

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Wednesday, November 16, 2022

1 PARTICIPANTS:

2 Opening Remarks:

3 KATHI VIDAL, Under Secretary of Commerce for
4 Intellectual Property and Director of the
USPTO

5 Patent Public Advisory Committee (PPAC) Members:

6 STEVEN CALTRIDER, Chair

7 TRACY-GENE G. DURKIN, Vice Chair

8 JUDGE SUSAN G. BRADEN (RET.)

9 DAN BROWN

10 JEREMIAH CHAN

11 CHARLES DUAN

12 SUZANNE HARRISON

13 HEIDI NEBEL

14 JEFFREY M. SEARS

15 Union Representatives:

16 CATHERINE FAINT

17 KATHLEEN DUDA

18 VERNON AKO TOWLER

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

2 (10:00 a.m.)

3 CHAIRMAN CALTRIDER: Good morning,
4 everyone. I'd like to call the meeting to order
5 and welcome everyone to today's PPAC. I have to
6 admit that I am really excited to see everybody
7 live. Getting to this habit of virtual meetings
8 and you kind of forget how much fun it is to see
9 colleagues face to face and visit beforehand in
10 breaks, and at lunch today, we'll have an
11 opportunity to chit chat some more. So, it's
12 really nice to see everyone. Thank you for
13 coming, and thank you for giving us your time
14 today.

15 I'd like to start off with introductions
16 from PPAC. I'm Steve Caltrider, Chair of PPAC.
17 We can go this way, then we'll go on line and
18 welcome our colleagues on line.

19 MR. DUAN: Charles Duan, Personnel,
20 PPAC.

21 MS. DUDA: Kathleen Duda, also member of
22 PPAC.

1 CHAIRMAN CALTRIDER: Anybody on line?

2 MR. SEARS: Jeff Sears, PPAC.

3 MR. CHAN: Jeremiah Chan, PPAC.

4 MS. FAINT: Catherine Faint, Member of
5 PPAC.

6 CHAIRMAN CALTRIDER: Great, thank you.

7 And, I would suggest we do the office

8 introduction, if that's okay.

9 Today's our last meeting of the year,
10 which is the closing meeting. I always like to
11 take the opportunity to reflect and say what did
12 we accomplish and how did we do this year? It's
13 been a remarkable year. It's been a significant
14 year of transition. Just looking around the room,
15 we have a number of new faces in the front office.
16 We have a new committee structure that we
17 implemented this year.

18 We have a new meeting cadence and again
19 I'll ask for your feedback on, you know, whether
20 the new meeting cadence worked or didn't work. We
21 had two live meetings at the beginning of the
22 year. At the end of the year, we had two long

1 session meetings. And then we had a series of
2 short session meetings in between, and we have to
3 decide whether we want to continue that cadence or
4 things that are around next year. So, I welcome
5 your feedback.

6 We also set three priorities at the
7 beginning of the year. First was improving the
8 reliability and the durability of the patent
9 right, expanding the number of people who engage
10 the U.S. patent system as inventors, particularly
11 in underrepresented constituencies and
12 geographies. And then finally, being a good
13 financial steward so that the patent system is
14 efficient, affordable, and accessible.

15 As we go through the agenda, you'll hear
16 from each of the committees and the progress that
17 we've made this year on those objectives. And I
18 think they are notable, and I congratulate
19 feedback in the office for the year in doing --
20 accomplishing those things. Of course, the
21 commitment of the office for continuous
22 improvement continues, and the work is never done.

1 So, we'll also make some recommendations on what
2 we need to do next year and in continuing our
3 focus.

4 With that, I will turn it over to the
5 Director virtually. She was unable to join us
6 this morning, but we have some opening comments
7 from Director Vidal.

8 MS. VIDAL: We closed with some office
9 and we are just getting started. For that, I have
10 the PPAC today. Working with PPAC as a trusted
11 advisor has helped shape our actions and will
12 shape the work we do in the future. In May, we
13 defined the mission and vision of USPTO and have
14 been taking steps together toward that mission and
15 vision. Our mission drive U.S. innovation,
16 inclusive capitalism, and global competitiveness.
17 Our vision unleashing American potentials.

18 You have worked with us to help
19 incentivize inclusive innovation. USPTO is always
20 looking for more ways to maximize our IP ecosystem
21 to help innovative, energetic, and creative minds
22 drive positive change. USPTO continues to expand

1 at Counsel for Inclusive Innovation, CI2, with the
2 addition of several new collide chairs taking in
3 all of government approach.

4 CI2 has been hard at work on new
5 initiatives to bolster participation and
6 innovation, including inventions,
7 entrepreneurship, and creativity. These
8 initiatives include innovation internship program
9 for community college and university students,
10 expanding our free legal services, including our
11 pro bono program and our lawful certification
12 program, piloting a community outreach campaign to
13 educate local communities on the importance of IP,
14 and developing an expedited examination program to
15 help under resourced first- time filers to secure
16 patent protection more quickly.

17 You have given response on our internal
18 DEIA effort to make the USPTO a place of and for
19 opportunity and innovation, and promote diversity,
20 equity, inclusion, and accessibility to every
21 corner of the agency.

22 We have appointed Caren Ulrich Stacy as

1 the agency's lead DEIA Advisor. Ms. Ulrich Stacy
2 is a talent expert with 30 years of experience
3 whose most recent accomplishments include founding
4 diversity lab, an incubator for innovative,
5 science-driven solutions that increase inclusivity
6 and equal access to opportunities in law and
7 beyond.

8 I've been working on programs to rethink
9 hiring, promotion, and opportunity with Ms. Ulrich
10 Stacy, and we're working on scaling and enhancing
11 those efforts across the agency. We are also
12 forming a DEIA committee and are shaping new DEIA
13 roles within the agency. You also helped on
14 collaboration and improvement within the agency.
15 We're working alongside all of my USPTO colleagues
16 in doing so.

17 In the past few months, I've held
18 numerous listening sessions, and I've heard from
19 well over 1,000 employees. These meetings have
20 blended several key initiatives to improve the
21 work we do. We've already extended work hours,
22 implemented process improvements to make tracking,

1 application classification, and routing even more
2 efficient and accurate, found better ways for
3 examiners to collaborate when technologies
4 converge, and announced numerous other agency-wide
5 initiatives.

6 You have helped advise other efforts to
7 improve robust and reliable patent. We issued our
8 first RFC on robust and reliable pattern, seeking
9 input on a variety of topics including prior art
10 searching, support the claim subject matter,
11 request for continued examination process,
12 restriction, divisional process, non statutory
13 double patenting process, and certain initiatives
14 related to these topics recently outlined by the
15 USPTO to address the Biden administration's goal
16 of increasing competition in the pharmaceutical
17 space.

18 We have another RFP in the works that
19 will address functional claiming among other
20 topics. We have on Board well-known professors
21 and former patent Commissioner Peggy Focarino, and
22 are working on guidelines for standard interviews

1 and reasons for allowance as well as updating the
2 101 guidance and creating guidance for 103, 112
3 patents.

4 You helped us improve examiners'
5 training as we continue to strive to issue robust
6 and reliable patents. The USPTO has developed
7 several successful programs to keep patent
8 examiners up to date on the latest technological
9 development, emerging trends, and recent
10 innovations. We encourage all who can contribute
11 learning to open their doors and collaborate with
12 us.

13 You can do so through one of our various
14 programs we've provided vendors and others at the
15 USPTO with the chance to interact with our
16 stakeholders while enhancing their technical
17 expertise. These programs include Patent Examiner
18 Technical Training Program, PETTP, we love
19 acronyms, sight experience education, SEE,
20 customer partnership meeting, CPM.

21 To reimpose the existing training
22 program, we've initiated a collaboration with IPO

1 and AIPLA on a training initiative that focuses on
2 the importance of the written record. This
3 training highlights the impact an examiner's work
4 has on patent and connects their work to the USPTO
5 strategic objectives to ensure robust and reliable
6 patent.

7 We are also working with you to ensure
8 that patent eligibility, like other areas of
9 patent law is clear, predictable, and consistently
10 applied. This clarity and consistency will allow
11 innovators to attract the investments and
12 collaborations that bring more innovation to
13 impact, in turn creating more jobs in solving
14 world problems.

15 The USPTO developed and employed,
16 deployed the deferred subject matter eligibility
17 response pilot program at the urging of Senator
18 Thom Tillis and Senator Tom Cotton. The program
19 is designed to evaluate whether examination
20 efficiency and patent quality can be improved by
21 delaying the complete evaluation of subject matter
22 eligibility until other patent ability criteria

1 are evaluated, as opposed to addressing all
2 requirements for patentability at the same time.

3 As I mentioned, the USPTO is also
4 revisiting its subject matter eligibility
5 guidance. We accepted comments on our subject
6 matter eligibility guidance from the public and
7 examiners through October 15th, 2022. We received
8 over 30 comments which are available for viewing
9 on regulations.gov. We're in the process of
10 reviewing the comments and will be determining
11 next step.

12 In addition to the work within the
13 USPTO, we are engaged in international efforts as
14 we continue to evaluate our approach to subject
15 matter eligibility. We are also working with
16 Congress and the U.S. Department of Justice's
17 Office of the Solicitor General providing
18 technical assistance and other input on patent
19 eligibility with the goal of creating more certain
20 and predictable rights that foster innovation. We
21 will continue to work with the Solicitor General
22 at her office to identify good vehicles for

1 achieving that objective while pursuing all other
2 options in parallel.

3 With your help, we have also developed a
4 faster, more streamlined customer experience. Our
5 patent center system fully replaced the legacy
6 public patent application information retrieval
7 public pair tool for the electronic filing and
8 management of patent applications. The public
9 pair tool first launched in the early 2000 was
10 officially retired on July 31, 2022.

11 Last year, the USPTO announced a
12 requirement for applicants to transition to the
13 DOCX file format and stressed the benefits of
14 doing so. Some of this were concerned there might
15 be potential rendering issues that applications
16 contain complex drawings or formulas. We provided
17 an interim option for applicants to file in both
18 DOC apps and with the backup PDF file to help
19 promote confidence in the DOC exponent. In
20 October, about 14 percent of new applications were
21 filed in DOCX.

22 Beginning August 1, the USPTO began

1 streamlining the process for following new
2 assignments, obtaining information on pending
3 environment questions on assignments, liens on
4 patent, filing assignment, recordation forms, and
5 trade market assignments. Users now submit
6 requests virtually using the electronic patent
7 private system, EPAS, an electronic trademark in
8 private system, EPAS. Our Chief Information
9 Officer, Jamie Holcomb, will delve further into
10 other ways in which we've modernized our IP
11 systems later today.

12 We are also completely committed to AI
13 as a major tool to improve all aspects of our
14 operations, our interaction with our stakeholders
15 and the public. We have a robust portfolio of AI
16 product development efforts across the agency and
17 areas such as search and retrieval,
18 classification, customer service, operational
19 support, and more. Some of these tools, including
20 AI based classification and prior art search have
21 already been displayed across the agency with
22 great impact. Many more are in the works.

1 We invite anyone, industry, academia,
2 independent researchers, and everyone else to
3 collaborate with us on bringing AI to bear an
4 important use case in any intellectual property
5 domain. The USPTO's goal is to incentivize and
6 protect innovations, including AI-driven
7 innovation. As such, we are carefully evaluating
8 AI goals in the investment process.

9 We look forward to continuing to engage
10 with our stakeholders on these important issues to
11 help inform our next steps in the AI space. We
12 continue working internationally with foreign
13 patent offices on these issues as well. Just this
14 past week we had a robust discussion with EPO and
15 JPO in North Carolina at the 40th Trilateral
16 Conference on IP improvements designed to
17 streamline processes across the three offices to
18 improve efficiency and reduce costs for
19 innovators.

20 We addressed AI-based tools, improvement
21 of prior art search capabilities and the
22 elimination of physical signature requirement.

1 This is part of a larger discussion at this
2 meeting focused on expanding and enhancing access
3 to tools, information, and other resources useful
4 to the innovation community and making the patents
5 to be more accessible to small and medium-sized
6 enterprises to drive economic growth.

7 We also worked with you on changes at
8 the PPAC. Since I arrived, I met with many
9 stakeholders to discuss issues relating to the
10 agency, including discussions about PPAC
11 proceedings. I have met with independent veteran
12 industry groups, representatives from IP member
13 organizations, and others. As we move forward on
14 clarifications and proposed changes to PPAC
15 procedures, I will bear in mind all the
16 perspectives and interests from the diverse
17 stakeholders we serve.

18 As of July 11th, parties also have the
19 option of requesting in person hearing. Through
20 the end of October, PPAC has had 79 in person
21 hearings, 25 in ex parte appeals, and 54 in AIA
22 trials, most of them held in Alexandria and at

1 least one other regional office. We continue to
2 improve. We continue to provide the public, but
3 the option to request video access and the vast
4 majority have been granted.

5 The USPTO also published a request for
6 comment, RFP, seeking public input on Director
7 review, presidential opinion, general POP review,
8 and internal circulation and review of patent,
9 trial, and appeal Board PPAC decisions. Comments
10 were accepted through October 19th. The USPTO is
11 considering modifications to seek out decision
12 review, including direct review, and will
13 formalize any changes after reviewing and
14 considering stakeholder feedback.

15 The Director review decisions over the
16 past six months were focused on ensuring that the
17 tax rules and practices were applied fairly and to
18 address any errors in law or facts. They also
19 addressed any abuses of the system. The
20 decisions, importantly, were not used to advance
21 policies.

22 (Inaudible) is being advanced in

1 the Board highlight policy issues.
2 Hose will be addressed through
3 Director memoranda guidelines and
4 notice and comment rulemaking.
5 That process has been taking place
6 at the USPTO over the past couple
7 months and in parallel with
8 Director review decisions.

9 In addition to Director review and other
10 ways to review PPAC decisions, I'm considering
11 next steps in relation to discretionary denials of
12 institution and AIA proceedings. Back in June, I
13 issued an interim guidance memorandum to clarify
14 certain processes as they relate to (inaudible).
15 That guidance is just the first step.

16 In light of feedback, we have received
17 from stakeholders already, I intend to revisit
18 policies pertaining to discretionary denials as a
19 general matter. I have plans to move forward with
20 (inaudible) through an NPRM which is in the
21 process of being finalized right now. We will
22 also address Joinder so that may likely come

1 through a different package.

2 I also want to address our LEAP program.
3 Just last week, on November 9, PPAC hosted its
4 inaugural LEAP to Chambers program. In this first
5 program of its kind, 30 LEAP eligible patentors
6 were marked with 1080 days for an exciting morning
7 of networking and education. The LEAP team looks
8 forward to repeating this program in the regional
9 offices in the future to make more contacts with
10 newer patent practitioners across the country.

11 Lastly, I want to talk about a care
12 request for comments that we recently issued on
13 October 18th. The USPTO seeks public input on
14 proposed initiatives directed at expanding
15 opportunities to appear before the PPAC and
16 expanding an admission criteria for registration
17 to practice in patent cases before the USPTO. The
18 comments are viewed by January 17, 2023. We look
19 forward to hearing from you.

20 We've also worked on many other projects
21 together, including promoting competition in the
22 pharmaceutical space, standard essential patents,

1 AI emerging technologies. And this is just a
2 high-level listing of all we've gotten done in the
3 brief time we've worked together, and I know we
4 will work together to accomplish even more next
5 year.

6 So, thanks to the PPAC for their support
7 and helping the USPTO have a great year in which
8 we made many great strides. And especially I
9 wanted to thank three of our PPAC members who are
10 concluding their terms this year, Tracy Durkin,
11 Jeremiah Chan, and Jeff Sears. Jeff said it best
12 when he said that one of the greatest benefits, he
13 received serving on the PPAC is to get to know all
14 the great people at work that happens here. Thank
15 you, Jeff, Tracy, and Jeremiah, and thank you,
16 PPAC.

17 As I turn over this session to Deputy
18 Derek Brent to recognize Jeff, Tracy, and
19 Jeremiah, I depart with great hopes for ways in
20 which we will move the country forward in the next
21 year. Thank you.

22 MR. BRENT: Excuse me. Thank you, Kathi

1 for your remarks. Thank you, Steve. And as Kathi
2 said, I am the Deputy Director Derek Brent. It's
3 been a pleasure just getting to work with the PPAC
4 early on here in my tenure and look forward to
5 more better to come. I want to thank PPAC for
6 your support in helping me here at PTO to have a
7 great year in which we have made great strides.
8 And I want to take a moment to recognize three of
9 our members who are concluding their terms and
10 express our appreciation for their service.

11 The first is Tracy Durkin, current PPAC
12 Vice Chair. Tracy served one term, three years
13 from December 2019 to 2022. She is current Chair
14 of the PQuIP's subcommittee, previously chaired
15 the outreach and international committees. Fun
16 fact: In her free time, she enjoys sailing and is
17 a licensed yacht captain. And so, Tracy, we will
18 present the certificates afterwards.

19 Jeremiah Chan, current Chair of the
20 Legislative, AI, and International Policy
21 subcommittee. Jeremiah served one term, three
22 years, December 2019 to 2022, previously chaired

1 the AI and IP subcommittee and the AI
2 subcommittee. Fun fact: He auditioned for the
3 Broadway show, Miss Saigon, and received a call
4 back.

5 And finally, Jeff Sears, current Chair
6 of the Finance subcommittee. Jeff had served two
7 terms, six years, December 2016 to December 2022,
8 previously chaired the following subcommittees:
9 Patent Quality and Pendency, PTAB, International
10 and Patent Pendency. And fun fact: During the
11 pandemic, he became a fan of opera and now his
12 streaming playlists are full of Pavarotti. And
13 so, and Jeff, I do share Pavarotti's version of
14 Pagliacci. It is beautiful, so I share that with
15 you.

16 Jeremiah and Jeff, we will be sending
17 their certificates in recognition of your service
18 to you. They're presented on the screen right
19 now. Thank you very much for your service. And
20 Tracy, if you don't mind, we'd like to present
21 yours in person.

22 CHAIRMAN CALTRIDER: Thank you, Deputy

1 Director Derek Brent, and thank you to Jeremiah,
2 Jeff, and Tracy. You will be very much missed and
3 great colleagues during my tenure and for your
4 service. Thank you for your service.

5 I'd like to now turn things over to Dan
6 Brown. And as we talk about robust and reliable
7 patents, it's important to highlight in particular
8 the impact of the patent on the small inventor and
9 the micro entities. It impacts all of us, all
10 stakeholders when patents aren't robust and
11 reliable. That's the order of magnitude more
12 significant to the small inventor because
13 oftentimes they're one asset, stop. It's the
14 patent or nothing that they rely upon, and it's
15 important to keep that in perspective.

16 If you're a large corporation, you have
17 hundreds or thousands of patents in your
18 portfolio. Losing one could be very immaterial,
19 can be very, very immaterial. But it's generally
20 not catastrophic to the company or to the
21 organization, but the small inventor can be
22 catastrophic.

1 So, I thought it would be important
2 today as we talk about robust and patent, reliable
3 patents, and that's our next agenda item after Dan
4 to really highlight that fact. And we have a very
5 special presentation by Dan. I'll let him
6 introduce himself directly, but I the hope you
7 enjoy it. Thank you.

8 MR. BROWN: Thanks, Steve, well, that's
9 for everybody. I'm independent, inventor
10 designate, and so I spend my, I guess, focus over
11 the last two years of trying to bring empathy to
12 the independent vendor and I have to thank my
13 fellow members of the PPAC's support. It's been
14 phenomenal and for the office of, you know, trying
15 to, you know, with all the things you have to deal
16 with, which I had no idea until I got here. Your
17 openness to understand what's going on and then
18 Director Vidal has embraced this, and we did a lot
19 of travel and work in trying to understand and
20 listening sessions herself.

21 And so, Director Vidal couldn't be here.
22 We're going to have a PPAC question and answer.

1 So, the second-best thing is I met with her
2 yesterday asking the questions and we had a
3 discussion and was recorded and I believe we're
4 going to play that discussion. So, thank you
5 everybody for your support.

6 (Recording playback begins.)

7 MR. BROWN: Director, thanks for
8 spending your time today. After being on PPAC for
9 a year with the interim, what have you learned
10 from them?

11 MS. VIDAL: A lot. I will say and I
12 think you know this, but before I was confirmed, I
13 spent a lot of time reading comments by
14 stakeholders to all the issues that were out there
15 and really educating myself so that when I came
16 into this position, should I be confirmed, I'd be
17 ready to go. So, I think that's part of the
18 reason why we're running, and then, of course,
19 meeting with the PPAC so early in my tenure and
20 realizing what a great group you are and just the
21 potential there is fantastic.

22 MR. BROWN: Thank you. As you know, I'm

1 the independent vendor that doesn't listen so
2 that's my candidacy and I've been hit hard with
3 all the PPAC numbers (inaudible) independents,
4 particularly those that have commercialized
5 products across the market. Well, what are you
6 gaining from there, what did you learn from them?

7 MS. VIDAL: So first, I want to thank
8 you for doing that, and if everybody doesn't know
9 when after I was confirmed we sent out letters to
10 numerous stakeholders that were traditional
11 stakeholders of the USPTO, but we want to go more
12 broadly and not just speaking our echo chamber and
13 then Dan was helpful in setting a discussion panel
14 throughout the country with individual investors
15 that sometimes are harder to reach than the larger
16 organizations, so I really appreciate all of that.

17 In having those discussions, there's so
18 much I learned that I didn't really think about,
19 everything from the way we communicate with
20 inventors, that we'll be sending forms, government
21 forms saying things like rejection notice. And it
22 was just getting how an independent inventor who's

1 not familiar with this system reacts to those and
2 how we need to just rethink everything that we're
3 doing to make sure that we're communicating with
4 every audience and not just those that are
5 familiar with our system.

6 So that's why I can go on and on and all
7 the things I learned through the sessions but it
8 was really about reorienting to make sure that
9 we're not only supporting the great companies in
10 the country that are already innovating but that
11 withdrawing more innovation at more areas of the
12 country more innovators and that we're supporting
13 that.

14 MR. BROWN: I certainly saw that
15 consistently in the feedback.

16 MS. VIDAL: And I just want to add to
17 that you pointed out all of PPAC being focused
18 also on the invention, that's phenomenal like I
19 did not expect that when I came here that a lot of
20 the larger stakeholders when they come in to talk
21 to me in group for part of organizations, they
22 know that I want to solve for everything and not

1 just for their particular concern and they have
2 great ideas, great solutions. A lot of them are
3 banding together to try and support innovation and
4 new areas so it's great that everybody's focused
5 for the most part on really what's best for the
6 country and not just their own individual needs.

7 MR. BROWN: Yeah, there's an umbrella
8 (inaudible).

9 MS. VIDAL: (Inaudible) patent trademark
10 office (inaudible). It's a phenomenal
11 organization, and you're right that individual
12 inventors need a voice and they need to make sure
13 that we're doing everything we can (inaudible) and
14 a lot of them don't have as much of a voice
15 because they don't have the lobbyists, they don't
16 have the infrastructure for that.

17 So, from my prospective, I always like
18 to look at things from all views and so and one of
19 my philosophies is somewhat related is, don't just
20 think about who asked for something but think
21 about all the people out there who didn't ask.
22 And I've applied that throughout my career whether

1 it's about elevating somebody for an opportunity
2 or whatever it is and I look at individual
3 branches the same way. I think not only about
4 who's coming in here with good ideas or just ideas
5 and then how may that impact individual vendors.
6 And so, I see everything from that lens. And then
7 also I think about how is that going to help
8 promote innovation in the country, grow jobs and
9 economic prosperity so everything that I look at
10 is through that lens.

11 MR. BROWN: Yeah, (inaudible)
12 consequences of not looking, you know,
13 (inaudible).

14 MS. VIDAL: That's a good question. So
15 just servicing on Director Review, we did put in
16 across in (inaudible) the process right after I
17 got here and the whole purpose would be really
18 open and transparent about what we were doing
19 because that shared everyone. And then we saw
20 stakeholder input so (inaudible), you know, and
21 we've already received responses to that when this
22 passed, a lot of responses over 4,000.

1 And what we're doing right now is we're
2 sorting through those and combining that with my
3 own experience of trying the guidelines that we
4 had out there and what I saw (inaudible) the
5 process to be improved so on Director Review
6 alone, I agree I think it's a very important
7 process to make sure that if there are intended
8 consequences, we can recognize them and address
9 them. To me, the recognition and addressing is
10 going to have to be responsible making or guidance
11 made by applying law or policies retroactively
12 developed not be fair to anyone.

13 So, my views on it is one, it helps me
14 think about bigger policy issues that we're
15 working on through rulemaking and we're also going
16 to involve the director of the process. So, we're
17 going to issue hopefully some updated guidance,
18 updated guidelines on it and then go through
19 rulemaking on that as well so that we can
20 formalize it and, in that regard, we haven't made
21 every decision on (inaudible).

22 I will say that I think it needs to be

1 changed such that the directors really looking at
2 this bigger impact issues and not just doing error
3 correction. Number one, because (inaudible) to
4 the public because if I do error correction to
5 correct an error and it benefits the particular
6 party, somebody may draw from that that I have
7 some papers that I don't have. And then I don't
8 want to create that into a better location.

9 And then the second reason is it's a lot
10 of work and as you recognize (inaudible) the
11 organization to run, there's a lot that we're
12 trying to do that really move (inaudible) so if
13 another group can do the error correction, then I
14 can really focus on the bigger picture issues.
15 So, that's how we encourage to revolve that going
16 forward and we'll put it in place to process where
17 any major changes will be (inaudible).

18 MR. BROWN: Why don't we (inaudible).

19 MS. VIDAL: Well, and I appreciate that
20 and as you recognize I can't go backward in time
21 and I'll also say that those statistically
22 (inaudible) ventures are not implicated that often

1 it doesn't matter if any of them are implicated
2 that's not the system we want. We want to make
3 sure.

4 MR. BROWN: (Inaudible) commercial basis
5 so (inaudible) people that are looking to design
6 around and create their own invention or jump on
7 it and (inaudible).

8 MS. VIDAL: Yeah, I would say that
9 there's a lot of barriers that slow ventures space
10 and I'm trying to identify what they all are and
11 see if we can remove them and, you know, whether
12 that's something else to assert your (inaudible)
13 and whether (inaudible) able to commercialize in
14 the first instance, you know, everything from that
15 to counterfeit I'm trying to do everything across
16 the board to protect innovation and grow job
17 growth in the country including small ventures,
18 startups, et cetera. When it comes to the PTAB,
19 and I actually have (inaudible) here this is
20 (inaudible) forward is I want to try putting it
21 back the other night (inaudible). There is
22 actually language in the statute is to the

1 considerations of revenues to consider when
2 engaging in rule making. And it says the Director
3 shall consider the investment any such regulation
4 on the economy, integrity of the patent system,
5 efficient administration of the office, and the
6 ability of the office to timely complete
7 proceedings.

8 So, I know that's been cited to me a lot
9 of times. I'm very familiar with it and language
10 want to make sure that that siding where we're
11 going with this PTAB and that we're thinking
12 through that in thinking about discretionary
13 denial. So, the next step is really to put out a
14 proposal for the ANPRM that addresses, you know,
15 how we can protect small investors need inside the
16 venture.

17 MR. BROWN: (Inaudible) to court and
18 then they want to take you to the PTAB (inaudible)
19 process in the courts in some way.

20 MS. VIDAL: So that's exactly where the
21 things that we're thinking about is, how do we
22 enable the PTAB process to work efficiently for

1 its intended purpose and part of that is taking
2 into consideration (inaudible) economy
3 (inaudible), et cetera. And so, what we are,
4 we're looking at every aspect of discretionary
5 denial including as you mentioned limit the
6 parallel (inaudible) and thinking about the
7 smaller invention where that it's very difficult
8 for some reasons under resource to go through both
9 of this report case and (inaudible).

10 MR. BROWN: (Inaudible) product and rely
11 on (inaudible).

12 MS. VIDAL: And I love this discussion.
13 If this is the independent inventor view that I
14 hear from a lot of independent inventors, it's
15 something we need to solve for and we are solving
16 for. I also recognize that there's other abuses
17 in the system that target some of the larger
18 companies that are different in kind so I just
19 want to let everybody know we're solving for all
20 of that because it's all important that we need
21 (inaudible) used to promote innovation and protect
22 that and not for other purposes that you think

1 both of the people have existed for litigation, et
2 cetera. So, I'm all aware of all of that and I'm
3 glad because a lot of times people do not hear
4 (inaudible). So, I'm glad you're here and like I
5 said it's something we're absolutely solving for.

6 MR. BROWN: Yeah, (inaudible) solve the
7 problem for everybody because solving the problem
8 (inaudible).

9 MS. VIDAL: Yes, so I will say a couple
10 things. One, when it comes to the EIA and the
11 ecosystem of inventors, et cetera, to me is
12 although the EIA (inaudible) component of it,
13 we've been reaching everywhere in the country and
14 pulling up innovators would be innovators
15 everywhere in this country and there is an aspect
16 of the EIA but we want to list everybody whether
17 they identify as diverse or not. I know inclusion
18 is all often considered (inaudible) with
19 diversity. To me, it's everyone. It's the
20 retiree, it's the veteran, it's the person in the
21 country that has a hard time getting internet
22 access and you're right. So, what we're trying to

1 do is bring more people into the system. I hope
2 people realize and that groups will be patient
3 because we need people (inaudible) any barriers
4 now are going to persist in the future (inaudible)
5 counterproductive, right? We're here, we're
6 working together on these issues so we want to
7 encourage people in case you need a patent so that
8 they can protect innovation in the country and
9 then with regard to, you know, the DIA effort I
10 was again considered that was inclusion effort the
11 council for inclusive innovation, the work we're
12 doing across the board to support and those
13 innovators and help them get their ideas to
14 impact, right? Because if you recognize a pattern
15 in and of itself even more than anything if you
16 can't rely on it, you can't seek investment, if
17 you can't then build on that, you create a company
18 and get your product out there. So, that's the
19 ecosystem that we're working to support.

20 MR. BROWN: So, I was very impressed
21 (inaudible) you were very clear that, you know,
22 (inaudible) could work on right now (inaudible).

1 MS. VIDAL: It's interesting the words
2 okay, because I So, want to pursue everything, you
3 know I feel like we So, have limited time to
4 really get a lot done and so I am very grateful
5 for this specific idea even this paper pulled from
6 a binder if somebody gave me with a lot of
7 specific ideas in it and some of the request for
8 comment have specific ideas that stakeholders gave
9 me. So, I always welcome those and just want to
10 mention you have to engage the director's webpage
11 where anybody is welcome to come in at any time on
12 any way that we can improve. As for next year and
13 moving forward there's a lot of things that we
14 started that I would love to (inaudible) we
15 started (inaudible)with the request for comment on
16 go back to reliable patent. We've got a second
17 we're working on now that we will share with you
18 soon and the other two cast members. We've got a
19 request for comment about expanding the bar
20 whether it's practicing before the PTAB or the
21 patent bar and whether we have a separate design
22 bar. You certainly have to go post your comment

1 on Director review and I already had the comments
2 come in the discretionary denial and so the goal
3 in the next year is not only to think about
4 anything new that they need to start. (Inaudible)
5 looking out for that but also pushing from these
6 things across the finish line. And as we get the
7 comments and digesting them, modifying our
8 guidance that we feel like there's appropriate to
9 do so without (inaudible) and then pushing it all
10 into (inaudible) so the (inaudible) APR is on this
11 first-year denial that's very high on the list and
12 looking to finalize that thing changing from the
13 processing where we can feel comfortable, we want
14 to work on that (inaudible) joiners. There's a
15 lot of guidance out there on whether director
16 should exercise discretionary (inaudible) focus on
17 that as well. And then with all these efforts
18 including the guidance that we're working on that
19 we bought in the (inaudible) to work on so that we
20 have the same rules that are applying examiners.
21 Yeah, examiners and with the PTAB whether
22 (inaudible) we're working on all of that in

1 parallel (including) the judges who were all
2 solving for that. So, I'm very optimistic we can
3 work with the with the (inaudible) two pack on
4 that next year and I'm sure we sit down and
5 regroup with the new French bunch. (Inaudible)
6 I'm glad about that. We've got a number of others
7 getting on including public interest
8 representatives. I'm glad we have a diverse group
9 and so really looking forward to regrouping in
10 December and thinking about what (inaudible) next
11 year.

12 MR. BROWN: (Inaudible) inside the
13 language (inaudible).

14 MS. VIDAL: Yeah. I just want to be
15 clear I like talking and plain language but thank
16 you for reminding me that I can do better job.
17 So, right now, there's a huge book of electronic
18 it's all called the MCEP (phonetic) that's when
19 they issue a patent. When the patents up getting
20 reviewed back again by the PTAB, we have
21 phenomenal judges on the PTAB (inaudible) and what
22 they do is they have the laws the Federal budget

1 that they follow so. And the Federal Circuit law
2 is not necessarily consistent on all issues and
3 that's why they could do those. That's job, 80
4 plus job and applying that law to a case but it
5 may not be the way to examine (inaudible) and
6 that's why we're looking at guidance to make sure
7 that the analysis is consistent so if you get the
8 patent on day 1, the same analysis will be applied
9 on day 2. If your patent (inaudible).

10 MR. BROWN: (Inaudible)

11 MS. VIDAL: Yeah, I want to say that
12 (inaudible) and they wanted to be an examiner but
13 you're right about regardless of how good you are,
14 it's the law that controls and so making sure the
15 interpretation of the law is consistent. They
16 work with 101 guidance patent eligibility whether
17 the patent is eligible for a patent. Once we put
18 in place 101 guidance, there was more, even
19 amongst the (inaudible) and then certainly for the
20 processes where you could challenge that at
21 (inaudible) there was now a consistent framework
22 and so that's really what we're working on with

1 this just to make sure regardless of what happens,
2 you know, someone like with all the ways on top
3 were there looking for that were solid and we're
4 using the same application of the law everywhere.

5 MR. BROWN: (Inaudible)

6 MS. VIDAL: (Inaudible) as a result of
7 that everything that the USPTO does is better, you
8 know, (inaudible) and you bring so many different
9 perspectives and an outside perspective that those
10 within the agency may not have and so it's
11 extremely valuable to you as you know that I was
12 everything by you and that (inaudible)

13 MR. BROWN: (Inaudible.)

14 MS. VIDAL: Thank you. I can't do
15 without you, and I appreciate you agreeing to do
16 this. It was my suggestion that we sit down as
17 well because I feel like oftentimes, I get out
18 there and do interviews and people see if I
19 thought something, but also those are not engaging
20 directly before the public with independent
21 inventors. So, thank you for roughly setting the
22 independent inventor and I know that it's not just

1 like me, it's not just your views. You have
2 communications with inventors across the country
3 with different organizations and you bring all
4 that to their decision making, which again just
5 makes it better, and we can focus on moving things
6 across the finish line.

7 MR. BROWN: Right, looking forward to
8 see you soon.

9 MR. VIDAL: Thank you. Thank you for
10 all your help.

11 (Recording playback ends.)

12 CHAIRMAN CALTRIDER: Thank you, Dan, and
13 thanks to the Director for putting that together.
14 I think it was very, very for this year, but that
15 moving forward segment was particularly
16 interesting. And as I indicated in the
17 introductory comments, I think it's a great segue
18 into our next agenda item on PQuIP, Patent
19 Pendency Quality International, because it really
20 is the subcommittee that drives whether or not
21 we're improving the robustness and the reliability
22 of the patent right. So, Tracy?

1 MS. DURKIN: Sure. Thank you, Steve.
2 Over this past year, as was mentioned, this is my
3 final hours of being part of the PPAC and it's
4 really been a pleasure, and I think Jeff did say
5 it the best, is, you know, seeing how this, after
6 30 years of practice, as a patent practitioner of
7 five years, before that as an examiner, it really
8 wasn't until I was on the PPAC for the last three
9 years that I realized just how much happens behind
10 the scenes and what quality people are at the
11 helm. So, thank you. So, with that I think I'm
12 going to start, as I'm supposed to do, with the
13 highlights of the annual report. And I guess
14 that's being released next week, but we wanted to
15 give the public a little preview of what is in
16 store.

17 So, for the past several years, the PPAC
18 has been focused on improving the reliability and
19 durability of the patent rights. We've heard a
20 lot about that already today. The starting point
21 for that is a well-prepared patent application,
22 but equally important is an examination that

1 ensures the closest prior art is considered and
2 the examiner knows and is correctly applying the
3 appropriate legal standards. And if the patent is
4 challenged before the PTAB, the PTAB needs to be
5 in the proper role envisioned by Congress to
6 correct any erroneously issued patent.

7 Only with a reliable and durable patent
8 right, inventors, and those who invest in that
9 technology will have the confidence in the system
10 and post granting validity filings will be
11 exception, not the norm. To achieve that goal,
12 the PPAC commends the USPTO for working towards
13 the creation of a robust feedback loop that will
14 help both the patent examination function and the
15 PTAB work together to ensure that the office
16 continues to receive quality patent applications
17 and that reliable and durable patent rights are
18 granted.

19 Starting with ex parte appeals, the PTAB
20 and patents are working to develop training for
21 examiners on how to strengthen examiner answers
22 and for PTAB judges on when to administer a new

1 ground of rejection based on feedback received
2 from cross surveys of each business unit. While
3 these steps are currently focused on appeals of
4 pending application, it's a good start and it will
5 hopefully lead to ways in which patents and the
6 PTAB can continue to work together to create a
7 feedback loop for proof grant outcomes as well,
8 and to use each decision, finding a claim
9 unpatentable as an opportunity to understand and
10 learn.

11 The PPAC commends this feedback loop and
12 suggests that it be embedded into all the USPTO
13 quality systems. The reliability and durability
14 of the patent right is also dependent on the
15 quality of the patent application and the
16 representation of the applicant before the office.

17 To that end, the office launched several
18 initiatives in FY22 to enhance outreach to the
19 inventor community and implemented tools and
20 services to aid inventors who appear on their own
21 behalf before the office. These programs include
22 START, a free three-day online workshop providing

1 training and one-on-one assistance to independent
2 inventors in preparing and filing patent
3 applications per se and the customer ambassador
4 program to support START participants once their
5 application has been filed.

6 The MPEP is the main tool on which
7 examiners and practitioners rely to ensure that
8 they're applying the most current patent laws and
9 rules correctly. Ensuring that it contains the
10 most up-to-date information is critical to quality
11 examination. Given the importance of this manual,
12 the PPAC recommends that the office considers more
13 frequent updates. Recognizing that manual updates
14 are time intensive, the PPAC encourages the office
15 to timely post all updated examiner training
16 materials to the USPTO website, including training
17 materials for design patents which are typically
18 not posted.

19 And finally on this topic, the PPAC
20 recommends that the office consider additional
21 ways other than increased fees that introduce
22 additional barriers to entry for under resourced

1 inventors to encourage the public to use DOCX.

2 And last I wanted to mention pendency.

3 While reliable and durable patent rights are
4 clearly the goal, obtaining them in a reasonable
5 amount of time is also important. To that end,
6 the PPAC has noted a significant increase in
7 application pendency overall, but more
8 particularly of design patent applications. And
9 while they make up a small fraction of the total
10 filings at the office, they are often the first
11 line of defense to combat counterfeiters and
12 copycat products. In addition, independent
13 inventors in small businesses who cannot otherwise
14 afford the investment required for a utility
15 patent, often file for them.

16 The good news is the first office action
17 pendency of design applications in FY22 has
18 dropped to 14.7 months, that's compared to 16.1 in
19 FY21. Total pendency, however, has shown a slight
20 increase to 20.4 months compared to 19.8 in FY21.
21 While the office is actively engaged in hiring and
22 training new design examiners to slow this

1 increase in pendency and expects to see positive
2 impacts over the next several years, the PPAC also
3 encourages the office to implement tools to enable
4 more efficient examination and grant of design
5 patent applications such as AI search capabilities
6 which are only available to utility examiners
7 currently and electronic publishing of granted
8 design patents.

9 These are just some of the highlights,
10 but I encourage everyone to read the entire annual
11 report. Thank you, Steve. Unless there's
12 questions on that, I will turn it over to Jackie
13 or Mike? Are you covering the PTAB option?

14 MR. BOALICK: I'll be covering the PTAB
15 update today and I just want to say thank you for
16 inviting the PTAB to speak today. We're going to
17 cover a wide range of topics. As you are aware,
18 we're going to cover all the way from our computer
19 systems all the way through presidential
20 decisions. So, with that, I would like to hand
21 over to friend. I see she's on the screen there.
22 Melissa Haapala is going to talk about our

1 computer systems, specifically the Patent Trial
2 and Appeal Case Tracking System.

3 MS. HAAPALA: Good morning, everybody.
4 Can I have the next slide, please? So, I'm just
5 here to give you a short update about our external
6 portal rule out of P-TACTS. P-TACTS is Patent
7 Trial and Appeal Case Tracking System, and it's a
8 new and improved system that replaced the old
9 portal end-to-end, and it was ruled out on
10 October 11th.

11 Some of the highlights that we have in
12 the new rollout is it's a more straightforward
13 interface, and it's easier for parties to file
14 papers and minimizing some common errors. Also,
15 it's a bit more secure. It uses the logon that
16 all of the USPTO systems in MYUSPTO accounts. So
17 that's, when you have a MYUSPTO account, it's a
18 portal for all of USPTO public applications and
19 systems, and so you can also now use your MYUSPTO
20 account to access P-TACTS. And it provides some
21 enhanced security and ease of use per single sign
22 on from the USPTO system.

1 We do have a new role as well in the
2 P-TACTS system in which lead counsel can add
3 staff, so staff would be able to file documents on
4 behalf of that party. Only lead counsel can add
5 the staff or you can add up to, I think, three
6 staff and the others can't see what staff you use.
7 We know that it's common to have paralegals file
8 documents and so with the new system there's an
9 explicit way to do that by adding a staff role.

10 The system also has a better workflow
11 for petition submission, so it kind of walks
12 through the petition submission process, make sure
13 you have all the documents filed with the petition
14 that you need to file, and reduces some common
15 errors that we used to see with the old system.

16 There's also an improved case viewer
17 interface with enhanced functionality, so you can
18 look at your cases with multiple ways, and you can
19 look at them with different information. It is
20 easier to file documents as well. You know, one
21 error that we would see sometimes with the end-to-
22 end system is sometimes parties would file a

1 motion and not attach the document in this new
2 system, for example, makes it a little bit easier
3 and have some enhanced usability, so that's
4 difficult to do now in the new system.

5 A really great feature that we have as
6 well is to link motions and oppositions and
7 replies and all those documents together so that
8 you can see them all together. So, petitioner or
9 patent owner can submit a motion and associate
10 exhibits with that motion. The opposing party can
11 put their opposition in and link it to the motion
12 and then the original filer can put in their reply
13 and everything can be linked together so you can
14 see all of that together.

15 (Inaudible) P-TACTS is the ability
16 for backup counsel to file. Before
17 there was only limited filing
18 ability and so now all backup
19 counsel, not just one can file
20 documents.

21 There's also in the case viewer, you can
22 see joint cases that are linked together for easy

1 access. We've simplified the rehearing request
2 submission also to reduce errors and we
3 pre-populate a paper type. So, before the old
4 system would have a long list of paper types to
5 choose from in this new system, now you can choose
6 the paper type most relevant to the stage in the
7 position that you're at.

8 So, this is just a few highlights. What
9 we did on last week, we did a Board side chat on
10 all of this. The features, including detailed
11 screenshots and walking through, where each of the
12 features are and what it looks like, and we can
13 lend that presentation to any of you, particularly
14 if you have paralegals that file documents for
15 you. The Board side chat presentation is
16 available on our website, and it has a lot more
17 details about all of these features and how to use
18 them.

19 MR. BOALICK: Thank you, Melissa. And
20 now I'd like to turn over for pilot program
21 extensions and I'll have Miriam Quinn who's up on
22 the screen. Miriam, if you could go over some of

1 our pilot program extensions.

2 MS. QUINN: Hello, can you hear me well?
3 Yes, I think I see thumbs up, thank you. Good
4 morning, everyone. I'm here to talk about the
5 motions to amend pilot program. The statutory
6 provisions of the AIA provides that a patent owner
7 is able to file a motion to amend during an AIA
8 proceeding. Since the beginning of AIA, we have
9 been having the motions to amend process. For six
10 years, it went unchanged and after that a pilot
11 program was instituted in 2019, and we have been
12 running under that pilot program for three years.

13 We recently extended the pilot program
14 for another two years to now run through to
15 September 16, 2024. For those of you unfamiliar
16 with the motions to amend process, it is the pilot
17 program. It allows the patent owner to file a
18 motion to amend and request with that motion a
19 preliminary guidance by the Board.

20 That preliminary guidance is provided
21 early in the process within one month of receiving
22 the opposition to that motion. And it is a short

1 paper, but it provides that preliminary guidance
2 is non binding, but it provides the panels abuse
3 of the motion to amend, and it also triggers the
4 opportunity for patent owner to get another
5 option, which is to revise its motion to amend in
6 light of the preliminary guidance.

7 Both of these options, the preliminary
8 guidance request and the option to file a revised
9 motion to amend are entirely optional and they're
10 independent of each other. We think these are an
11 efficient way of obtaining feedback from the
12 Board, and we have had 84 percent of the motions
13 to mend have taken advantage of the preliminary
14 guidance. With the extension of the motion to
15 amend pilot program, we have also announced that
16 we will engage in some comment and rulemaking with
17 regards to motions to amend the pilot program to
18 see how it is going in addition to also recently
19 established rules for burden allocations in the
20 process of motions to amend.

21 Together with a motion to amend pilot
22 program, if we go to the next slide, we also

1 issued a motion to amend study. We do this every
2 year. This is the seventh installment of that
3 study, where we analyze all of the motions to
4 amend filed and data around those motions to amend
5 and we have issued that study. It's also on our
6 website accessible by everyone.

7 And there's some interesting statistics
8 of that as a highlight for you all today is that
9 the -- traditionally we have seen that from all of
10 the AIA cases proceedings filed, 10 percent of
11 them we see a motion to amend filing. That had
12 been traditionally the same amount of motion
13 installments since the inception of the motion to
14 amend in an AIA process. So, it hasn't changed,
15 it's still 10 percent.

16 Also, we have seen, as I said, that 84
17 percent of those motions to amend we see a request
18 for preliminary guidance. And out of that, we
19 also see that almost 50 percent of those cases we
20 get a revised motion to amend. So, patent owners
21 are taking advantage of those two options.

22 We also saw that of the 99 motions to

1 amend that we have seen on the merit, 25 percent
2 of them officially were granted. We have seen
3 since the issuance of this study that number
4 picked up a little, almost to 29 percent.

5 The pilot program study also identifies
6 the reasons why the motions to amend are granted
7 or denied. And as a highlight of those findings,
8 we have 58 percent of the denials are because the
9 petitioner has met the burden of unpatentability,
10 and 16 percent of the denials were because the
11 patent owner failed to meet the statutory and or
12 regulatory requirements.

13 I'd like to now switch to another topic
14 which is another pilot program that we had also
15 the opportunity to extend during our summer, if we
16 can go to the next slide, please.

17 So, this is a fast-track appeals pilot
18 program. We have also extended that program to
19 July 2nd of 2024. We have been using this pilot
20 program since 2020, and it is a program that
21 allows appellants that have a docketed ex parte
22 appeal to file a petition to expedite the review

1 of the appeal. The target is to reach the
2 decision within six months from the day they enter
3 the program, and this is useful, you may know,
4 that the pendency is about 11.8 months, so it
5 pretty much half the time that the Board will
6 decide on an ex parte appeal. And that's what I
7 have for those topics this morning. Thank you.

8 MR. BOALICK: Thank you, Miriam. And
9 it's actually my pleasure I get to talk about our
10 recent request for comments. I'll be talking
11 about our open RFC and I'm going to hand out to
12 Amanda Wieker, for our Director of URC. So, I
13 think many of you are aware and if not, this is my
14 opportunity to remind people we have an open RFC
15 right now, Request for Comments, and if you look
16 at this slide, we have the RFC on expanding
17 opportunities to appear before the PTV.

18 So, taking you a set back ten years ago,
19 we put out our rules, and in our rules, we had
20 reached out to the public and said, how do we want
21 to proceed with having counsel appear before the
22 Board? Listening to feedback we received, we

1 created a rule that says that lead counsel is a
2 registered practitioner and a benefit counsel,
3 could be a prosecutor, a non-registered counsel.

4 In doing so, we could hint at, you know,
5 what we expected that 10 years ago was the
6 non-registered practitioner, as benefit counsel,
7 would be someone with some litigation experience
8 and familiarity with the patent. Well, now, 10
9 years later we have a wealth of experience, we've
10 been working with the public. We want to hear how
11 things changed. We want to increase opportunities
12 for more people to come before the Board and serve
13 as counsel.

14 I think you're all familiar with and
15 we'll talk a little bit about. We have a LEAP
16 program right now for less experienced attorney
17 program, which allows people to come in and to get
18 extra time, if they've had three or less federal
19 hearings before what they presented. We want to
20 again increase opportunities. We've gone out with
21 this request for comments, and again comment
22 period is open till January 17, 2023, so no

1 excuses (inaudible), not enough time, here we have
2 plenty of time, if you'd like to tell us what you
3 think we should do going forward.

4 Should the lead counsel still be
5 required to be a registered practitioner? Should
6 we open it up to more people, just to have any
7 prep, any one of this counsel, any attorney in the
8 public? So, before us, should they have a certain
9 amount of training or experience with what they
10 show up before? Should we change it so that
11 backup counsel is registered and open up the lead
12 counsel?

13 We have all sorts of permutations here.
14 Let us hear from you. Please provide us with your
15 comments. Additionally, we have also
16 opportunities to comment on. Are there other
17 areas we should provide training on? And so, it's
18 not just limited to counsel, other additional
19 training opportunities the Board could be
20 providing. Should we look at our LEAP program,
21 should we expand it, should we change it in any
22 way? We want to hear this from the public. So,

1 please again, January 17, 2023, plenty of time to
2 give us your comments. So, we're looking forward
3 to having a lot of comments.

4 And speaking of a lot of comments, I
5 don't know if we'll break the record that we have
6 currently at the Board, but we had over 4,000
7 comments in the Director Review. I don't know if
8 we'll get to that in this area, but again, if you
9 have a comment, please make it. With that, I'm
10 going to turn over to Amanda Wieker to talk about
11 those 4,000 post comments received on Director
12 review. So, Amanda, I'm turning it over to you
13 now.

14 MS. WIEKER: Good morning. Thanks for
15 having me today. As indicated, the office has
16 implemented several processes aimed at promoting
17 consistency, and, I'm sorry, could you advance to
18 the next slide? So, I'll be talking about the RFC
19 on Director review, presidential opinion panel,
20 and internal and circulation review.

21 And as I started to indicate, the
22 offices implemented these processes to improve and

1 promote consistency and accuracy within PTAB
2 proceedings. The POP process was introduced in
3 2018. We have an interim process for Director
4 review and an interim process for circulation and
5 internal review of PTAB decisions.

6 The office sought public input on these
7 processes through request for comments. Among
8 other questions, the RFC sought comments on how
9 these processes were working, how they could be
10 changed in the future, and how the Director review
11 and POP processes could insure, relate, and
12 interact.

13 The RFC closed October 19th. As we've
14 heard already, we received over 4300 stakeholder
15 comments. The sizeable number of comments spent
16 in large part from a number of duplicate comments
17 which were submitted individually from individual
18 stakeholders. At this time, the office is
19 carefully reviewing the comments and considering
20 the next steps for all of these processes.

21 After we consider the comments, the
22 office intends to formalize the processes,

1 including through notice and comment rulemaking.
2 This will give stakeholders a further opportunity
3 to respond to the proposed regulations.

4 I believe I'm also going to speak to you
5 about the next topic, the presidential decisions
6 that have issued recently. So, if we could
7 advance one more slide, that would be great.
8 Recently, the director has issued three
9 presidential decisions, all of these arise out of
10 interim director review cases that the director
11 granted Sue Sponte. The first two listed here
12 clarifies the Board's application of discretion as
13 set forth in presidential decisions, General
14 Plastic incentives. The third case, the OpenSky
15 case, addresses abuses of the IPR process.

16 So, starting with the first case here,
17 the Code200 case. The first decision here was
18 Director review directed Sue Sponte to review the
19 Board decision, discretionarily denying the IPR
20 under General Plastic in view of petitioners first
21 filed petition. In the presidential decision, the
22 Director found that where a first filed petition

1 was discretionarily denied without evaluating the
2 merits, General Plastic factors 1 through 3 will
3 only weigh in favor of discretionary denial if
4 there are road mapping concerns. So, in this
5 case, the Director vacated the decision and
6 remanded to the Board to consider institution.

7 The second case, the NXP decision, also
8 rolls out of the responding Director review of the
9 Board's decision denying rehearing of an
10 institution denial that was based on the Board
11 (inaudible). And in this case, the petitioner had
12 filed a standpipe stipulation after the
13 institution denial issued but before the rehearing
14 decision. In the Director's presidential
15 decision, the Director affirms the Board and held
16 that the only appropriate time for a party to
17 offer situation related to (inaudible) factor 4 is
18 prior to the Board's decision on institution.

19 And then finally, the last case, the
20 Open Sky decision. This arose out of Sue Sponte
21 Director review in a case where a POP request had
22 been ousted by other parties. This just relates

1 to abuse of process in the IPR. In the decision,
2 the director found that petitioner OpenSky abused
3 the IPO process by, among other things, filing an
4 IPR in an attempt to extract payment from either
5 the patent owner or joint petitioner, Intel. The
6 Director sanctioned OpenSky and precluded them
7 from actively participating in the IPR and also
8 issued a show cause order as to why OpenSky should
9 not be ordered to pay compensatory damages to the
10 patent owner.

11 In the decision the Director remanded to
12 the Board to determine whether compelling merits
13 were presented in the original petition, and it
14 said the IPR would continue. The decision
15 clarified that that compelling merit is a higher
16 standard than the reasonable likelihood of
17 prevailing standards that the Board applies in
18 determining whether to institute a petition.

19 Of these three decisions that issue just
20 over the course of the summer involved, these and
21 all others can be found on our website, which is
22 indicated at the bottom of the slide there. Thank

1 you very much.

2 MR. TIERNEY: Thank you, Amanda. And
3 that concludes our set presentation, but we're
4 open to questions should you have any.

5 MS. WIEKER: Any questions?

6 MR. DUAN: So, first, thank you for that
7 presentation. That was really a fantastic update
8 on what's going on with the PTAB. I was
9 particularly interested in the discussion of the
10 request for comments. And, you know, I think it's
11 great that the -- it creates the agency of the
12 PTAB are source of feedback on these initiatives.
13 So, in previous sessions regarding another request
14 for comments, the one on the (inaudible) patents,
15 I suggested that it would be useful for the patent
16 office to hold a sort of explanatory webinar that
17 would explain kind of what's going on in the
18 request for comments in plain language so that
19 people who might not be familiar with the
20 terminology and such would understand that. In
21 the weeks since the agency (inaudible), I received
22 numerous comments from people either saying,

1 either wanting to thank the agency for holding
2 that webinar or asking where they could see a
3 video of it because they wanted to hear what the
4 agency had to say about that.

5 And so, I think I'd like to make the
6 same suggestion for some of the requests for
7 comments here, particularly the one on
8 practitioner on the requirements for practicing.
9 A lot of the audience there is going to be law
10 students who are thinking of going into a PPAC
11 practice, but wants to know kind of what the
12 background requirements are. They're probably not
13 spending a lot of time reading the federal
14 register, but they probably will be very
15 interested if the patent office holds an event
16 that is sort of directed towards that audience.

17 Let's say I think that would be
18 something I definitely encourage thinking about
19 because that past experience was clearly
20 successful, and I think there are some interesting
21 audiences to be reached with regard to some of the
22 other public comments that are out there right

1 now.

2 MR. TIERNEY: Thank you for the input,
3 and as always, we're looking for ways to do more
4 and more outreach to get the message across. We
5 have been, you know in presentations, mentioning
6 the RFC and we'll look to maybe encourage more
7 like the Board side chats we've been putting in
8 our message there, may be other ways we can look
9 at an entire webinar. There's maybe not an hour's
10 worth of material there, but at least we could get
11 something out to the public. And I like to
12 suggestion to make it available on line.

13 MS. BONILLA: And I'll just add that we
14 do often do Board side chats on the request for
15 comments, and both the slides and the presentation
16 of the video are there. So, but Mike makes a very
17 good point that maybe we can make that more
18 readily available and speak about it more than
19 once. So, we will take that in advisement. Thank
20 you.

21 MS. WIEKER: It's an excellent
22 suggestion. Do you have any comment?

1 CHAIRMAN CALTRIDER: I have a question
2 on the motion to amend. I would recall back in
3 the day with the original set of rules that you
4 had, you know, really quite controversial in terms
5 of there's a lot of (inaudible). The pilot
6 program, from my advantage point, has been
7 fantastic in the sense that it may be, I'm just
8 running different circles now, but I do not hear a
9 lot of negative criticism, and I'm eager to go to
10 note this and comment and make those rules
11 permanent, but I'm curious on, what kind of
12 feedback in the last couple of years have you
13 heard about the new system, the pilot program, and
14 is there yet more optimization that needs to
15 occur, or we found the right kind of sweet spot
16 where we need to be operating in this regard?

17 MS. BONILLA: So, I'll let Miriam pipe
18 into, she has comments, but I will say that
19 interestingly, there has been somewhat crickets on
20 it which we sort of think is a good sign frankly,
21 because of the reasons you just said. I do think
22 that we need to go through notice and comment rule

1 making, so we're considering a request for comment
2 on the pilot itself just to drill down if there's
3 anything in particular that people like or people
4 dislike. And so that's the plan going forward
5 with the idea that we would go and put it into
6 rules. But the overall feeling that we have is
7 that it has been well received but obviously we
8 welcome comments if people feel differently. I
9 don't know, Miriam, if you have anything else to
10 add.

11 MS. QUINN: Yeah, I just wanted to add
12 that with respect to the request for comments that
13 we're planning to do, we want to know whether
14 there are additional barriers that we can remove
15 to make it more accessible and also to make it so
16 where patent owners take advantage of it more.

17 MS. DURKIN: Okay. I guess we'll move
18 on. Thank you very much. So, the last topic in
19 this section is patent end-of-year pendency and
20 quality. Andy? Thank you.

21 MR. FAILE: Okay. Thank you, Tracy.
22 Good morning. First of all, before we start on

1 behalf of all deputy commissioners, a hearty
2 thanks to Tracy and all your leadership and what
3 is a very large and very expansive PQuIP
4 subcommittee. Thanks to you, we remain focused
5 with all the different issues that came through
6 this year and have some good results to report.
7 So, thanks again, not only for your service on
8 PPAC, but for your service in the PQuIP
9 subcommittee. Appreciate that.

10 So, by way of background, I thought I'd
11 talk a little bit about quality and pendency of
12 patent examination, quality and pendency, set the
13 stage for Remy Yucel and Gladys Corcoran who are
14 on the screen now that will give us the results of
15 FY22. So going back to Director Vidal's
16 introductory remarks, she laid down the theme of
17 robust and reliable patents. So, in the patent
18 examining sphere here at the office, you want to
19 think about this is a pretty high- volume issue.
20 We've got 8500 patent examiners. They are
21 literally producing hundreds of thousands of
22 pieces of work each year.

1 In trying to assess on that body of work
2 over the entire fiscal year, we look at a couple
3 main facets. We basically measure everything when
4 you kind of aggregate this. We're looking at a
5 couple main facets. One is how quickly,
6 efficiently, and expeditiously is that work moving
7 through the examination process into what is the
8 quality of that work product is going out there in
9 terms of the office actions themselves?

10 So, we have again in addition to the
11 many measures that we have, we are looking at a
12 couple different aggregate level measures that
13 measure patent quality and that measure patent
14 pendency or throughput. Each one of these
15 measures has a long-term goal, because these are
16 some, these are facets of examination that don't
17 necessarily move very quickly. They don't move
18 overnight.

19 We're looking at a long-term landing
20 spot of where to be, number 1. Number 2, for each
21 fiscal year, we devise targets along that journey
22 to hitting those aggregate level thresholds over

1 some period of time. So, for FY22 we had targets
2 Gladys and Remi walk through what they were and
3 assess our progress to that. So, when you're
4 hearing the presentations, keep in the back of
5 your mind that there are about 8500 examiners
6 literally day-to-day working through hundreds of
7 thousands of pieces of work that become office
8 actions, and our task is to do that with a level
9 of pendency and quality that fits the U.S.
10 Intellectual property system.

11 So that's the background for quality
12 pendency just to lay out on some of the basics
13 here, and let me turn it over to Remy and Gladys.
14 If you guys could introduce yourself as you do
15 your piece and we'll assess how we did in FY22.

16 MS. YUCEL: Hello, good morning,
17 everybody. My name is Remy Yucel. I have a
18 slight amendment to this slide. I am Acting
19 Deputy Commissioner for Patents. I am filling in
20 for Andy while he is Acting Commissioner. My
21 regular day job is an Assistant Commissioner for
22 Patents. And I'm joined by my colleague, Gladys

1 Corcoran, who's also an Assistant Commissioner for
2 Patents.

3 And we will have two slides for you. I
4 will first go over the pendency, how we ended up
5 in FY22, and Gladys will cover where we ended up
6 for our quality metrics. So, if I can have the
7 next slide, please.

8 So, as Andy mentioned, we have a
9 longer-term goal of achieving 90 percent
10 compliance in both our mailed actions and our
11 remaining inventory, so, that's a 90/90. I'm sure
12 you've heard of us refer to that before. That's
13 the overall long-term goal that we are striving
14 for to introduce as much consistency and
15 reliability in terms of the timing of how we get
16 the work done, our throughput. So, that is our
17 long-term goal. So, as we work to a long-term
18 goal, we are chunking that up and trying to get
19 there incrementally and improve year over year.

20 So, as you can see from this slide, our
21 FY22 target for the overall compliance of mailed
22 actions. And here you would think first actions

1 on the merits, you would think RCE amendments,
2 regular amendments, PTAB disposals and responses,
3 and, you know, when we get decisions back from the
4 PTAB that those are acted upon in a timely
5 fashion. So, all of those feed into both of these
6 metrics. So, you can see that our target for 22
7 was 80 percent compliance and you can see that we
8 are nailed it there. We ended up at 80 percent
9 compliance for our mailed office actions.

10 The other set of numbers that we look at
11 is, well, what do we have on hand? And here, you
12 can see that our target was 87 percent compliance
13 of our remaining inventory, but we saw a couple of
14 percentage points, short of that we ended up FY22
15 at 85 percent.

16 So, we are still on target for making,
17 you know, our longer-term goal that we did fall
18 short of our overall compliance and I think many
19 folks here in the room and with our -- the
20 previous pendency committee and now we've been
21 joined in with the peak web. You can recognize
22 the challenges that we had in terms of trying to

1 meet both the old goal and the new goal. So, we
2 did have a lot of older inventory coming, you
3 know, that we accrued, that we needed to really
4 clean up, and we did a fantastic job getting that
5 work out the door. So, it's a matter of
6 continuing to point all of our firepower to the
7 right cases so that they're done, the right cases
8 are done at the right time so that we can march
9 our way towards the 90/90.

10 Again, it's a firepower issue we are
11 maintaining for the amendments and the RCE's top
12 decisions. All of those metrics are really in the
13 very high 90s and for RCE we're at like 80-89
14 percent, 88 percent there. So, we're making very
15 good progress there, but our main challenge is to
16 start getting our first actions, get that
17 inventory, and our mailed dates, get those more in
18 balance. So, we are working towards that.

19 Again, it was a fairly successful year.
20 We did hit our compliance for mailed actions, and
21 we are still marching towards and improving with
22 our overall remaining inventory. So, with that I

1 will turn it over to Gladys. Gladys?

2 MS. CORCORAN: Thank you, Remy. Good
3 morning. Excuse me. I'm Gladys Corcoran,
4 Assistant Commissioner for Patents. I report to
5 Deputy Commissioner Robin Evans. Today, I will go
6 over some of the patent quality results for
7 FY2022. I think we need to advance right, great,
8 thank you.

9 We are proud of all the high-quality
10 work our employees do every day and as you will
11 see, FY2022 is a good year for patent quality in
12 particular with respect to statutory compliance as
13 well as customer experience. We would like to
14 thank all our employees for their hard work and
15 for the hard work of our management leadership
16 that led to the accomplishment of these goals.

17 Statutory compliance is measured by the
18 Office of Patent Quality Assurance for a random
19 sample of approximately 12,000 work products over
20 the fiscal year. The statutory compliance metrics
21 shown here are calculated by dividing the total
22 number of office actions but properly evaluate all

1 pending claims in light of each of the
2 patentability statutes by the total number of
3 office actions reviewed and are expressed as
4 percentages.

5 Our focus in FY22 was on increasing our
6 compliance levels, in particular for the 35USC103
7 and 35USC112 statutes marching towards our
8 longer-term goal while maintaining our high levels
9 of compliance for 35USC101 and 35USC102. As you
10 can see in our first bullet, we exceeded our
11 targets for all four statutes for FY2022.

12 This past fiscal year, we based our
13 customer experience metric as a net promoter score
14 based on our customers' responses as part of our
15 external Customer Quality Perception Survey. The
16 Customer Quality Perception Survey is a survey we
17 administer twice a year to a pool of applicants
18 that have had multiple recent interactions with
19 the office. External probate is sent to 3,000 of
20 our frequent filing customers on a semiannual
21 basis. For this metric in FY2022, we will get
22 responses to the question in the past three

1 months: How would you rate overall patent
2 examination quality?

3 To evaluate responses to the survey
4 question, we use the Net Promoter Score. Net
5 Promoter Score is a measure used by many
6 industries to gauge customer loyalty,
7 satisfaction, and enthusiasm. It's a number from
8 -100 to 100, calculated by subtracting the
9 percentage of respondents. We respond with a
10 rating of poor or very poor numerous detractors,
11 from the percentage of respondents who respond
12 with a rating of good or excellent net promoters.

13 Typically, scores over 50 are considered
14 favorably since 2009 was steadily improved on this
15 metric with the most recent survey resulting in a
16 net promoter score of 60, with 65 percent of our
17 customers rating an overall quality as either good
18 or excellent how it's using data like the Customer
19 Perception Survey to continue to improve our
20 stakeholders' experience.

21 Overall, this is a great year for
22 patents from the quality of our work products, and

1 we would like to thank our employees and
2 leadership again that continued to lead to high
3 quality work every day. More information on
4 metrics can be found by going to uspto.gov website
5 and search in for quality metrics. Thank you.

6 MS. DURKIN: Thank you Gladys and Remy.
7 I'll start us off with the first question and then
8 I'll see if others have questions. I think it
9 might be helpful for the public especially going
10 to the slide on pendency to just explain what TPA
11 compliance is, I don't know that we talked about
12 that recently.

13 MS. YUCEL: Sure, this is a metric that
14 we have adapted to provide a much more certainty
15 in terms of getting the work out and through. The
16 categories that we use are from the American
17 Inventors Protection Act as a guide. Basically,
18 it's, you know, 14 months to first action from
19 filing and then we have a number of four-month
20 categories including amendments, action on RCEs,
21 action on cases that have come back to the core
22 from the PTAB, and then there's a file metric of

1 overall pendency of 36 months or less than 36
2 months for total pendency. So, that's kind of the
3 high-level framework for our TPA structure here.

4 If you remember previously, we did have
5 APJ's that were something like 15 months or less
6 average to first action pendency and less than 24
7 months for a total pendency. And I think we are
8 around a 23-month, 22-month mark for total
9 pendency. The problem with those previous APJs
10 that it took us a number of years to finally drop
11 was that it really did not probe and did not
12 really closely track or as close as they should
13 have been tracked, all of the 14444 or 36
14 categories in particular. We were only really
15 looking at the average time to first action and
16 average time of total pendency.

17 With these metrics now, they're much
18 more robust. We can monitor and hold ourselves
19 accountable to definite timelines for each phase
20 of prosecution, including getting our first
21 actions out as timely as we can, but then also
22 being timely when we respond to applicants'

1 amendments and responses, you know, keeping a
2 stricter timeline for four months or less for the
3 amendments RCE and the PTAB decision.

4 So, we feel that by monitoring actual
5 specific numbers instead of relying on averages,
6 we will be having a much clearer and much more
7 accurate picture of pendency. And so, our
8 ultimate goal would be to have achieved 90 percent
9 of compliance both for our mailed actions as well
10 as for our inventory. I hope that addresses the
11 question.

12 MS. DURKIN: It did, that was helpful.
13 I'm just curious is that all relates to utility
14 patents, is there a goal for design, especially
15 since that was in the annual report.

16 MS. YUCEL: I think we are also working
17 with designs. They do have different things that
18 they need to take care of in terms of The Hague
19 and other treaties and their throughput is
20 definitely somewhat different. I think that is --
21 we do work with the design group to figure out
22 what they can do with the firepower that they do

1 have on hand. For now, they are not part of this
2 particular metric, but, you know, I think we could
3 take that back and look and see what would make
4 sense for them given all of the requirements that
5 they need to meet. It may not be this, but it
6 would be appropriate for all of, you know, that
7 the prosecution patterns that they have in
8 designs.

9 MS. DURKIN: I think that would be
10 helpful. I think also making that public would be
11 helpful, too, because there's a lot of focus on
12 that issue right now. So, thank you. Go ahead,
13 Steve.

14 CHAIRMAN CALTRIDER: Thank you, Remy.
15 It's really an outstanding presentation on
16 pendency. My recollection is that much of the
17 pendency on the later date, the full pendency, the
18 36-month target was driven by whether or not the
19 office met their date on the first action and I
20 wondered if you could speak a little bit more
21 about first actions in particular because that's a
22 predictor of whether or not we'll make the

1 ultimate target of 36 months.

2 MS. YUCEL: Yeah, we spent a lot of time
3 in the pendency subcommittee. You know, you've
4 kind of learned one of our challenges very, very
5 well. That is true. A big predictor and driver
6 of the total pendency is how quickly we get to the
7 first action. That still remains true, right?
8 And so, as we talk about our biggest opportunities
9 to make big gains in the overall longer term,
10 90/90, our biggest opportunity and biggest area
11 would be those, you're absolutely correct, getting
12 to the first actions more quickly, getting to them
13 as close to 14 months as we possibly can. And
14 that's still something that we are working
15 towards.

16 The problem is, while we were trying to
17 pursue, you know, in this transition period, while
18 we were trying to pursue overall 15 months average
19 and tried to transition over to this, we did
20 accrue a number of cases that got old, that were
21 much older than 14 months. And so, we tried this
22 year, I think we had about 170,000 cases that were

1 quite a bit older than the 14 months that we, you
2 know, the very oldest part of our tail, we got
3 those cases examined and worked on. It was a
4 tremendous effort by the examining court to do
5 that. So, we put our inventory in much better age
6 alignment.

7 We're still not there yet, but we're in
8 much better age alignment than we had been
9 previously when we were pursuing both the average
10 goals, and these are more specific PTA goals. So,
11 that continues to be an area of challenge for us
12 that also continues to be our area of biggest
13 potential gain, but we also have to keep the, you
14 know, the amendments going. We have to keep our
15 RCEs going in a timely fashion, so it's a matter
16 of again using the firepower that we have and
17 pointing it to the things that we need to point
18 to. Like I say, the four-month categories, four
19 of those we are in, like, some of them are at 100
20 percent, some are like 99 percent. So, really the
21 big effort has to be getting to the first actions
22 as quickly as we can while maintaining our

1 performance in all of the in-process cases.

2 MS. DURKIN: Okay, anything else? We
3 didn't mention anything about the public
4 submitting comments. Do we need to do that? I'm
5 monitoring the box, but I'm not seeing anything, I
6 don't recall that we said anything about that.

7 MS. CORCORAN: Well, I think what
8 happens, if anyone who's on the Webex that wants
9 to make comments can put them in the chat, and
10 there's already been a few comments from the PTO
11 in response to Charles' comment about the RFC
12 webinar, but I think if people have comments, they
13 can either put them in the chat or they can send
14 them to the PPAC mailbox, which I think is may be
15 ppac@uspto.gov. Thank you.

16 MR. CALTRIDE: Thanks, I do have one
17 other additional question about quality probably
18 directed to Gladys. The quality metrics for
19 statutory compliance look strong, and my question
20 is one of the issues is upstream of that, and that
21 is, how do we assess whether the examiners are
22 finding the right art and kind of getting the

1 right art before them? I know we've made
2 substantial investments and the tools, the search
3 tools, and the hope is that those substantial
4 investments will translate into more effective
5 searching to make sure that the all best prior art
6 is before the examiner, so that when we measure
7 the statutory compliance with the best prior art,
8 we're getting the right outcome. Remind me what
9 do we do to measure the effectiveness of the
10 search and whether or not we're finding the right
11 art, and also whether or not those data show the
12 impact of the investment we've made in the tools
13 to enhance search.

14 MS. CORCORAN: Great question. Thank
15 you so much. Absolutely, we have made lots of
16 investment in our search tools and they are
17 growing out and many have been ruled out. We've
18 also made changes to our performance appraisal
19 plan for our examiners that emphasizes search and
20 ensures that our supervisors are looking for
21 whether or not examiners are finding the best
22 prior art and applying the best prior art in their

1 office actions.

2 We have not completed our full
3 assessment of those tools and those changes, but
4 we're certainly looking at all compliance rates as
5 part of the evaluation, as well as more detailed
6 questions and metrics that we look at through OP2A
7 reviews as well as reviews within the technology
8 center. We're also looking at potential when we
9 do our reviews, potential limited rejections.
10 Perhaps every document should have been made and
11 to see if any missed or large that is available
12 was not applied. So, those are certainly things
13 that we look at year to year, absolutely.

14 MR. BAHR: Steve, also I wanted to
15 mention that in addition to what Gladys said about
16 that in support and quality assurance, they do
17 random reviews. They do research to see if
18 there's any priority that was missed. But in
19 addition to that, while this isn't one of our
20 quality metrics per se, we in OP2A are also doing
21 a project on reviewing the results of PTAB IPR
22 decisions where claims were found on patent when

1 we're doing a deep dive into those decisions to
2 see if, you know, one of those many things we're
3 looking at is to see whether there is prior art
4 that was brought before the PTAB that was not
5 blocked for the examiner and looking to say, is
6 this something that the examiner should have
7 found? Is this something we need to search in
8 additional places or find different prior art
9 sources? So, we are also, I'm looking into that
10 there.

11 MR. SIEDEL: I was just going to jump in
12 on the prior art front. We've made tremendous
13 advances and if the key to patentability
14 determination is getting the best prior art in the
15 case, I think we've made significant progress.
16 We've talked about past times, about ingesting 75
17 million documents from around the world from
18 foreign offices, complete patents, English
19 translation, complete collections. So, I think
20 that's huge in our foreign database. Not too long
21 ago we shared our AI tools similar, not similarity
22 search, that's today, right? So, that's another

1 leap forward of the more like this document
2 feature in our patent and search. So, I think
3 we've done a lot in that space in addition to what
4 Gladys and Bob have had shared as well in terms of
5 reviews and identifying opportunities for
6 improvement.

7 MS. EVANS: And I just want to add just
8 one additional thing with all of the tools and the
9 reviews. Our examiners work together. We have
10 quality enhancements, meetings, so they do a good
11 job of sharing their information, their knowledge
12 and skills about the new technology that's coming
13 in to provide an environment to share it so that
14 we all know what is evolving, what's coming in,
15 and what we should be looking for, and where we
16 should be looking to ensure and still, we get that
17 best prior art in the record as well.

18 MR. BOALICK: I have a question quick.
19 On the question of prior art, do you ever track
20 the metrics of how many cases that are submitted,
21 and the inventor, and their ventures attorney, has
22 done the prior art search? And then, how much new

1 prior art is brought in from the examiner search?
2 Is there any sense of, you know, that inventors or
3 the applications are weak in the prior art search
4 or they're strong in the prior art search or
5 examiners, you know, in the (inaudible)?

6 MR. SEIDEL: So, the short answer is no.
7 Specifically, generically, we generally look at
8 two categories, references cited by examiners and
9 then references cited by applicant or attorneys.
10 I don't know that we have a great way of
11 synthesizing that data to -- I mean certainly we
12 could drill down to multiple applications filed by
13 a single entity or single applicant and compare.
14 But I don't know that we have a great way to
15 identify numbers and details. We're not there
16 yet, I think some improvements to our prior art
17 capture and identification and citation. In the
18 future, I think we could get there. I just don't
19 think we're there right now. It could be a manual
20 process, I think. I'm not sure how resource
21 intensive and how valuable that would be on a
22 small scale.

1 MR. BOALICK: Following up, you know,
2 the question of a prior art and relevancy, I mean,
3 you have the inventor and their attorney, and then
4 you have the examiner, and now we also even have
5 in the post grant review process. Is there any
6 way to try to normalize an assessment for what is
7 relevant prior art other than, you know, the
8 individual, I mean, looking at it in critical
9 thinking type process, has there been any study in
10 that or any way to, I guess I'm grasping for a way
11 of trying to get the panel allow what is relevant
12 prior art and what would be considered relevant
13 prior art throughout the life of that patent.

14 MR. SEIGEL: That's a \$64 million
15 question. So, the short answer is it's such a
16 moving target. It's so highly individualized per
17 application, per technology. If we had a way to
18 get our arms around that then, and it's very
19 interesting, I think that would be very useful.
20 I'm struggling as how, just thinking of it,
21 hearing it for the first time from you, how we
22 would actually do that? What we try to get at

1 some of that is we start -- we talk about the
2 MPEP. We start with the MPEP guidance on what is
3 a proper search. As Gladys mentioned, that's
4 followed up in the way we assess examiners
5 searching. So, there's a little bit of a start
6 there, at least the genesis of that. You're
7 basically searching for an unbounded thing through
8 literally billions and billions of possibilities
9 we could see in the Internet, you know, which
10 examiners search frequently. So, I don't know how
11 to get my arms around how we could normalize all
12 that and have it specific to the very different
13 technologies that we have at play particularly of
14 those technologies that are converging on the
15 front end. That would be something great. I'll
16 refer to PPAC that we might want to take up in a
17 PQuIP subcommittee and see if we can (inaudible)
18 with an idea and try to put some definition to it.
19 So, I think if we had something like that, that's
20 another rubric we could use, that would be very
21 useful. I don't know right now listening to it
22 the first time that I have, you know, completely

1 understand and get my arms around what that would
2 be.

3 MR. BOALICK: Yeah, it's a very
4 qualitative talk. I mean I do a lot of patents
5 searching myself and in that context. Do you do
6 any surveys with the, you know, the complaint with
7 the patentees, attorneys, and how they feel about
8 the prior art, that they missed coming back, that
9 they, you know, they'll obviously argue in the
10 case, and if it's brought up in a office action,
11 but, is there a way to try to get feedback in
12 context and to, you know, was this new prior art,
13 you know, seen but not put into the case, or was
14 it seen and not considered relevant art? Or, you
15 know, they just missed it?

16 SPEAKER: We don't have visibility into
17 that, but that sounds like as we're talking as we
18 take up this larger issue to the extent we do, I
19 think we should poll that in as well. There are
20 some questions, I'm looking kind of Gladys and
21 Robin, there's some questions on the survey to
22 applicants about priority searching. We can infer

1 some things from there, but not specifically in
2 months, no, go ahead, Gladys.

3 MS. CORCORAN: So not specific to
4 domestically, but we have several programs
5 internationally for harmonizing of practice where
6 we look to search and the prior art identified
7 from office to office and do a comparison of what
8 was found, the relevance of what was found, and
9 how the examiners are using. That one in
10 particular is a CSP, which I'll speak a little bit
11 more later today, but it's a collaborative search
12 pilot that we run. We run two separate ones, one
13 with Japan Patent Office, one with the Korean IP
14 office, where we're doing exactly what you're
15 saying. We're looking at cases that were filed,
16 the same convention filed in separate offices, and
17 independently having examiners in those offices do
18 a search and then compare those results and then
19 even after comparison of those results surveying
20 with examiners on which prior art did, they
21 actually use and why. So, we're doing that there.
22 We're also doing it with PCP that helps inform us

1 the IP5 took on the PCTC SME search collaboration
2 pilot that we're running now, where all five of
3 the IP5 offices are reviewing the same case
4 independently, getting their findings, and then
5 comparing those findings. And we are in the
6 process right now and it's being led by EPO of
7 looking at those findings and then doing an
8 analysis on it.

9 So, we don't have a final finding yet on
10 it, but that will be coming as well as we work
11 very closely with industry through IP5 as well as
12 in our trilateral that Director Vidal mentioned
13 earlier and getting PPAC on all topics, including
14 prior art and the relevance of that prior art
15 during examination.

16 So, we certainly can do more and you
17 bring up a great point here, but we have done some
18 things. We also have the pilot that we've spoken
19 before on a relevant prior art pilot where we do
20 in a manual fashion looking at the related cases
21 from one office to the other, and then the
22 comparison of that prior art there, and how do we

1 pull that now into the docket for an examiner so
2 that they can have that upfront when they're
3 looking at a particular case, they have that prior
4 art, right at front as part of their examination
5 process. That's in a pilot stage as well. It's
6 at a small pilot stage because we are looking at
7 the IP solution to doing that, so we don't have to
8 do it manually. That's very, very labor
9 intensive, but there are several programs in line
10 with what you're.

11 MR. BROWN: Yeah, I don't want to light
12 a fire on you because you have plenty of fires
13 burning but, you know, it just seems to me
14 rationally that with all the money spent on
15 searching and all the efforts and how it comes
16 into play quite often in court cases, et cetera,
17 with that moving forward, I think the rationale
18 for prior art, we probably should be looking at
19 and try to at least start gathering that
20 information and to see if we can make sense out of
21 it because that's going to be the definition of,
22 is AI working or is it not working and many things

1 that we're doing so.

2 MS. CORCORAN: Dan, I don't have
3 anything specific to the question that you asked,
4 but things that are similar that we have responses
5 in our surveys, for example, our external customer
6 survey, 98 percent of our applicants still will
7 say appropriate prior art to moderate a great
8 extent of the time, with 70 percent indicating
9 great extent. And then for our internal surveys
10 where we survey our examiners, they indicate that
11 the art cited in an idea, whether or not it's
12 material to patentability, 43 percent indicate
13 that they're satisfied. So that's about as close
14 as we can get to the question that you asked.

15 MR. BROWN: So, for me and, you know,
16 we're doing research, I would look at those
17 rejections that were rejected and bring a focus to
18 that core group and try to ascertain if there's
19 any consistency or patterns there that could help
20 us work.

21 MS. DURKIN: I think we're done.

22 CHAIRMAN CALTRIDER: Thank you, great

1 discussion. All the dependencies was our first
2 objective for a reason in terms of robust and
3 reliable patent rights, and I thought that was an
4 outstanding discussion across the entire spectrum
5 from examination through PTAB. So, thank you very
6 much.

7 Let's move on to the next agenda item,
8 innovation, expansion and outreach. Dan and
9 Suzanne, I'm not sure who which of you is taking
10 the point.

11 MS. HARRISON: Thanks David. It's going
12 to be me today. And thank you all for hanging in
13 there so far. So, our job at the Innovation and
14 Expansion Committee was to first and foremost
15 understand Kathi's goals as it related to the EIA
16 and then understand how those could be utilized to
17 effectively help the nation. And so, in our
18 report, we laid out a road map of how we can, as
19 an agency, utilize patent data to help inform the
20 government where the innovation is currently not
21 happening and innovators are not a part of the
22 system. So that, as Kathi said earlier, we could

1 help bring in all relevant innovators into the
2 system to prevent (inaudible) new invention.

3 And so, one of the statistics we used
4 was from Professor Lisa Cook, who was an Edison
5 scholar here at the USPTO and is now on the
6 Federal Reserve Board. She came up with a
7 statistic submitted that said that if we
8 quadrupled the number of inventors in the United
9 States, we could increase the national GDP by 41/2
10 percent. And when you look at the GDP last year,
11 41/2 percent is over a trillion dollars that we
12 could bring to the U.S. economy.

13 So, thinking about that, that helps us
14 understand how patents can in effect begin to move
15 our national GDP. And so, the report lays out a
16 step by step look at how we can increase our
17 inclusivity of innovation and inventors within our
18 system and grading those folks that are currently
19 not inventing into our inventing system. And so,
20 I think it's just very helpful as we go forward,
21 and we look forward to what Kathi is going to do
22 to again figure out how we can bring more people

1 into the system for the benefit of the nation. So
2 now, I just would like to actually turn it over to
3 discussion - is Paul here, or actually, I'll turn
4 it over to Valencia, sorry, for you to talk a
5 little bit about CI2 and you're part of helping
6 the nation if you would like to go forward.

7 MS. WALLACE: Thank you, Suzanne. I'm
8 waiting for my slide. All right, thank you. So,
9 first I want to thank Dan, Suzanne, and the rest
10 of the subcommittee on all the input that we've
11 had over the year on not only CI2, but all- of
12 inclusive innovation and what we're doing here at
13 the USPTO. We've taken on a big chunk from very
14 beginning at the ages of three or four years old,
15 all the way through the life of an innovative
16 having the effect and the impact to grow to the
17 point that Suzanne was talking about, and we've
18 had amazing year of discussions, comments, and
19 input on how to get that done and I'm really
20 excited about what we're going to do in the next
21 year.

22 So, I'll start with giving just some

1 updates, not only on CI2, but on some other areas
2 of innovation expansion that we participated in
3 here both partnerships as well as some of the
4 initiatives we put on at the USPTO. So, I'll
5 start with just telling you how excited I am about
6 the announcement that came out this past September
7 from Secretary Gina Rimando, who is the Chair of
8 CI2, and from Director Vidal, Vice Chair of CI2,
9 announcing the addition of new Co-Vice Chairs to
10 the leadership team within the CI2.

11 And starting from the left just here,
12 Assistant Secretary of Commerce for Economic
13 Development, Alejandra Castillo, is joined as a
14 Co-Vice Chair, as well as I mentioned of Secretary
15 Rimando and Director Vidal, are Co-Vice Chair,
16 another Co-Vice Chair is Laurie Locascio. She's
17 the Undersecretary of Commerce for Standards and
18 Technology and National Institute of Standards and
19 Technology Director. We also have on the bottom
20 row starting at the left, Sethuraman Panchanathan,
21 who is the Director of the National Science
22 Foundation. In the center there you'll see Don

1 Cravins, who's the Undersecretary of Commerce for
2 the Minority Business Development Administration,
3 and Shira Perlmutter, Register of Copyrights and
4 Director of the U.S. Copyright Office.

5 So, it's pretty exciting leadership team
6 we have here in in CI2. And I have to say we've
7 already started meeting with this leadership team.
8 They are very dynamic. They have amazing ideas
9 where they want to, as we heard earlier from
10 Director Vidal, it's discussing it but discussing
11 it in having action. How are we making a
12 difference? How do we pull together to have that
13 exponential impact that we're looking for to drive
14 a more inclusive innovation in the system?

15 So, I'll also share that we are having a
16 meeting very soon, November 30th actually with
17 this group as well to do an ideation workshop to
18 pull together and discuss the programs and
19 initiatives within each of these agencies and how
20 we will collectively work on them, as well as
21 bringing that to CI2 and building this strategy,
22 as well as the actions for expanding innovation

1 and building a more inclusive system.

2 Next slide, not coming up, there you go.
3 Okay. So next thing that I want to share with you
4 is a series of public private collaborations that
5 we have developed here at the USPTO with some of a
6 like-minded organization. Here you see a picture
7 of Director Vidal with Mr. Scott Frank who is the
8 President of USIPA. USIPA has the mission of
9 providing leadership and resources to make the
10 United States global model for the most diverse,
11 efficient, and effective ecosystem to facilitate
12 the creation, protection, and enablement of IP for
13 the economic and social well-being of our
14 citizens.

15 So, just from that, you can see that
16 they are perfectly aligned with what we're doing
17 here at the USPTO and in particular CI2. So,
18 we're pretty excited about the collaboration. We
19 just, Director Vidal, find an MOU with Mr. Frank,
20 who is not only the President of USIPA, but he's
21 also President and CEO of AT&T IP, LLC and serves
22 as a counsel representative for AT&T. So, we're

1 pretty excited about the work that we're going to
2 be doing with USIPA to pull together and
3 collaborate on and support programs and
4 initiatives that are being built through both of
5 these programs and organizations.

6 So next I want to talk a little bit
7 about some of the innovation education
8 partnerships that we have developed here at the
9 USPTO. So, USPTO'S leadership top objectives are
10 to make USPTO a catalyst for inclusive innovation
11 and to bring innovation to impact. This is
12 something that Director Vidal spoke very
13 passionately about, she always speaks passionately
14 about and in particular in her opening remarks, as
15 well as her conversation with Dan that we saw this
16 morning.

17 In order to do that, we need to advocate
18 for as many innovators as possible. So, how we go
19 about that is, 1 - standing up the first IP skills
20 work-based learning program that we have
21 developed. So, this is a year-round paid work-
22 based learning experience for high school students

1 conducted in partnership with the Urban Alliance.
2 This work-based learning provides students with a
3 living wage access and exposure to career
4 opportunities in federal service while creating
5 opportunities for IP awareness, invention, and
6 entrepreneurship education, and integrated STEM
7 and steam learning.

8 And I'll just take a moment to just
9 reiterate on that I love this program because it's
10 doing two things. We need to bring that
11 innovation. We need to bring the education and
12 awareness, but it's also helping to support. We
13 cannot just spend the time asking people to spend
14 their own time doing these things without helping
15 them to grow, and having this be a paid program in
16 the same manner that we have our innovators
17 internship being a paid program, people,
18 especially students and college students, they
19 have to pay their bills, too. So, we are helping
20 them with that while we're teaching them and
21 helping them mature as innovators and inventors.

22 So, another program that we have started

1 up is called the Equip HQ. It's an external
2 portal that USPTO is building as a content
3 resource so that educators have more opportunities
4 to engage students around concept of IP. The
5 Equip HQ teachers help teachers bring invention
6 education into their classrooms so teachers and
7 parents can leverage Equip HQ and engage students
8 with these exciting challenges in the innovation
9 sphere. Students as well as teachers will have
10 great opportunities and entertaining opportunities
11 to explore all of IP, patents, trademarks,
12 copyrights, as well as other forms of IP through
13 awareness and literacy.

14 So, one of the other programs that we
15 have right now is our Master Teacher of Invention
16 Education Program, and let me stop and say a huge
17 congratulations and thank you to the Office of
18 Education with it, which is within the Office of
19 the Chief Communication Officer, who have
20 developed, nurtured and really provided excellent
21 programming in all of these programs. So, the
22 Master Teacher of Invention Education Program is

1 an opportunity for the trainer model getting
2 experienced teachers this opportunity to learn
3 more about invention education and to teach them
4 how to bring this education to their students.

5 Now, while we do have a summer
6 internship program which I'll speak a little bit
7 more on, this really takes it to the next step of
8 learning and education for educators around our
9 nation in order to make sure that our students at
10 every age level are growing and expanding in their
11 awareness, their education of inventorship,
12 entrepreneurship as well as in innovation as a
13 whole.

14 So, some other innovation education
15 programs that we have, so we have a web page full
16 of information for young inventors, and I would
17 encourage everyone who can hear me to go onto
18 those webpages uspto.gov, you can put in
19 innovation education as well as our expanding
20 innovation web pages that give so much rich
21 education awareness, understanding references, and
22 resources on building a better system and

1 educating of all ages. While these may focus on K
2 through undergraduate school, we have programs and
3 awareness and education programs for all levels
4 whether you are a six-year- old or you're a
5 60-year-old and you want to be nurtured as an
6 inventor, we're going to be there to help you.

7 So, I mentioned already our summer
8 teacher institute. This is where a shorter term,
9 where they train the teachers on how to bring IP
10 innovation into their classroom.

11 And I will go on to our next, the
12 national outreach partnerships. As I mentioned,
13 we have some other partnerships besides the USIPA
14 that I'd like to really congratulate the agency,
15 specifically our partners in OCCO, who really
16 nurture and build these partnerships. The
17 National Inventors Hall of Fame Program, we
18 partner with the National Inventors Hall of Fame.
19 We've reached 250,000 college, I'm sorry, K
20 through college-age students nationwide on
21 building their education awareness of STEM as well
22 as invention. It's the longest and biggest

1 outreach partner that we've had, and we're still
2 going to keep moving forward on them, with them,
3 and build an even bigger and more expansive
4 program. Two-thirds of the students receive
5 funding to attend the next programs ensuring that
6 children of all economic backgrounds have access
7 to this critical programming necessary to build
8 the innovators of tomorrow.

9 So, we also have a partnership with the
10 National Medal of Technology and Innovation. It
11 is America's highest honor in the technological
12 achievements field. It is awarded by the
13 President. So, these laureates are featured in a
14 series of outreach events and mentoring programs
15 that are run by the National Medal Foundation,
16 targeting specifically STEM college students.

17 We also partner with the National
18 Academy of Inventors. It's a membership
19 organization for academic inventors and their
20 institutions, and together, NIA and USPTO are
21 working on free IP curriculum and mentoring
22 program and a study on language use in the

1 innovation ecosystem to get to every corner of our
2 nation with education.

3 And I will just say on this last slide
4 is all the partnerships and programs that I
5 discussed you can find here on this reference
6 page, but as I mentioned before, if you go onto
7 our expansion of innovation web page on USPTO, you
8 will find these and more. Thank you.

9 MS. HARRISON: Thanks, Valencia. I will
10 say that one of the challenges that Dan and I and
11 our committee have had is actually getting our
12 arms around all of the hundreds of programs that
13 the USPTO is running around different aspects of
14 diversity, and inclusion, and inventorship, and
15 education across the nation. And part of, I
16 think, what we're hoping to do here is, while we
17 want to think nationally, we want to act locally.
18 And so, we want to find ways to enhance engagement
19 with people doing good work, feet on the street.

20 And so, again, a large focus has just
21 been trying to understand the USPTO's efforts to
22 understand where they're targeting engagement,

1 whether it's understanding, educating kids and
2 young adults on invention and inventorship,
3 whether it's trying to increase people coming into
4 the profession. I know many of the people in the
5 patent profession didn't start out to want to be
6 in the patent profession and so, you know, we
7 can't really rely on growing the profession if
8 it's accidental, right? So, how can we can make
9 it available earlier as a career path so people
10 have choice about wanting to come here and knowing
11 to come here. And so again, there are many
12 aspects to this that I think have been very eye
13 opening as we've gone through it. Dan, do you
14 have anything that you want to add here?

15 MR. BROWN: No, I think that you hit it
16 but the reality is that while we have so much
17 going on, there's so much that needs to get done
18 and, you know, transacting that and getting
19 effective outcome is really the focus. Hopefully,
20 as we discussed in our meeting yesterday, next
21 year's goal, and I'm looking forward to that.

22 MS. HARRISON: Any other PPAC members

1 have questions?

2 MS. WALLACE: I could just add one
3 thing. We've been caught off the press where we
4 have the women's entrepreneurship that was just
5 released and we have a welcoming message from
6 Secretary Rimando about it. And it is a
7 community-focused, collaborative, and creative
8 initiative to encourage and empower women founders
9 across the United States. So, I'll just give a
10 plug there and ask everyone to please go onto
11 USPTO webpage and learn more about what we're
12 doing in empowering women entrepreneurs.

13 CHAIRMAN CALTRIDER: Just a question.
14 It's kind of age-old problem that we've talked
15 about before, but I'm just curious if the
16 committees' subcommittees been able to advance
17 their thinking on it and how do you measure
18 success? It's easy to count outreach efforts but
19 is it really measuring engagement? You can
20 measure engagement but does it translate into
21 invent more inventors and GDP? How do you measure
22 success? And so how do we know what's effective

1 and what's not effective?

2 MS. HARRISON: Yeah, I'm going to start
3 with that. So, I will say that our committee is
4 working on that and we are actively engaged with
5 the USPTO on defining effectiveness and success
6 measures for each of these different kinds of
7 groupings. You know, education is going to have a
8 different metric than outreach. So again, it's
9 partly we're trying to get our arms around what we
10 have first, and then we can determine the
11 effectiveness of what's happening and how we
12 measure that. And then we can hope the PTO can
13 make some choices on how they want to continue or
14 get new programs for areas that they're not being
15 effective or having any kind of programming at the
16 moment. So, it is a large focus of our committee
17 going forward next year, sure. Derek Brent?

18 MR. BRENT: If I can answer that
19 Suzanne, hit it right on the head. That is, I
20 think an old way of thinking is just numbers, how
21 many people do you reach. But quite honestly, you
22 have to think about each audience because you're

1 trying to get a different reaction. So, for
2 example, within the system this is part of a great
3 comment yesterday. Even within an audience, say
4 you're talking to a bunch of IP lawyers, you don't
5 want your call to action or what you're asked to
6 do is different than, say, if you're a group of
7 entrepreneurs, bunch or group of scientists,
8 students, engineers, who you're trying to reach
9 and talk and help them, educate them on IP. So,
10 with each audience, there's going to be different
11 metrics and I think now that we've sort of started
12 thinking along those lines, I think the metrics
13 are getting clearer rather than trying to have one
14 overall broad metric that measures it for
15 everybody lumped together. Now that we're
16 starting to look at segments and audiences, the
17 picture is starting to get a little bit clearer in
18 terms of, because we have different calls to
19 action, different acts for each group. So now our
20 metrics could match up to those audiences. Dan?

21 MR. BROWN: Yeah, I have a great
22 example. So, I'm a professor who teach and we

1 have Capstone classes for engineering students and
2 our metric now is robust provisional patents
3 coming out of those problem-solving classes. Now,
4 they don't all go to full patent. Sometimes teams
5 disperse, so we've had that success. I think if
6 we could create a pedagogy in that particular
7 segment, it's not the same for preschool or -- but
8 in that particular segment and expand on that and
9 bring that kind of focus, I think there would be a
10 tremendous amount more sensitivity and
11 understanding of the overall process and that we
12 can certainly count that that's a quantitative
13 thing to do.

14 MS. WALLACE: I just want to add up.
15 So, first I agree with everything that Suzanne,
16 Dan, and Deputy Director Brent have said. I'm
17 just going to add one other thing to that. I'm
18 going to do a call out to every sector of the
19 innovation community and say just as with all the
20 programs and initiatives, we need your numbers as
21 well. We need every sector of the innovation
22 community to share where they are, what type of

1 maturity if that's what they have, and where they
2 are now, what they're putting in place to have an
3 impact in this area, and then how they are
4 measuring and analyzing whether it's working or
5 not, because there are great amount of things
6 happening. And yes, we are challenged and we're
7 working on our measures and monitoring, but it's
8 not just one sector. This isn't a USPTO thing
9 that needs to be done. It's an innovation
10 ecosystem thing that needs to be done, and every
11 sector within that system is responsible for every
12 aspect of this, including the monitoring, and the
13 measuring and the sharing of that information.

14 CHAIRMAN CALTRIDER: Very good,
15 excellent discussion. Let's move onto artificial
16 intelligence and information technology. Heidi, I
17 understand your taking it all.

18 MS. HARRISON: Sorry, there's one more
19 of my section here. Apology. Janine?

20 MS. SCIANNA: Alright, thank you so
21 much. Just one more section, just two slides. I
22 promise it will be short. Nice to meet you all.

1 This is my first encounter with the PPAC. I'm
2 pleased to be here and to give you an update on
3 some of that local programming that Suzanne
4 referenced as being so important as well.

5 So recently actually after last Monday,
6 the USPTO had a wonderful event at the Fort Bragg
7 Army Garrison in North Carolina, and I think it's
8 a really great example of what the agency is doing
9 to actively reach new demographic group and make
10 innovation and entrepreneurship accessible to more
11 individuals. And I wanted to first also thank my
12 co-planner in this initiative, Christy Whitaker,
13 in the office of the Chief Communication Officer
14 and also Elizabeth Ering (phonetic) for executing
15 the program in person in Fort Bragg. Next slide,
16 please. So, in this case we were delivering
17 educational programming directly at a military
18 installation, and certainly meeting people where
19 they are, which I think is a mantra that we're, as
20 an agency, we're trying to deliver with all of our
21 outreach programming. We set up a dynamic
22 entrepreneurship essentials panel workshop to

1 offer introductory training on startups and the
2 role that IP comply in a business strategy.

3 And we have done work with transitioning
4 veterans for sure and it's locally with regional
5 officers. We've also done national programming
6 for veterans and military community members, but
7 we wanted to expand our focus here at Fort Bragg,
8 specifically to two audiences, and that's service
9 members themselves and military spouses. So,
10 service members, you might think is an odd
11 audience, but actually some of them do set up side
12 gigs while they serve, and a lot of them are just
13 doing their homework, knowing that at some point
14 they will separate from active duty and transition
15 to veteran status and potentially start up their
16 own business.

17 For military spouses, they face
18 extremely high unemployment rates, about 22
19 percent or about five times the amount the
20 national average will have severe difficulty with
21 gaining employment and maintaining employment due
22 to frequent moves and deployable status of their

1 spouses. And so, many of them end up turning to
2 self-employment to help provide a professional
3 path for themselves and financial gains.

4 And so, we knew that to reach both of
5 these audience, we need to find the best host
6 partner at Fort Bragg and we identified the Army
7 community service whose logo you see in the upper
8 left-hand corner as the best home for this
9 program. This program at Fort Bragg in an
10 all-Army installation is focused on the family
11 unit as a whole in supporting everybody in the
12 family unit. The service member and the spouses
13 making sure that if their lives at home are at
14 peace and they have good welfare, then that helps
15 support the overall operational mission of the
16 installation.

17 We also knew that IP shouldn't be the
18 sole focus of this particular panel. We wanted to
19 empower the audience with the full spectrum of
20 info they would need for entrepreneurship. And
21 so, when we developed the panel composition, we
22 were looking for that broad spectrum of

1 information and also, we wanted to find local
2 experts that, you know, after we have come and
3 gone, they could turn to their local experts for
4 help the audience members. And we also knew that
5 relatability to the panelists would be really
6 important to make an impact on our audience.

7 So, Director Vidal did anchor the panel.
8 She did a wonderful job. She provided opening
9 remarks for the panel and she provided the IP
10 expertise during the discussion and a local
11 military spouse, IP attorney, helped to round out
12 the IP perspective on that panel. We also had a
13 really wonderful pair of military spouse
14 entrepreneurs who co-founded the business, R.
15 Riveter, who's (inaudible) office is here. This
16 is a handbag company that was started out in
17 Fayetteville, NC, has gone national. They
18 actually ended up going on to Shark Tank and got
19 funded on Shark Tank. We also had these two green
20 markers that you see, two local organizations that
21 we knew would be really helpful to point the
22 audience direction to. One of them is the Women

1 Business Center, Fayetteville, which is an
2 SBA-funded local organization that provides small
3 business development support and also the North
4 Carolina Center for Economic Development, which
5 provides microlending support, and credit
6 counseling as well.

7 So, for the panel itself, we had three
8 basic themes and these were fairly rapid fire. We
9 wanted to just give the audience a taste of the
10 overall topic and get them interested and know to
11 where to turn for help. So, the first discussion
12 theme was entrepreneurship for the modern military
13 family. The second segment was critical steps for
14 self-employment and the third was where to go for
15 help, which was really the most important aspect
16 of the entire event.

17 And local organizations, we also brought
18 some of them in to do research there before and
19 after the panel so that people could have further
20 one-on-one discussions with the organizations
21 represented, get more information and basically
22 know who to turn to for help as they're doing

1 their research in setting up their own business.

2 We think it was a big success. We had
3 roughly even split of active-duty service members
4 and military spouses, about 40 people in
5 attendance. They were really engaged. There were
6 lots of note taking that was happening. We were
7 asked can we come back to do future programming
8 there. But the bottom line is, I think people
9 really know where to go for help now. They have
10 an understanding of the research thing to do and
11 the organizations that are there to support them,
12 including the USPTO.

13 And I also wanted to mention another
14 meeting that Director Vidal held while she was at
15 Fort Bragg. She met with the 18th Airborne
16 Corpse, which is one of the major operational
17 commands on Fort Bragg with deployable troops.
18 The 18th Airborne runs a Shark Tank like
19 competition called Dragon's Lair. This is for
20 active-duty service members from all service
21 branches and Director Vidal discussed ways of how
22 the agency could support that particular

1 competition and in general just how to integrate
2 IP inside their community, a little bit more
3 robust leading feature.

4 Next slide, please. And so, I think the
5 natural question after having a successful event
6 like this is what do we do next. And I think our
7 initial focus is definitely let's go to other
8 installations across the country, you know,
9 utilizing our regional office footprint. And so,
10 we're looking to see what makes the most sense
11 going forward, but we have a formula that we can
12 replicate and iterate, potentially tweet,
13 depending on local circumstances and hopefully
14 deliver this type of programming across the
15 service branches and make installations know that
16 USPTO is here to help them and all of the people
17 that are under their purview.

18 Another idea we're exploring is creating
19 a dedicated landing page on the web for military
20 audiences, similar flavor perhaps to the
21 inventorship and entrepreneurship landing page we
22 have now. And, also just creating that personal

1 contact for installations, having a person's name
2 and e-mail address to serve as a concierge for
3 installations if service members or their family
4 members need help getting started. And we're also
5 looking at thinking beyond just actively serving
6 troops and their families. How can we support,
7 you know, National Guard reservists, certainly
8 expand our veterans programming as well.

9 So, this is kind of our opening salvo in
10 terms of reaching the military installation
11 communities themselves and we're really excited to
12 see where it goes. And I'm happy to entertain
13 questions if people have them.

14 MS. HARRISON: Thanks, Janine. I think
15 that's a great example of what a local programming
16 looks like. Thank you for sharing that.

17 CHAIRMAN CALTRIDER: Great and thanks so
18 much for sharing that. I apologize for my
19 eagerness to jump ahead to the next agenda item,
20 but I really think that is an exciting program,
21 and I look forward to hearing more about it as you
22 scale and move beyond it. It seems to me Director

1 Vidal comments several times, you know, solving
2 multiple variable problems and certainly
3 empowering our veterans community and tapping into
4 the entrepreneurial spirit and inventorship spirit
5 of that group of people really would solve for
6 multiple problems. And it sounds like a terrific
7 program, so congratulations and I look forward to
8 hearing more about it.

9 Okay. Let's now fit it to our next
10 agenda topic, AI and IT, and Heidi, I think you're
11 kicking this off.

12 MS. NEBEL: Yeah, so I served on the
13 AIIT subcommittee with Judge Braden, who could not
14 be here today, so I'm just sitting for her to go
15 over our report a little bit from a 10,000-foot
16 view, which I found. I thought the most important
17 thing is to talk about which may or may not be
18 Judge Braden's opinion, but for me I think some of
19 the significant things that are discussed in our
20 report is, first of all, DOCX and the program to
21 help and encourage people to file with DOCX where
22 we can file a PDF at the same time.

1 As an attorney in private practice,
2 we're always terrified of losing a filing date,
3 and so now you've removed that and also allowed us
4 and also encouraged us to try the DOCX program, so
5 it continues to improve. So, I think that was
6 brilliant, and I want to thank the Patent Office
7 for that.

8 Also, we've talked a lot today about
9 searching, about improving access to prior art and
10 the patents end-to-end program using artificial
11 intelligence to help examiner search is really a
12 significant advancement and particularly the more
13 like this program. I'm sure we're going to hear
14 more about that today. But for me, I think those
15 are some of the highlights of the AIIT portion of
16 our report that people can read. But in addition
17 to that, we'll have our presentations today. So,
18 first I would introduce Chief Information Officer
19 Jamie Holcomb.

20 MR. HOLCOMBE: Thank you very much. If
21 the Chair would entertain, I'd like everybody just
22 to get up. And I say that because if you get up,

1 move it around a little, and then sit on back
2 down, then you get a little different perspective
3 about things and I'm glad I was going to set way.
4 I'm glad we had that last presentation because, of
5 course, the Army being near and dear to me. I am
6 a graduate of the United States Military Academy
7 at West Point, and I'm happy to report that on
8 December 10th we will finally defeat the United
9 States Naval Academy.

10 MS. HARRISON: Hold on, hold on, hold
11 on.

12 MR. HOLCOMBE: So, it's good to have
13 good fun and make sure that we have that
14 collaboration and transparency. So, first slide,
15 please. I am happy to report that we are moving
16 forward on all fronts in the IP realm. That is,
17 we've retired so many legacy systems, and we can
18 now concentrate on the modernization efforts that
19 everybody here wants to see moving forward. That
20 retirement should not be overlooked. These
21 applications have served us very well, but it's
22 time to replace them and move on.

1 Now with the added layer that we don't
2 have to spend resources, time, and our money, and
3 our labor on these old, making sure that they're
4 up to speed. Now we're moving forward on the new,
5 and that's what we're going to be talking about.
6 Fifteen different applications were retired at the
7 end of the Fiscal Year on 31 September 2022.

8 So, I'm really, really happy about that
9 and, we're moving to the Cloud. What does that
10 mean? We don't have a Cloud first mentality. We
11 have a Cloud smart mentality. And why is that?
12 Because things in the Cloud need to be better,
13 cheaper, and faster or we'll keep them in our new
14 data center in Manassas. And that's a very
15 important concept, not everything is made for the
16 Cloud. There are some things that just don't work
17 well in the Cloud.

18 As an example, if you have a very chatty
19 application and there's a lot of data moving back
20 and forth. A lot of times, the Cloud service
21 providers will charge you a lot of money for that.
22 So, instead of that, what we can do is create a

1 link between wherever our Cloud storage is and our
2 current applications and ensure we're not paying
3 for that because we'll pay for the Link and in
4 that regard, not everything is meant for the Cloud
5 but we'll be Cloud smart.

6 And I'm happy to report as well that
7 this is the first year during hurricane season
8 where, even if we're flooded out here at the
9 Eisenhower Avenue, USPTO headquarters, we have the
10 ability to operate out of Manassas, Virginia.
11 We've established our new data center there, and
12 we have moved applications over to Manassas over
13 the last four months and we're going to be
14 continuing it for the next four months.

15 So, by the end of March of 2023, we will
16 have all of our (inaudible) operations established
17 between both Alexandria and Manassas as well as
18 having things in the Cloud. So, I'm very, very
19 happy to say that these are the two things
20 (inaudible) in the Cloud, but the thing at the
21 bottom it says full authority to operate cyber,
22 cyber, cyber.

1 One of the greatest things that we've
2 accomplished is the ability to have an awareness
3 of cyber hygiene throughout the enterprise. This
4 is not the side key. This is through the examiner
5 core in both trademarks and patents. The fact of
6 the matter is don't press that phishing button.
7 Don't be socially engineered. Try to ensure that
8 you look at cyber security and everything you do
9 on your daily tasks. So, with that I'm going to
10 get to the next slide, and ask Jonathan to give us
11 a little demo on the AI similarity. Are you out
12 there, Jonathan?

13 MR. HORNER: I am out here. Can you all
14 hear me?

15 MR. HOLCOMBE: Yes, we can.

16 MR. HORNER: Great, great. So, I'm
17 going to go ahead and steal the view here. I just
18 have one slide, don't worry. But the first thing
19 I wanted to cover with respect to similarity
20 search was what is the difference. And with more
21 like this document in similarity search now both
22 being in PE2 E-search, what is the difference

1 between the two? Well, more like this document,
2 as many of you saw last time was on the published
3 patent document. It was based on the entire
4 disclosure text, and it returned to other
5 published patent documents with the highest
6 similarity. Similarity search takes that idea and
7 really emphasizes it.

8 So, it's actually done on U.S. patent
9 applications, and that includes unpublished
10 applications. So, the examiner can now look at
11 unpublished applications and perform a search
12 based on those unpublished applications. He
13 returns the published patent documents, again
14 sorted by similarity, but the big feature which
15 I'm going to show you is that the user may
16 emphasize portions of the disclosure text and CPCs
17 to refine the retrieval.

18 So, let's jump into it. Here you can
19 see we have a similarity search. This is just a
20 gadget within PE2 research. It looks complicated
21 at first glance, but it is actually very simple.
22 You load an application and this is a live tool by

1 the way. And you can see just how quickly
2 everything loads. It loads the application itself
3 in under a second, and it loads the results in a
4 matter of seconds. And it loads the results based
5 on the entire disclosure here. So, this is an
6 application for patent on the left, and we have
7 results on the right. So, the examiner can
8 actually go through these results in the normal
9 fashion, doing the normal search techniques that
10 they use on results.

11 So, the actual point though is that the
12 examiner can emphasize other pieces, portions of
13 these things to better refine the search. So, you
14 see right here we have a U.S. Document as the
15 most similar document to this. Well, if I scroll
16 down and find something specific in the
17 application that I like, I can actually say, hey,
18 I'm looking for an augmented reality interface. I
19 can add that. And I can add a CPC specification
20 as well to really narrow down this search.

21 So, I rerun this search and it actually
22 -- this is again a live tool, so this is running

1 in production and this is giving you the results
2 as fast as say an examiner would get them. So,
3 you can see now that there is a Chinese document
4 at the top of the list. The examiner can now go
5 through the documents, view, and understand
6 everything along with snippets which are these
7 pieces of text here.

8 This is the explainability piece, which
9 is so important to us. The explainability piece
10 actually tells the end user, the examiner in this
11 case, why the AI chose this document as the top
12 document. It gives you a list of CPCs, and it
13 gives you a list of snippets from the actual
14 document itself. So, the examiner, at a glance,
15 can tell is this relevant, is this not relevant.

16 Beyond that, the other important piece
17 of this is our communication to the public and the
18 applicant. So being able to do that, we do have
19 an automatic search history piece that records the
20 similarity search and records the selections of
21 the similarity search directly in the search
22 history so the applicant and public can have an

1 understanding how the examiner made the decision
2 that they made. This is all very important to us,
3 and we are actually looking forward to adding more
4 features into similarity search.

5 So, what I have shown you is a very,
6 very, very brief overview, but it just shows you
7 how simple and powerful this system is that we
8 have given to examiners. We hope to maintain
9 patent quality and to improve the ability for
10 examiners to really find that needle in the
11 haystack when it comes to similarity search.

12 So, I realized that was a very short
13 demo, but that just again shows you the power and
14 simplicity of the tool for examiners, and I would
15 be happy to take any questions if there are any.

16 MR. BROWN: Jonathan, this is
17 interesting and very interesting, and thanks for
18 the demo. My question is how are we going to
19 compare and assess this with the examiners who
20 know that the rationale for the relevancy is
21 appropriate? I mean, we can get all kinds of data
22 out there, but it's the analysis of that data and

1 its relevant prior art. Is there a way that
2 you're testing this or how is that going?

3 MR. HORNER: That's a great question.
4 So, I will tell you that based on that slide
5 before it said we had a few thousand users and
6 about 15,000 distinct applications here. And now
7 we have 5,000 users using it on over 35,000
8 distinct applications. So, our first test to see
9 if this is working is are people using it. And
10 people are using this application, so we do know
11 that we are also measuring other metrics behind
12 the scenes that tell us, is this working across
13 PCs, what PCs are using it, and how are they using
14 it? So, are they citing references? Are those
15 references ending up in office actions? So, those
16 are all ongoing tasks that we are taking on.

17 MR. BROWN: So, I mean it's come a long
18 way in the year obviously, and that's great.
19 Still, I'll be interested to know and so, don't
20 have to know it now, but you know what the
21 feedback is compared to say, well, you would have
22 new users, they would adapt it easy. But then you

1 have those experienced examiners that, like myself
2 or whatever, that they, you know, you don't like
3 to change and I guess the measuring of that
4 switching behavior it would be an important
5 metric, and obviously your adaption is going up.
6 But some feedback in there would be interesting
7 even. And do you have like test cases where
8 you've may be taken a certain particular search
9 and run it in the traditional way and then takes
10 new users or whatever running it in the new way
11 and looking at the result.

12 MR. HORNER: We have not done anything
13 specifically like that. That is something that we
14 would certainly take back and take a look at as to
15 something that we might do. But we are always
16 looking for ways to perform measures and metrics
17 on these tools to figure out if they're working,
18 who they're working for, what segments of the
19 population they're not working for, so that we can
20 go in and figure out, is it the tool, is it the
21 training, or is it that the users, you know, have
22 a different way of searching or anything like

1 that.

2 So, we are taking both qualitative and
3 quantitative feedback and we are analyzing that
4 feedback and making decisions to improve the tool
5 based on that. So, this is not we're finished
6 type of situation. This is a situation where we
7 will continue working on the tool and improving
8 it, and that includes both the back-end machine
9 learning models and the front-end functionalities.

10 MR. BROWN: So, one final thing, I put
11 maybe 100 students a year through this similar
12 program more like this and I've been testing the
13 different software and I don't - since I'm
14 inexperience, I can't tell the relevancy for each
15 particular one, but I can measure when their
16 outcomes for their provisional or whatever we're
17 looking at it, we can claim analysis if they're
18 getting better or not. It's still an open
19 question, but the one thing I wanted to say is
20 that it moved along. We talked about it before,
21 hopefully it'll be available to the public, so the
22 applicants and the examiners are using the same

1 system in the future, so that it's an
2 apple-to-apple kind of comparison. If we're going
3 to rely on it and the AIA critical painting if
4 it's there, it should be consistently.

5 MR. HORNER: So, I'll jump in. That's
6 certainly our goal. As Jamie mentioned early on,
7 we retired about 20 legacy systems, 20 search
8 systems for the public. And now moving forward,
9 we have what's called our patent public search
10 system, pPub. And that is built on the same
11 platform, has much of the same features. We're
12 trying to simplify some of those to bring in some
13 of the legacy features, but what it doesn't have
14 is the fit data, the foreign image, and text.
15 What it doesn't have is the AI functionality right
16 now. And I say right now our short-term goal is
17 to incorporate both of those.

18 We have some challenges with contract
19 provisions with, you know, the AI being able to
20 take that outside, particularly when it relates
21 to, as Jonathan demonstrated, you know, sensitive
22 patent applications, unpublished patent

1 applications, right? So, we can't have the full
2 thing, but incrementally we want to get where the
3 patent examiner search is very close, if not
4 identical to what the public can also search, just
5 not there yet. And I think I don't want to give a
6 hard timeline but our goal is within two years to
7 achieve both of those. When we get there, maybe
8 sooner, maybe later, but certainly we're on it.
9 We're trying to navigate those challenges.

10 MR. BROWN: So right now, applications I
11 think it's months and then they're published,
12 right? And is that the reason for that, just
13 allow for first examination and feedback or is
14 there some legal reason that it, you know, say, I
15 couldn't search pending applications before 18
16 months.

17 MR. HOLCOMBE: Eighteen months is sort
18 of an international norm and that's why we agreed
19 to it like 20 years ago that we would seek
20 publication at 18 months. And that's from the
21 earliest client priority date. So, if you file a
22 provisional application and file a non-provisional

1 a year later, it's six months after the
2 non-provisional filing date.

3 MR. BROWN: So, in the future, is it
4 going to stay at 18 months for people?

5 MR. HOLCOMBE: I can't imagine that
6 being changed easily. It's an agreement among
7 many nations, and the idea is so that all the
8 applications -- the same application around the
9 world will be published roughly at the same time.
10 So, it would be challenging to try and get anyone
11 to agree to move that.

12 MR. DUAN: My recollection is it's
13 statutory, right?

14 MR. HOLCOMBE: Oh, yeah, it's certainly
15 statutory, and it's the subject of a number of
16 international agreements.

17 MR. DUAN: So, what was the reason for
18 it? I just don't still?

19 MR. HOLCOMBE: Performed well before my
20 time.

21 MR. BROWN: Thank you. We'll take it
22 offline.

1 MR. HOLCOMBE: Okay.

2 MR. SEIDEL: If you don't mind my
3 asking, on a separate question. So, number one,
4 you know this is a fantastic tool. I would love
5 to use it myself. Well, I agree with Dan that you
6 know would be great if this could be made publicly
7 available. I think it would be useful for a lot
8 of folks. The sort of emphasizing of text, that
9 sounds like you'll have to do some sort of similar
10 matching on the text. My recollection is that was
11 also the project of the Kaggle competition. So,
12 is that integrated or is that the plan to
13 integrate it? I wasn't (inaudible) on what -- how
14 did that work out?

15 MR. HORNER: Yes, there are plans to
16 integrate it, and that's exactly why we did it.
17 Thank you for paying attention.

18 MR. BROWN: Obviously, right? I mean it
19 just naturally it will occur.

20 MR. SEIDEL: Right. It seemed like such
21 a natural fit, and so I think that's a great
22 opportunity. Sort of on the subject of the Kaggle

1 competition, one sort of unrelated thought. I
2 learned recently of the C program in which the
3 agency brings in technologists from some
4 companies. And it occurred to me that through the
5 casual competition, besides having a bunch of
6 really good code, you have a bunch of - you have a
7 mailing list of great engineers and I don't know
8 still on thoughts about trying to bring them in as
9 potentially informative speakers to the patent
10 examiners to talk about the kind of the
11 state-of-the-art research.

12 CHAIRMAN CALTRIDER: That's a great
13 little wisdom or a nugget. We were looking at the
14 actual team competition that occurred and there
15 are so many nuggets of wisdom within that
16 repository. We're mining it. There's so many
17 things we can do, that is a great idea. Just ask
18 them, hey, what do you think, would you like to
19 come and talk to us? That's a great idea, we'll
20 take it. Thanks.

21 MS. HARRISON: We did have a public
22 question which has now been answered twice about

1 when this will be available to the public, but I
2 just wanted to acknowledge we had that question.
3 But what - we'll ask that from my end as someone
4 who's been around the block a lot. The new public
5 search tool is really counter intuitive from my
6 perspective, and I have not even been able to find
7 a patent just by putting in a patent number. And
8 I know you've had some training programs, but I
9 don't know that any of them were ever videotaped
10 or something like that, so that if we missed the
11 session, we could just watch it on our own. But
12 that would be so helpful because I literally have
13 no way of just finding a copy of a patent now.

14 MR. BROWN: They usually won't take
15 that.

16 MR. SEIDEL: But glad you raised that.
17 We've taken it already. We've gotten that
18 feedback. One of the things that you're familiar
19 with the site, the landing site and you can
20 actually start a search. I believe there's FAQs
21 and there's a third button I don't recall, but the
22 start of search we'd like to parse that out into

1 -- we're still struggling with what the term is
2 basic search perhaps.

3 So, you go and you click on that button
4 and you will be prompted. Do you want to enter a
5 patent number? You put in the seven digits. Do
6 you want to put in the publication number? You
7 put in however many digits there. And then maybe
8 just some basic functionality, kind of holdovers
9 from PUB West, PUB east, that type of
10 functionality so you're very limited, very
11 rudimentary type search elements that you can put
12 in and that'll be on a basic planning.

13 We've gotten that feedback again that
14 the challenge was we could no longer support the
15 legacy tools. We needed to come up with something
16 very quickly, so we launched that and have been
17 working on this, this basic simplified button if
18 you will, to address that very concern. The big
19 reveal, I think we hope to have it within about a
20 month. So, mid-December, we should have a new
21 look and feel, stay tuned. But thank you for
22 that. Happily, we are on that in advance of the

1 question, thanks.

2 MS. HARRISON: I would also say the next
3 training session is December 8th from 2:00 to 3:00
4 Eastern because I just signed up for it today so.

5 CHAIRMAN CALTRIDER: Rick, I'm very
6 happy to hear you say that and the one thing I'm
7 going to jump into (inaudible) just slightly on
8 this, it would be great if you have one of those
9 buttons on the assignee, because I think that, at
10 least from the old system to the new system, I
11 haven't quite figured it out if you want to narrow
12 a search by assignee, how to do that under the new
13 system. At least I've accomplished it yet. So,
14 that maybe it's one of those buttons for
15 simplification.

16 MR. SEIDEL: Yeah, I'll go back and
17 check, but we had envisioned inventor, Anthony,
18 maybe some basic search terms like cat and dog if
19 you'd be interested in that, perhaps. I don't
20 know a patent number, maybe even a date. So,
21 we'll go back and look. I mean again, we're trying
22 to keep it simplified, but I think some of those

1 basic hits I think we can accommodate here, so
2 thanks for the suggestion, Steve.

3 MR. HARRISON: I believe next we're
4 going to hear from Rick Seidel, Deputy
5 Commissioner of Patents.

6 MR SEIDEL: I have nothing to add. I
7 think that was the presentation. I'm on the
8 agenda, supportive of Jamie and certainly Jonathan
9 in the demo. So, thank you.

10 MS. HARRISON: Yeah, we have several
11 other people on the agenda. Is it just you,
12 Jamie, that's going to speak today?

13 CHAIRMAN CALTRIDER: And the demo.

14 MS. HARRISON: All right, good. We're
15 ready for a break, I believe.

16 CHAIRMAN CALTRIDER: Right and thank you
17 and Jamie, you kind of beat me to the mark in the
18 sense of I'm one that I don't like to sit much
19 more than three hours and a couple of back
20 surgeries is driving that for me. But I do think
21 wellness is important. So, we did plan a bit of a
22 break here to grab a bite and reconvene at 12:35.

1 Thank you everyone.

2 (Recess.)

3 CHAIRMAN CALTRIDER: We may have risk of
4 food coma this afternoon, but we have some great
5 topics and hopefully that list will not be too
6 high. And I do think the break was helpful not
7 only to have an opportunity to stretch our legs
8 and, you know, blood flowing a little bit, but
9 also just to visit with people in the hall, and as
10 we gather here. That's why we're a couple minutes
11 late. So, with those comments I will turn things
12 over to Jeremiah Chan to give us a legislative and
13 AI international policy update.

14 MR. CHAN: Thank you Steve and glad to
15 be here everyone. I want to start by thanking my
16 PPAC Vice Chair, Heidi Nebel, and also the PTO
17 colleagues that we've collaborated with on
18 legislative and policy issues this past year.
19 After three years on PPAC, I've had a front row
20 seat to tremendous talent and dedication of the
21 USPTO personnel, and this year was no exception.
22 I am very grateful for their service to our

1 country's innovation ecosystem and thousands of
2 current and future inventors. So, thank you so
3 much.

4 I'm going to start with some highlights
5 from PPAC's forthcoming annual report, and then I
6 will look to my USPTO colleagues to provide some
7 more detail on several of the initiatives.

8 In the past year, Congress has continued
9 to be very active on patent issues, particularly
10 focused on patent quality, post issuance patent
11 review proceedings, under represented inventors,
12 and drug pricing issues. Several bills have
13 related to these topics, and the USPTO has
14 monitored them very closely.

15 The Senate Judiciary Subcommittee on
16 Intellectual Property and the House Judiciary
17 Subcommittee on courts, intellectual property, and
18 the Internet held hearings that addressed post
19 grant proceedings at the Patent Trial and Appeals
20 Board. While the USPTO did not testify at those
21 hearings, the Director did submit a letter
22 outlining various initiatives at the PTAB. And

1 this letter is publicly available and also will
2 be linked in our annual report.

3 Over the course of the year, the USPTO
4 received several inquiries from Congress at a
5 range of topics and the USPTO conducted extensive
6 outreach. They've collected feedbacks from a
7 variety of relevant stakeholders, including PPAC.
8 The USPTO also held meetings and events with
9 stakeholders and agency personnel, some of which
10 we've heard about today that facilitate
11 collaboration. One great example is the
12 artificial intelligence and emerging technology
13 partnership that Matt Sked will discuss in more
14 detail, the USPTO also launched the global AI
15 competition. I believe that Charles mentioned.
16 This engaged the public AI research community with
17 over 2,300 researchers and engineers from 85
18 countries, really remarkable. It's something I
19 have never seen before. On the international
20 front, the USPTO also became a partner to the
21 global green technology platform of WIPO called
22 WIPO Green.

1 And that's just a quick overview of some
2 of the highlights that we'll talk about today. As
3 you will read in our report, the USPTO has been
4 very, very active in soliciting feedbacks from
5 many stakeholders and partnering closely with the
6 research community, really excellent work. With
7 that, let me stop and I will turn it over to Mary
8 Chritharis to give us the international update.
9 Mary?

10 MS. CRITHARIS: Thank you so much,
11 Jeremiah. We wanted to discuss the updates for
12 the trilateral meeting since for the first time
13 since the pandemic, we hosted an in-person meeting
14 where we met with our trilateral partners and that
15 included offices from Japan as well as Europe. We
16 held those meetings last week in Durham, North
17 Carolina, and we also met with our industry
18 representatives from those three regions as well.

19 Prior to the meetings, we held a public
20 session at Duke Law School to highlight the
21 importance of small and medium-sized enterprises
22 in the innovation ecosystem. I'm going to turn to

1 my colleague Nyema Glasser (phonetic), who's going
2 to give you an update on the various meetings.

3 MS. GLASSER: Thank you, Mary. Last
4 week, the USPTO hosted an AIPIA, and also IPO
5 co-hosted the 40th Trilateral Conference. Again,
6 it was held by Duke University, which is in
7 Durham, North Carolina. The theme for this
8 particular meeting was enhancing the accessibility
9 of the patent system for SME in order to drive
10 economic growth. As Mary mentioned, we kicked off
11 these meetings with a public side event. The side
12 event was entitled international perspective, IP,
13 SMEs, and global markets.

14 The side event was hosted on November
15 8th at Duke University. The program consisted of
16 three different sessions. The first session
17 included the heads of the trilateral offices and
18 they spoke about the importance of IP.

19 The second session that was held, we
20 invited local innovation businesses to talk about
21 some of their views on IP, in particular some of
22 the benefits, some of the challenges, and also

1 their strategies, when they're thinking of how
2 they can protect their products.

3 The last session that was held, the
4 offices of the trilateral, shared information
5 about the particular resources that each of these
6 offices offer to small businesses. The first
7 meeting that the trilateral held was on November
8 8th that was in the afternoon and the heads of the
9 trilateral offices met with industry trilateral.
10 Again, all of the agenda items focused around the
11 theme for the meeting, which was SMEs. To kick
12 off the meeting, we spoke about some of recent
13 reports -- economic reports.

14 Basically, the IP intensive industry
15 reports all three offices conducted different
16 reports, and also, they exchanged information
17 about the main takeaways. This pretty much made
18 the foundation for why travel offices should
19 continue to support SME. Basically, we found that
20 industries that are intensive users of IP
21 generally contribute to a significant portion of
22 the gross domestic product. Also, it increases

1 the percentage of employment and also in those
2 intensive industries, they earn higher wages and
3 account for a larger percentage of exports.

4 In addition to discussing the main
5 findings of these economic reports, the officers
6 also spoke about how, in different ways, that we
7 can try to support SME, and one of the things that
8 we spoke about was some of the digitalization
9 efforts that are going on at the USPTO, the EPO,
10 and also the JPO.

11 We also talked about inclusive
12 innovation efforts and also different resources.
13 In addition to that, we listened to industry
14 feedbacks with respect to all the different agenda
15 topics. On November 9th, only the heads of the
16 trilateral offices had a meeting, and we spoke
17 about all the different aspects in ways that we
18 can continue to support the SMEs and we spoke
19 about some of the next steps. I just want to
20 share with you the main findings.

21 Regarding the digitalization efforts,
22 some of the next steps the trilateral office will

1 share and exchange ideas about how each office
2 will use certain tools such as AI tools when it
3 comes to searching, and in particular searching
4 NPLs. With respect to the economic reports on IP
5 intensive industries, the trilateral offices will
6 create a joint report and, I tried to extract some
7 of the main takeaways and publish those findings.

8 In addition to that, the officers took
9 time to brainstorm some new ideas and some other
10 ways that we can try to engage SMEs. One of the
11 things that we spoke about was trying to leverage
12 commercialization and also expanding innovation to
13 reach global markets. So, we spoke a little bit
14 about the patent for partnership that we have here
15 at the USPTO, the JPO, they shared information
16 about some of their WIPO Green efforts and also
17 the EPO, they have a certification program with
18 respect to test transfer.

19 We also spoke about ways that we can
20 increase innovation and so some of the things that
21 we spoke about were continuing some of the
22 innovation awards. The EPO has the innovation

1 award, the USPTO, we also have a similar award.

2 Lastly, we spoke about global assignment
3 and some of the other ways that we can try to
4 improve some of the tools that we have. So, one
5 of the next steps for trilateral will be to try to
6 decouple the legal and the technical components of
7 global assignment form. And those are some of the
8 many things that we're going to do. I think that
9 the trilateral offices will also work at the
10 working level to try to put together an action
11 plan that comprises all of the components that I
12 mentioned earlier. Lastly, the meeting ended with
13 an announcement that the 41st Trilateral
14 Conference will take place next year in late
15 September, and that will take place in Munich. If
16 you have any questions, I can answer them. Thank
17 you.

18 CHAIRMAN CALTRIDER: I do have a
19 question. One, thank you for the report and as
20 well as for having the global assignment amongst
21 your highlights on the report. That's a very
22 important issue to many users in terms of

1 streamlining and making it much more efficient in
2 saving money. Just a general question in terms of
3 the spirit of the meeting. Is it collaborative or
4 competitive at the office? Because I know, there
5 have been times and under prior leadership,
6 particularly, I think perhaps in Europe, sharing
7 my colors a little bit where I think the attitude
8 was more competitive, friendly-competitive. I
9 don't want to leave the wrong impression. They're
10 friendly-competitive, but, you know, the Europeans
11 were happy to be the international search
12 authority of choice and, you know, you really kind
13 of kept things close so that they could have that
14 reputation of being the international search
15 authority of choice. And I'm just curious,
16 culturally is it more collaborative, is it
17 friendly- competitive, is it, what's the general
18 tone of a trilateral meeting?

19 MS. CRITHARIS: Thanks Steven, that's a
20 great question. We struggle with that as well. I
21 will say in the past when we have launched the
22 trilateral since 1983 and a lot of good, you know,

1 efforts have been undertaken in projects under
2 that group. When we folded everything into the
3 IP5, the dynamics kind of shifted because, as you
4 alluded to, I think from the dynamics were really
5 coming from our European colleagues and the way
6 they -- I think there was this kind of
7 cooperative, yet friendly-competitive or this is
8 the way we do things and people should follow suit
9 as well.

10 But having said that, I think since most
11 of the projects have been folded in the IP5, I
12 think the -- what we're trying to do with this
13 particular trilateral group now is to re-energize.
14 And we were just kind of keeping that group. We
15 were holding it to kind of meet on the margins of
16 IP5 to see what we can do. I'm just collectively
17 to further some of the initiatives of IP5, but now
18 I think we're trying to undertake some own
19 initiatives under trilateral. So, a little bit of
20 a renewed energy. So, I do think there's
21 definitely a lot more collaborative spirit because
22 what can we do as a group outside of IP5 to make

1 progress.

2 And for example, one thing that you
3 noted that I'm glad you mentioned it so, I wanted
4 to highlight that as well is how do we make
5 progress on global assignment because we want to
6 make sure that we move forward. So, in doing that
7 in a smaller group, I think is easier than doing
8 in the IP5 and getting them on Board. So as Nyema
9 mentioned, we thought it's really important to
10 decouple those issues, the technical with the
11 legal issues. Hopefully, we can make progress on
12 some of the legal issues, you know, fairly
13 quickly, and as far as the technical issues are
14 concerned, WIPO did indicate at the meeting that
15 they would support all of our efforts to fold it
16 into some kind of global assignment that would
17 give effect to, you know rights and, you know
18 transfer of ownership at WIPO.

19 And one thing we've heard from all
20 different kinds of organizations, how costly and
21 difficult it is to transfer ownership or rights,
22 and so obviously that's going to be a big priority

1 for us, and I think we can leverage the trilateral
2 in this regard to move forward. Having said all
3 of that though, I think it's important to
4 recognize that unlike the USPTO and the JPO, the
5 EPO has a little bit of a different mandate. They
6 don't have necessarily the same confidence that we
7 have to address some of those issues.

8 So, you know, ownership is on a
9 nation-by-nation level, so it's trying to, you
10 know, coordinate all of the members of the EPC so
11 it can be a little more challenging, so, I think
12 that plays into it. But I think, you know, we
13 have confidence that we can move forward and at
14 least come up with a common form that the
15 applicants can use to record with, you know, one
16 recommendation of that that will have the effect.

17 Obviously, the legal effect in the
18 different countries will always be determined on a
19 jurisdiction-by- jurisdiction basis. So, I do
20 think we're seeing a little bit different, but I
21 hope that answered the question.

22 CHAIRMAN CALTRIDER: It does, and it's

1 kind of an impossible question to answer as well,
2 but I will ask a follow up if that's okay. And
3 that is did the collaboration go beyond or the
4 trilateral go beyond kind of substantive issues
5 into, you know, we heard a great deal about cyber
6 security late this morning. Does it, did it go
7 also onto, you know, sharing best practices around
8 cyber security because all of us have a common
9 interest there to maintain the confidentiality of
10 patent applications before they publish, and I'm
11 just curious if it goes beyond the merits, if you
12 will?

13 MS. CRITHARIS: So, I think we're trying
14 to expand a little bit beyond just some of these
15 technical issues that we have between office.
16 It's obviously the global assignment is a good
17 example where it's not just collaborating with an
18 office, but making it more broadly available to
19 everybody. And we did talk, as Nyema mentioned,
20 you know, we're kind of branching out a little bit
21 into issues of, you know, outreach, small, you
22 know, enhancing the innovation ecosystem,

1 exclusive innovation, so those topics as well, but
2 a little bit broader than technical issues. We've
3 talked about center essential patents in the past,
4 so we see opportunities for doing that in this
5 group, works up in the trilateral than perhaps in
6 the IP5 forum. So, we're happy to take their
7 suggestions. We haven't really branched out into
8 cybersecurity. It leads to the best of my
9 knowledge, but I think we're happy to take all of
10 that feedback on Board. And you know, happy to,
11 you know, propose that in future meetings.

12 CHAIRMAN CALTRIDER: Well, I think it's
13 appropriate to prioritize and I'm not sure that
14 that would be the highest to -- it's obviously
15 very, very important for the office to consider
16 those issues, but I'm not sure it's the highest
17 issue for the IP5 or the trilateral. So, I leave
18 it to you to prioritize, but, you know, you just
19 think of the things that are common amongst all
20 three offices or all five offices and, you know,
21 those are the things that seem to be most ripe for
22 discussion and benchmarking and sharing best

1 practices.

2 MS. CRITHARIS: Yeah, and we do rely a
3 lot on the industry trilateral to give us that
4 feedback and we had some really good discussions,
5 as Nyema mentioned, that was the first day of the
6 meetings we're meeting with them. But we're happy
7 to take feedback from all of our stakeholders as
8 we prepare for the, you know, upcoming meeting.
9 And we're also happy to answer any other
10 international, you know, related questions that
11 the group may have.

12 CHAIRMAN CALTRIDER: Jeremiah, anything
13 else?

14 MR. CHAN: No, just waiting for any
15 other questions before we move on.

16 MS. HARRISON: I only have one, Mary.
17 So, you know, this year also saw the formation of
18 the unitary patent in the unitary patent court,
19 and we can see around the globe that there's some
20 sense of consolidation of particularly smaller
21 patent offices into regional offices and a way to
22 do that. Do you discuss any of these kinds of

1 changes in the trilateral and do you have any
2 perspectives on how that might change the global
3 patent landscape? And what does that mean for the
4 U.S.?

5 MS. CRITHARIS: So, we, the EPL gave a
6 brief update on unitary patent and the court
7 system. We don't really go into details.
8 Officers' kind of give some updates on
9 developments in their office and their particular
10 jurisdiction. We haven't had those, you know,
11 more in depth discussions of kind of the
12 implications for U.S. rights holders and what that
13 means. I think, you know, we do get a lot of
14 feedback from different stakeholders. I think
15 we're still trying to figure out, you know, how
16 this is going to work. I think this is all just
17 very new and even we talked to our colleagues in
18 Europe, they don't seem to have a lot of these
19 answers either. So, one of the nice parts of
20 having the meetings in person was for the first
21 time in a couple years we were able to meet with
22 the colleagues and have a lot of really good

1 discussions on the margins of the meeting. So,
2 those are questions we've asked them as well, and
3 the comments that we received was we are still
4 figuring that all out, but we're happy to keep
5 engaging on that. I know it's a really important
6 topic and we are also interested to see how this
7 will play out in Europe as far as the
8 consolidation, how the court system, you know,
9 will be utilized. Will this, you know, the
10 enhancements and the efficiencies and also, I
11 think with any new system and now we have those
12 challenges as well when we introduced new
13 procedures. I think there's going to be some
14 unforeseen kind of consequences that no one really
15 predicted how they play out. So, but it's
16 important for us to hear from you so that we can
17 engage with them because like I said, it was
18 really nice to have those, you know, off the
19 record frank discussions. Thank you.

20 MS. DURKIN: I would like to turn it
21 over to Valencia. I know she has some work
22 sharing updates she'd like to deliver.

1 MS. WALLANCE: Thank you, Mary. Just
2 really quickly I wanted to share with everyone
3 that after the trilateral heads meeting, we did
4 have the signing of an MLU to not only extend the
5 CSP which I mentioned earlier today, the nice
6 collaborative search pilot program with JPO, but
7 also, it's in agreement with JPO and PIPO to have
8 this one petition form in order to request being
9 part of the CSP. So, this was something that was
10 asked for by stakeholders as making it much more
11 easier to use this program.

12 So, I just wanted to take that
13 opportunity. This opportunity also will share a
14 little bit updated statistics on that program.
15 So, with the CSP non-RCE, we are looking at a
16 total pendency of 19 months with PIPO at 16.78
17 months. Non- CSP cases, we're looking at 24.1
18 months. So, there's a significant improvement in
19 going through the CSP pilot total pendency with
20 RCE is higher, 22.34 months for CSP in JPO, and
21 19.6 in the PIPO pilot, but then outside the CSP,
22 it's 28.7 months.

1 So, we've seen some significant success
2 in the pendency in getting the cases prosecuted.
3 We're looking at an overall CSP between PIPO and
4 JPO of seven months overall time to first action
5 competition. So, we see some significant pendency
6 improvement through this program. Yet, we're not
7 seeing a lot of people opting into the program.
8 So, I just wanted to take this opportunity to
9 share those numbers and just encourage everyone to
10 please go onto the PTO website and look at our
11 CSP, the new petition form, as well as to consider
12 it. Also, another number just to leave with you
13 is our actions per terminal disposal for JPO is
14 2.49 with PIPO of 2.61. Outside of the CSP
15 program is 3.19. So, we're seeing some
16 significant numbers here, so just wanted to share
17 those numbers and hopefully have some similar
18 applicants use that process.

19 MR. CHAN: Thank you, well thank you
20 very much. Why don't we move to Ellen McLaren for
21 the legislative update.

22 MS. MCLAREN: Perfect. I know, we're

1 running low on time so I will try to just hit the
2 highlights here. We've had a number of
3 substantive patent discussions and proposals in
4 Congress, this current Congress, the 117th. You
5 can see from some of the highlights here, just the
6 breadth of congressional interest in and work on
7 patent issues this Congress from Senator Durbin's
8 Interagency Patent Coordination and Improvement
9 Act to expand on the collaboration that's already
10 taking place between USPTO and FDA to Senator
11 Hirono's Idea Act to improve the demographic data
12 collection at PTO so we can have a better picture
13 of what groups are taking advantage of our
14 innovation system and per Suzanne's point earlier
15 this morning, whose ideas we may not yet be
16 seeing.

17 We also have Senator Chelse's proposal
18 on 101 bringing some important congressional focus
19 on this topic. One correction just to this slide.
20 The patent examination quality improvement is
21 actually 47.04, small typo, so I apologize for
22 that.

1 Lastly, on legislation, I just want to
2 flag the unleashing American Innovators Act. This
3 count was countered for tomorrow by Senate
4 Judiciary. They have a long agenda, so we may not
5 be seeing any action tomorrow, but just wanted to
6 flag. PTO will obviously continue to monitor and
7 share updates as appropriate.

8 So, moving on to the next slide and
9 congressional hearings, as Jeremiah also
10 mentioned, we had a lot of focus on both in the
11 House and Senate on the patent trial and appeal
12 Board, sort of makes sense with the 10-year
13 anniversary of the IAA that House and Senate will
14 want to hear from stakeholders and we look forward
15 to continuing that focus in the coming Congress as
16 well.

17 So, quickly moving onto the next slide
18 on congressional inquiries. We just pulled and
19 highlighted a list of topics similarly to the
20 broad range of legislation that's been proposed.
21 We've had a significant set of policy issues that
22 we've been working with our partners in Congress

1 on. We have questions related to the importance
2 of discretionary denials and post grant
3 proceedings and the role of patents play in the
4 complex drug pricing ecosystem and then emerging
5 issues as well and ideas like the potential
6 creation of a patent small claims court,
7 suggestions to review the overall structure of our
8 IP office within government, and IP issues raised
9 by emerging technologies like NFTs.

10 Moving on to the next slide in the 118th
11 Congress, we expect a number of potential
12 legislative issues will get attention, many of
13 them continuing from this current year,
14 highlighting just a few here. I know Director
15 Vidal is excited to continue this dialogue that we
16 have had between USPTO and Congress on Senator
17 Tillis' patent eligibility reform proposal. We
18 expect conversations to continue between Congress,
19 stakeholders, and USPTO on 101 in the coming
20 months. And of course, next year, our House and
21 Senate IP subcommittees have put a focus on PTAB
22 as I mentioned, and we expect that focus will

1 continue looking at what is working and what could
2 be improved from the AIA's original vision.
3 Additionally, we expect to see a continued focus
4 both in Congress and the administration on drug
5 pricing and we'll continue to share our
6 collaboration with FDA and our work to deliver
7 robust and reliable patent rights as part of that
8 dialogue, ongoing dialogue with Congress.

9 Finally, I wanted to note the retirement
10 of Senator Leahy, Chair of the Senate IP
11 Subcommittee. It's the closing of a long,
12 remarkable chapter of collaboration with our
13 office and his advocacy for America's creators and
14 inventors. So, we in the Congressional affairs
15 team are sad to see him go, but looking forward to
16 working with our many wonderful congressional
17 partners and continuing the bipartisan work on IP
18 issues. So that is our very quick highlights and
19 support any questions or happy to turn it over to
20 Matt to carry on.

21 MR. CHEN: Yeah, we're running a little
22 short on time. Thank you, Ellen. Why don't we

1 move straight to Matt for a few of the AI updates,
2 so we've got enough time for finance.

3 MS. MCLAREN: Perfect.

4 MR. SKED: Thanks, Jeremiah. Yes, like,
5 I will try to go quickly. I'm here to do some
6 updates on official intelligence policy. We've
7 had our second AIET partnership event back in
8 September. The first one was in June, I believe
9 of this year. This one was focused on
10 biotechnology. It occurred in the USPTO Silicon
11 Valley regional office. And it's really about the
12 intersection between biotech and AI. We have two
13 panels as well as USB to your presentation, so if
14 there's anything that interests you and I got to
15 discuss, we do have a video of the event up on our
16 AI and ET partnership webpage. The link is right
17 there, for you, have fun.

18 So, the first panel of our discussion
19 really discussed how, you know, how we prosecute
20 and draft applications in this space. It is
21 mostly practitioners discussing the challenges
22 they have and drafting applications, prosecuting

1 applications and providing tips to our
2 practitioners on how to most effectively move
3 their applications through USPTO.

4 The second panel with more about the
5 technology side on how AI is impacted in research
6 and development specifically, you know, how it has
7 allowed them to focus their experiments and they
8 will not have to spend a lot of time doing lots of
9 permutations of different experiments, try to find
10 what would work best. AI can help them focus
11 their efforts and actually move their text out
12 there at research a lot faster.

13 Unless there's a presentation by the
14 USPTO preferably Nick Ferraro, who is working at
15 the economist office about the diffusion of AI
16 biotechnology and how AI has been growing in the
17 biotechnology sector releasing the patent
18 applications we see here at the office. Although
19 it's not expanding access to some other areas, it
20 is expanding pretty quickly in biotechnology and
21 we also see a significant amount of U.S. ownership
22 of these applications. So, a lot of these

1 innovations happen here in the United States.

2 All right, next slide. The second topic
3 that I can talk today is inventorship and
4 specifically the Thayer versus the Dowell decision
5 and we will kind of be the effects that come from
6 that. So, there was a very quick background
7 failure filed a couple operations here at the
8 USPTO claiming that Dabus which is the name he
9 gave his machine claiming to establish, invented
10 these applications. We found those problems in
11 part because they did not name a human person at
12 the end of it.

13 Then he sent 10 petitioned to those
14 pharmacy parts and we did not do those petitions
15 here at PTO, you know, holding that an adventure
16 must be a person. You don't see those in Eastern
17 District of Virginia (inaudible) decisions and
18 then finally in August after they appealed to
19 Federal Circuit, we got the decision from the
20 Federal Circuit finding their inventor must be a
21 natural person.

22 Next slide, please. But very quickly in

1 the decision itself, it really came down to
2 statutory interpretation of 35USC100F, which
3 defines an inventor as an individual or
4 individuals who invents or discovers, so, looking
5 down on wet, there's an individual mean, the
6 individual has to be a natural person, and based
7 upon statutory construction as well as some
8 Supreme Court precedent, it came down that an
9 individual must be a natural person, unless there
10 is an indication in the Patent Act that shows the
11 Congress intended different meaning.

12 And since there's no, you know,
13 indication of Congress that they intend different
14 meaning, the individual must be a human person.
15 So, the holding of the court is that you cannot
16 name a machine as the sole inventor of the patent
17 application. (Inaudible) I think it's very
18 important to acknowledge is what the court did not
19 address situations where human beings are
20 inventing with significant contributions from AI.
21 And I think that's where, we're kind of headed
22 from here is how to proper address that situation.

1 So, next slide, please. So next steps
2 after Sailor, is he did request a rehearing as
3 well as a banc-free hearing. Both were denied a
4 few weeks ago by the CFC. We're still waiting to
5 see if they will petition for cert up the Supreme
6 Court.

7 In the meantime, we're considering the
8 impact to Sailor and how this affects prosecution
9 moving forward especially that issue I just talked
10 about after the better to make a straight
11 inventorship issue where we have humans innovating
12 with the use of significant contributions from AI
13 and how panel should address that, how PTO should
14 address that, and how we should think about this
15 moving forward.

16 I think we're looking to try and get
17 some more stakeholder input on this, whether it's
18 through a request for comment, or whether it's
19 through some public events, try to get the, you
20 know, the public's thoughts on, you know, the VO
21 PTO need to take any positions on this, issuing
22 guidance on this, or should that be, or should it

1 look like those sorts of things. So, that's what
2 we're looking to move from here.

3 So, you know, as we move on to our next,
4 you know, AIA partnership meetings, perhaps that
5 might be a topic for one of future events. So,
6 I'm happy to take any questions on any of this,
7 but I know we're running short on time. Thank
8 you.

9 MR. CHAN: I have a very quick
10 question. What's the status of the have
11 blockchain partnership meetings?

12 MR. SKED: I believe the partnership
13 blockchain partnership meetings are still ongoing.
14 They may only have one or two left. I forget how
15 many left are still up, so they've been going on
16 once a month for some time now. I forget exactly
17 when they're ending though.

18 MR. CHAN: And have a lot of people been
19 attending them?

20 MR. SKED: Yes, we've had (inaudible)
21 turn out. I presented that one last month on my
22 eligibility and blockchain and we've had a few 100

1 attendees for that.

2 MR. CHAN: Great, thanks. Well, thank
3 you very much and apologies to cut off the
4 questions, but I want to make sure that Jeff in
5 financing has enough time. S o Jeff, take it
6 away.

7 MR. SEARS: Thanks very much, Jeremiah.
8 Before I turn to this substance, I'd like to make
9 two very brief personal remarks as it is my last
10 meeting. First to the office, I'd like to say
11 thank you very much for the opportunity to serve
12 and work with you on improving the patent system
13 for the benefit of the public applicants and
14 inventors. And to my fellow PPAC members, I'd
15 like to say thank you for your collegiality. I
16 look forward to working with you in the future on
17 other matters. I'm going to turn now to the
18 substance. I think if we could put up the first
19 content slide, I will hit the highlights of the
20 PPAC annual report. Great, thank you very much.

21 So, I'm just going to two highlights.
22 First, it was a very uneventful year for the

1 Patent Office, which is exactly what we would like
2 on the finance side, and the Patent Office has
3 demonstrated once again that it is an excellent
4 steward of its fees, and these are fees from
5 users. So here at the PPAC we recommend to
6 Congress at the appropriate time that the Patent
7 Office is fee setting authority under AIA be
8 extended and potentially even expanded to decouple
9 fee setting from entity size. That expanded
10 authority would allow the Patent Office to
11 increase fees for certain matters on large
12 entities without potentially also having to
13 increase those fees on small and micro entities
14 and then net result would be to further reduce the
15 barrier to entry for small and micro entities.

16 I'll leave the highlights there since we
17 are short on time, and I will turn it over to Jay
18 Hoffman for the overview of the financial status
19 of the office. Jay, over to you.

20 MR. HOFFMAN: Great, thank you very
21 much, Jeff, and thank you for your service to our
22 subcommittee this year. I've really enjoyed

1 working with you. I'm going to go to my
2 presentation. I'm not sure who's driving. I'll
3 probably skip a couple slides just in the interest
4 of time, but they are available. What we're going
5 to do is spend most of our time on a look back at
6 what happened in FY2022. I'll give you some color
7 on the current operating year, our FY23 and then
8 some on the horizon issue. So, let's see. This
9 is where we ended up.

10 So quick look for FY2022 financial
11 status as Jeff mentioned, we ended the year in
12 very good financial health. Let's focus on the
13 first column labeled patents and we'll just walk
14 down this table. So, we were appropriated \$3.608
15 billion in the FY2022 appropriation. We updated
16 our fee estimate by about \$23-1/2 million, meaning
17 we expected to collect more than what the
18 appropriation was, and our end of the year total
19 fees for the patents were \$3.631 billion. So,
20 \$23-1/2 million went into the patent and trademark
21 fee reserve fund. That's a good thing.

22 We're currently in the process of

1 working with Congress to reprogram those funds to
2 make them available to the agency. Our operating
3 reserve balance to start the year was \$521
4 million. Spending for the year, however, was less
5 than the \$3.631 billion that we collected, so we
6 were able to add to the operating reserve. We
7 ended the year with about \$771 million in our
8 reserves, which is well north of the minimum level
9 of \$325 million. I'll talk about that more later.

10 Terms of agency spending, this reflects
11 aggregate spending, not just patents. The agency
12 spent 93 percent of its plan for the year, 93
13 percent of budgeted spending. You can see here
14 that the vast majority of our spending is in
15 compensation. The red bars, by the way, represent
16 actual spending, the blue bars represent the
17 targeted amounts.

18 So, you might say why the underage.
19 There were two principal drivers. Number one,
20 about half of the underspend was due to vacancies.
21 We didn't complete all of our hiring, but that's
22 not to say that those vacancies won't be filled in

1 the months ahead. We also had \$40 million in
2 contracts that we chose to execute in FY2023. So,
3 it's just a delay in timing, not really an
4 underspend of plan.

5 Let's take a look at these two charts.
6 So, the chart on the right, that wouldn't. Let me
7 start the chart on the left. Yeah, the bar chart
8 with the line that -- the red bars on this slide
9 represent cumulative spending in the patent
10 business line and the blue line that you see
11 represents aggregate revenues. So, as you can see
12 here, spending and revenues were roughly in line
13 for the year.

14 As I mentioned before, we underspent the
15 plan by about seven percent adding to the
16 operating reserve, but there's really not too much
17 remarkable in this picture. I think that's the
18 good news story. On the right-hand side, the pie
19 chart that you can see, it's a sort of a
20 mission-oriented breakout of our spending. We
21 spent about \$2 billion on patent and PTAB
22 compensation, and you can see here, my copy is not

1 in color, so I'm going to have to squint a little
2 bit. The red dot chunk you see in the pie, there
3 is about \$407 million in non compensation. And
4 then green wedge is probably our last large wedge.
5 We spent about \$488 million in information
6 technology related to the patent business.

7 And here's a more sophisticated look at
8 our fee collections throughout the year. You've
9 seen this chart every time that we've talked. To
10 acclimate you though quickly, the Y axis is in
11 millions of dollars. The X axis is in months of
12 the fiscal year. You see a couple horizontal
13 lines going across there are nearly horizontal.
14 The green one is the appropriated level, which is
15 \$\$3.6 billion. The purple line is our internal
16 planning estimate.

17 We're always looking at our most recent
18 forecasts, and we map that against a forecasted
19 end of the year estimate. So, the bottom line
20 here is that fee collections were right in line
21 with what we estimated for the year. We estimated
22 a shift over \$3.6 billion and fee collections came

1 in at \$3.630 billion. So, we were, you know,
2 within 15 or so million dollars of our estimate.
3 To give you some context for \$15 million, that's
4 about one day of collections, so pretty close.

5 This is a look at different fee
6 categories. We broke this out by maintenance
7 fees, patent application filings, patent post
8 allowance, and so on. You can see here for the
9 most part, both in terms of percentage and
10 dollars. We were pretty much right in line with
11 our estimates by category. I mean the one that,
12 you know, at first blush may seem like it sticks
13 out a little bit as the patent application filing,
14 but that was only 1.6 percent below estimate and
15 again only \$14 million. So, overall, this looked
16 pretty good and a big driver of that patent
17 application filing bar is RCE. RCEs were down and
18 I'll show you a slide on that in a minute.

19 Okay. So, these are some of our
20 advanced users slides, but these are ones that I
21 look at every month and to try to get a sense of
22 the rhythm of our revenues. This is a 25-day

1 moving average of our utility plant and reissue
2 filings, and you'll see two horizontal lines going
3 across these are our preliminary filing estimate
4 and our planning estimate.

5 Bottom line here is that actual filings
6 into the year at about 591,000, but the rate was
7 up slightly at the end of the year. It was
8 tracking at about 614,000. That's not seasonally
9 adjusted so that it doesn't necessarily mean that
10 that rate is going to continue to drift up like
11 that, but certainly just comparing the two ends of
12 the year with a rate that was slightly higher than
13 planned.

14 Same idea here on serialized filings.
15 We ended the year with about 458,000 serialized
16 filings against an end of the year rate of about
17 486,000. So, it was again a slight uptick here,
18 but, you know, nothing too remarkable.

19 RCEs, I had mentioned that they were
20 down relative to our estimate. You can see here,
21 this chart shows the same thing. The actual RCEs
22 for the year were 134,000, but the rate at the end

1 of the year was only 128,000.

2 Design, same idea. Actual for the year
3 55,000, slightly below was the moving average
4 52,000, but again directionally it was pretty
5 flat. So, but it was a little lower.

6 Come on, there we go. This is a look at
7 the patent operating reserve balance over the
8 course of the year. You know, keep in mind that
9 the operating reserve is not a savings account.
10 It's really a cash flow account, so that's why the
11 balance is different every day. What you see here
12 is the area reflects the actual balance or the
13 25-day moving average, I should say of the actual
14 balance. You see a horizontal line going across
15 the middle, that's the minimum operating balance
16 that we're targeting \$325 million or about one
17 month of reserves, and the optimal level \$888
18 million, or about three months. I don't have a
19 line to represent that, but we have it marked on
20 the slide.

21 You can see here that we, generally
22 speaking, did a pretty good job. We added to the

1 operating reserve this year taking it from a, you
2 know, beginning of year balance of just under \$500
3 million to close to \$800 million by the end of the
4 year. You'll see that it dropped a little bit. I
5 guess this is actually a two-year chart. It's
6 worth noting that it tends to drop in the first
7 quarter every year. So, it'll do the same thing
8 again this year in Q1 and Q2.

9 There's two reasons for that. Number
10 one is we're under continuing resolution, and so
11 that constrains our ability partially to extend
12 all the fees that we collect. The second reason
13 is spending in the first and second quarter is
14 higher than it is in the third and fourth quarter,
15 because a lot of contracts get renewed in the
16 first and second quarter. And in government
17 terms, all of that cost is recognized at the time
18 the contract is signed.

19 Staffing is a giant component of our
20 spending, and so I just want to show you a picture
21 of where we're at with our staffing. We ended the
22 year with a six percent vacancy rate across the

1 agency, so not too bad. We had about 900
2 vacancies. Of that, 526 of those vacancies were
3 in the patent's organization. I'm not going to go
4 through the quality measures.

5 All right, total cost per patent
6 production unit. The purple line here is our goal
7 for the total cost per patent production unit, the
8 blue bars here that you see, I'm color blind, I
9 can't hardly tell the difference. The blue bars
10 were the actual cost per quarter. Keep in mind
11 these are done up on a proprietary basis, so
12 that's why you see some variability quarter to
13 quarter. It's not a big deal, but we ended the
14 year, you know, slightly below expectation, which
15 is a good thing, \$5,632 per unit.

16 This is the FY2022 utility patent and
17 reissue patent application. Unexamined inventory?
18 This is something that we watch in the Chief
19 Financial Officer's Office because it has to do
20 with the operating reserve and revenues on hand.
21 We don't recognize the revenue until we earn it,
22 meaning that we're doing something with the patent

1 application. So, an application set, it's just
2 something to keep an eye on so that we know how
3 much of that cash is really unearned revenue.

4 You can see here in 2021, we had a UPR
5 inventory goal of \$577,000. In 2022, that goal
6 was \$637,000. Exceeding the goal is not what you
7 want in this case, but we did exceed it and had an
8 inventory level of \$689,000. But you can see here
9 that it's -- we're bending that curve right at the
10 end of the year. So, I won't characterize it
11 beyond that. But again, it's just something that
12 we keep an eye on so that we understand what our
13 cash position is.

14 Let me transition and talk a little bit
15 about the year ahead. We're currently under a
16 continuing resolution through December 16th. So,
17 what that means is we look at last year's
18 appropriation, which was \$4.058 billion and we
19 take a prorated amount of that to calculate how
20 much fee revenue that we can spend in the current
21 year. So, if you do the math, that's about 20
22 percent. October 1st through December 16th is

1 about 20 percent of the year, so we have access to
2 about \$750 million in patent fees. So, we can
3 spend up to that amount collected but not to
4 worry. We also have access to the full amount of
5 the operating reserve, which is \$772 million. So
6 total financing sources available to us are about
7 \$1.5 billion, which is well in excess of what we
8 plan to spend. We won't plan to spend, you know,
9 more than \$900 million or thereabouts through
10 December 16.

11 As I mentioned before, we are in the
12 process of working with Congress to reprogram the
13 \$31.6 million that's in the patent trademark fee
14 reserve fund. About \$23 million of that is patent
15 fees.

16 Okay, so, these are some of the FY2023
17 planning assumption as we reflected in the
18 President's budget that we submitted in February
19 of this year. We had estimated fee revenues for
20 FY2023 of about \$3.71 billion. We predicted a
21 serialized application filings would increase by
22 about 1-1/2 percent. Total spending for the

1 agency was about \$3.65 billion in the FY23 budget.

2 At the beginning of the year, the
3 operating reserve balance predicted back in
4 February was just under \$600 million and we hoped
5 to end the year at about \$700 million for FY2023.
6 We're obviously a little bit ahead of that based
7 on the numbers that I just showed you. So, we'll
8 update all of those assumptions.

9 A few things have changed. The budget
10 assumed a three percent pay raise in FY2022, looks
11 like we're going to have a 4.6 percent pay raise
12 in 2023. We're planning a one percent pay raise
13 in 2024 through 2027, but that's unlikely to
14 actually be the case. It'll probably be higher
15 than that. That's out of our control, that's just
16 legislated. So, whatever the number is, is what
17 we work with but to give you some sense of be how
18 the pay raise affects us. Every one percent
19 change in pay cost the agency about \$25 to \$30
20 million. So, you can kind of use that as a rule
21 of thumb. If you get a 4 percent raise, you know
22 how that works out.

1 Okay. This is the FY2023 revenue
2 projections. This is looking at it over a
3 five-year period. As I mentioned, we're
4 predicting to collect about \$4.31 billion in
5 revenue in FY2023. The overall revenue profile is
6 up slightly over the five-year horizon. And
7 that's roughly in line with historical averages.
8 There's not a lot of, there's not a big story here
9 other than it's as expected.

10 These are the operating reserve
11 trajectories that were in the FY2023 budget. The
12 red line that you see here on this slide is the
13 minimum operating reserve level of \$325 million.
14 The gray line that you see is the optimal level of
15 about just under \$900 million. You can see here
16 that based on the dashed blue line, which is our
17 predicted operating reserve balances that we
18 expect to exceed the optimal level starting in
19 2026 and beyond. Keep in mind, though, that this
20 does not include the inflationary pay assumptions
21 that I just articulated, so it's likely that those
22 curves will bend downward if those inflation

1 assumptions bear out. So, we'll see but we're in
2 good shape regardless. We'll be able to manage
3 through it.

4 This is a breakdown of our spending
5 highlights. I've already talked to you on a
6 couple slides back on some of the drivers, but
7 we're planning to spend \$4.15 billion in FY2023.
8 We'll have just over 14,000 federal employees.
9 Got a couple pie charts here. They're exactly the
10 same dollars. They're just broken out in
11 different ways. The pie chart on the top is sort
12 of a mission-oriented view of our spending. We
13 break it out by patents, trademark, IP
14 enforcement, mission support, patents, clearly the
15 biggest chunk of the pie at \$2.7. billion.

16 The pie chart on the bottom is more of a
17 sort of mission facing versus support facing view
18 of the world. Production spending versus
19 non-production spending about \$2.8 billion in
20 production related spending. So, those are folks
21 that are working on patent and trademark
22 applications.

1 A few items of interest on the horizon
2 that affect us financially, sort of big item
3 number one is the campus lease. You've probably
4 seen some of the press at the USPTO Alexandria
5 Main campus lease is up for a decision in August
6 of 2024. The agencies announced that as a result
7 of, you know, more people are teleworking, people
8 are coming in just a couple days a week that we
9 don't need quite as much space as we've had in the
10 past.

11 So, we've made a decision to release the
12 Remson and Randolph buildings as part of the main
13 campus. Those are the two buildings on the end,
14 that's about 700,000 square feet. That'll result
15 in the savings of about \$30 million a year. So
16 that's very helpful financially. Hopefully that
17 we can actually realize those cost savings.

18 I would note that in addition to those
19 we had already given up during the pandemic, two
20 auxiliary facilities in Northern Virginia, we had
21 a lease in Shirlington and the lease around the
22 corner here and that resulted in another \$4

1 million in savings per year.

2 So, this is an area of leadership for
3 the USPTO. A lot of Federal agencies are focused
4 on their real estate footprint right now, but a
5 lot of them are in the analysis phase. We're in
6 the execution phase.

7 Already talked about inflation, we're
8 updating inflationary factors. Since the FY2023
9 President's budget, those have changed quite a
10 bit. Inflation, supply chain disruptions,
11 increases to routine costs of operations, we've
12 just seen a lot of different inflationary
13 adjustments in our budget that is going to put a
14 little bit of a squeeze on us. We'll continue to
15 update those in the FY2024 budgeted in our
16 spending plans, but this is, you know, it's not
17 just an issue for the USPTO. This is an issue
18 across the economy.

19 We had submitted the FY2024 President's
20 budget request to OMB in September, so we have not
21 gotten much feedback on that yet from OMB, but we
22 expect to get a pass back either later this month

1 or early in December. We will send a budget
2 forward to Congress in February 2023. We are
3 also, I'm sure, Kathi talked about this, we're
4 also working on a new strategic plan and we hope
5 to release that sometime around the release of the
6 budget as well.

7 I think that's my last slide. How did I
8 do? I think I'm almost right at time.

9 MR. SEARS: Thanks very much, Jay.
10 Given that we are at time, I will turn it back to
11 Steve. Steve, over to you.

12 CHAIRMAN CALTRIDER: Great, great thank
13 you, Jay. You know, I'm not going to resist the
14 urge to ask one question though. You talked about
15 inflationary pressures and the impact on the
16 office's operation and spending. What's the
17 projection on the applications, and do we have a
18 sense for whether we'll see applications go up or
19 down? Maintenance fees go up or down because
20 people are abandoning patents rather than paying
21 maintenance fees. What do we expect on the
22 revenue side?

1 MR. HOFFMAN: I'll speak about it just
2 in terms of dollars and patents this year. They
3 can speak about it in terms of their product
4 demand. We're predicting in terms of filings,
5 we're still looking at a growth of 1.5 percent in
6 our projections. I did, unrelated to this
7 presentation, look at maintenance fee renewal
8 rates, just in the last week, and surprisingly,
9 they're up. And I think some of that is just a
10 bounce back from a slight decline that we saw
11 during the pandemic, but I don't know if Andy or
12 Bob or anyone else wants to add any additional
13 color to that.

14 Andy Faile: No, Jay is right about the
15 prediction for serialized filings. We also expect
16 RCEs to continue to go down a little bit, although
17 they are so low. Our backlog of RCEs is about
18 11,000 now compared to 111,000 a few years ago.
19 So, it's come down dramatically, so I can think
20 that's going to come down a little bit more than
21 probably now, hold on.

22 CHAIRMAN CALTRIDER: Any other final

1 questions before -- I'm going to make just a
2 couple closing remarks. First, I want to again
3 thank our outgoing PPAC members, Tracy Durkin,
4 Jeremiah Chan, and Jeff Sears. They made very
5 significant contributions in. Thank you again for
6 your service. I also would like to thank Jennifer
7 Low. She is the person behind the scenes that
8 keeps the machine working and moving in the right
9 direction. You know, these live meetings are a
10 significant burden on her to plan and organize,
11 and they always are executed perfectly, and I know
12 that there's a team of people helping her and I
13 don't know all of their names, and I apologize for
14 that. But you know, let's applause right now.
15 Unless there's any other new business or any
16 closing comments from other, we can adjourn.
17 Seeing none. Thank you everyone.

18 (Whereupon, at 12:50 p.m., the
19 PROCEEDINGS were adjourned.)

20 * * * * *

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1 CERTIFICATE OF NOTARY PUBLIC

2 COMMONWEALTH OF VIRGINIA

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

17

18 (Signature and Seal on File)

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

21 My Commission Expires: September 30, 2025

22 Notary Public Number 256314

