

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Thursday, July 14, 2011

1 PARTICIPANTS:

2 PPAC Members:

3 DANIEL BENJAMIN BORSON, Chair

4 MARC ADLER

5 LOUIS FOREMAN

6 ESTER KEPPLINGER

7 MICHELLE LEE

8 STEVEN MILLER

9 WAYNE SOBON

10 MAUREEN TOOHEY

11 Also Present:

12 ROBERT BAHR  
Associate Commissioner for Patent  
13 Examination Policy

14 CHRISTIAN CHASE

15 DANA ROBERT COLARULLI  
Director, Office of Governmental Affairs

16 JAMES DWYER  
17 Assistant Deputy Commissioner

18 PEGGY FOCARINO  
Deputy Commissioner for Patents

19 DAN HAJEC  
20 TC Group Director

21 BRUCE KISLIUK  
Acting Deputy Chief Financial Officer

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## 1 PARTICIPANTS (CONT'D):

2 DAVID LANDRITH  
Portfolio Manager

3 JENNIFER LO

4 TERREL MORRIS  
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6 TERESA STANEK REA  
7 Deputy Under Secretary and Deputy  
Director, USPTO

8 PATRICIA RICHTER  
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9 ANTHONY SCARDINO  
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11 KEVIN SMITH  
OCIO

12 ROBERT STOLL  
13 Commissioner of Patents

14 ALBERT TRAMPOSCH  
15 Administrator for Policy and External  
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## 16 Union Reps:

17 ROBERT BUDENS  
POPA

18 CATHERINE FAINT  
19 NTEU 245

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

2 (8:02 a.m.)

3 CHAIRMAN BORSON: All right. Well, good  
4 morning, everyone. Welcome to the Patent Public  
5 Advisory Committee meeting today. My name is Ben  
6 Borson. I'm sitting in for Damon Matteo, who is  
7 unable to join us in person. I expect that he  
8 will be available on the telephone and we may be  
9 able to hear some of his comments.

10 Anyway, first of all, I'd like to  
11 welcome you all. The PPAC is a group of  
12 individuals that have many hats. We wear many  
13 hats. As we all know, while we're sitting on this  
14 committee we are wearing the hats of the public  
15 advisory committee, and any individual or client-  
16 related position is not something that we will do  
17 here. We actually represent the diverse members  
18 of the intellectual property community and the  
19 innovators throughout the country.

20 So with that I'd like to just remind  
21 everybody that we do have e-mail if you have any  
22 questions. This is a public meeting. Please

1 e-mail them to the PPAC. And do you happen to  
2 recall the e-mail address? Jennifer?

3 MS. LO: Yes.

4 CHAIRMAN BORSON: The e-mail address of  
5 PPAC?

6 MS. LO: Yes, it's up there.

7 CHAIRMAN BORSON: Oh, okay. Sorry.  
8 Yeah. If you look up on the screen you'll see  
9 it's the quarterly meeting and the e-mail address  
10 is there. If you have any questions or comments,  
11 please e-mail them and we will take them when we  
12 receive them.

13 For those of us sitting around the  
14 table, we do have microphones. And when the red  
15 light is on that means your microphone is on. We  
16 appreciate the courtesy that when you're not  
17 speaking to have your microphone off so that  
18 spurious noise is not apparent.

19 Okay. Introductions. Again, my name is  
20 Ben Borson. I'm a member of the Patent Public  
21 Advisory Committee. And we'll just go around the  
22 table.

1 MS. REA: Hello. I'm Terry Rea and I'm  
2 the deputy director at the USPTO.

3 MR. SOBON: Wayne Sobon.

4 MS. TOOHEY: Maureen Toohey, member of  
5 PPAC.

6 MR. BUDENS: Robert Budens, member of  
7 PPAC.

8 MR. BAHR: Bob Bahr, acting associate  
9 commissioner for Patent Examination Policy.

10 MR. ADLER: Marc Adler, PPAC.

11 MR. FOREMAN: Louis Foreman, PPAC.

12 MS. KEPPLINGER: Ester Kepplinger, PPAC.

13 MR. MILLER: Steve Miller, PPAC.

14 MS. FOCARINO: Peggy Focarino, deputy  
15 commissioner for Patents.

16 MR. STOLL: Bob Stoll, commissioner for  
17 Patents.

18 CHAIRMAN BORSON: Very good. Thank you.  
19 Well, with no further ado, let's get started.

20 We'll try to keep to our schedule. You  
21 all have the schedule in front of you. So we'll  
22 do what we can to keep to it.

1           So first of all I'd like to have Terry  
2       Rea make some comments about the USPTO and  
3       basically where we're going.

4           MS. REA: Thank you, Ben. Thank you for  
5       your leadership in PPAC today and we appreciate  
6       everything you have done as well as your  
7       colleagues.

8           I'd like to say that in the past decade  
9       PPAC has actually offered the patent community its  
10      keen insights and invaluable guidance and over  
11      time it has become part of the extended USPTO  
12      family. We envision the collaboration between  
13      PPAC and the USPTO to grow, mature, develop, and  
14      for this to be a beneficial experience for all of  
15      our stakeholders. We have a great deal of work  
16      before us right now, especially in terms of our  
17      impending -- I would like to think it's impending  
18      -- patent reform legislation. We will all have a  
19      great deal of work to do. And for all of the  
20      talent and insight and expertise that we have with  
21      the PPAC that should be well leveraged to assist  
22      the USPTO to develop the rules and the guidance

1 that we need to implement the new legislation in  
2 as less awkward a fashion as possible.

3 Change is always difficult and so we are  
4 going to try and make the transition as elegant  
5 and clear as possible. And I think that our PPAC  
6 colleagues will help us achieve that goal. Their  
7 cooperation is vital in terms of keeping the USPTO  
8 moving smoothly and efficiently. So what they do  
9 here today -- they're not here for the fame, the  
10 money and the glory -- they are here to actually  
11 help advance the ball, move it forward, and help  
12 the United States develop a bigger and better  
13 patent system than ever before. And so I do want  
14 to thank each of the PPAC members that are here in  
15 this room for all of your time and your interest  
16 because they do a great deal of work.

17 I'd also like to take a moment to thank  
18 Bob Stoll and Peggy Focarino on our patent side  
19 for driving the effort to continually engage with  
20 the public, engage with PPAC, and to be  
21 responsive. Things are changing within our  
22 profession and I think we're going to be



1 leveraging and developing and perhaps trying to  
2 pull more from our PPAC colleagues than ever  
3 before. However, just because you -- for those of  
4 you on the web who are not on this room, you have  
5 access to those of us here in the USPTO as well as  
6 some of our PPAC members, and everybody is willing  
7 and interested in hearing your ideas.

8           Also, I'd like to mention leadership and  
9 the vision of my boss, Director Kappos. He  
10 actually is a very focused, consistent, fair  
11 leader, who is trying to drive the U.S. patent  
12 system to be the true gold standard. He is trying  
13 to advocate best practices, not just with our  
14 patent reform legislation but with every step,  
15 everything we're doing here right now within the  
16 USPTO. He's breaking down every one of our  
17 processes and steps to make everything the best  
18 that it can be, the most efficient that it can be.  
19 And he's attracting pretty awesome talent here in  
20 the USPTO.

21           We have some initiatives that I've  
22 mentioned before. The Green Tech Pilot Program is

1 a big one. Whenever I go outside the D.C. area in  
2 particular and I speak on it, there's always  
3 somebody in the audience who shakes my hand very,  
4 very, very vigorously and tells me make sure you  
5 keep the Green Patent Pilot Program. As a matter  
6 of fact, have it cease being a pilot program  
7 because everybody thinks that is one of our best  
8 initiatives. It's a way to accelerate patent  
9 applications for uses that are environmentally  
10 friendly, and I'm pleased to indicate that since  
11 the pilot program began in December 2009, we just  
12 issued our 350th patent. So the Green Patent  
13 Pilot Program has been extremely successful.

14 We've also just recently implemented  
15 across the board, across all our units or  
16 technical centers, our first action interview  
17 program. And that's where we're encouraging  
18 members of the public to engage with the patent  
19 examiner before the issuance of the first office  
20 action. It gives the examiner and the member of  
21 the public an opportunity to actually engage,  
22 target their discussion. The examiner will have

1 already issued to the applicant their first search  
2 and actually a pre-first office action to give the  
3 applicant an idea of where the examiner is headed.  
4 It allows both the applicant and the examiner the  
5 opportunity to communicate, focus the issues,  
6 reach the target sooner so that you know that if  
7 you have allowable subject matter in the  
8 application it could be identified earlier. We  
9 found this first action interview program to be  
10 very successful and statistically there is far  
11 less office actions, far less steps required. So  
12 therefore, to those of you in the user community,  
13 you won't necessarily get your patent far faster  
14 because we don't take the applications out of  
15 order. It's in the regular order, but you do  
16 arrive at a meeting of the minds with the examiner  
17 earlier and it makes the entire process more  
18 efficient and less costly.

19 We're also in a significant retooling of  
20 our IT infrastructure right now and that's an  
21 ongoing effort. Ideally, we'll have additional  
22 funds available and our chief information officer,

1 John Owens, will be able to, I guess, beef up our  
2 infrastructure, take us more into the 21st  
3 century, give our examiners more tools to do their  
4 job more efficiently, and just improve overall  
5 examination. Right now you know we have our  
6 patents dashboard and we hope that the members of  
7 the user community will actually look at that  
8 because I think that's very, very helpful. We're  
9 also streamlining how we publish our MPEP right  
10 now and we're hoping to have something implemented  
11 there sometime this fall and we're going to break  
12 it out and introduce and describe it to our  
13 members of the PPAC, but it's a tool where our  
14 examiners will have a more vibrant, interactive  
15 MPEP.

16 To those of you in the public, we'll try  
17 and give you more consistency as to when revisions  
18 will be made and I think that it's a win-win both  
19 for the examiner and the applicant once again. So  
20 we're still perfecting that system. But how we  
21 publish the MPEP will not be in the same arcane  
22 way that we have historically done it for the past

1 75 years or so.

2 Right now, the America Invents Act did  
3 take up an awful lot of our time. We're hoping  
4 that that bill does pass. We're optimistic that  
5 things will happen in a positive manner. I  
6 realize that there are no guarantees but the USPTO  
7 is ready, willing, and able to implement that act  
8 when it's actually signed.

9 So once again, let me thank the members  
10 of the PPAC around this table right now. I think  
11 that you guys do a great deal of work, a great  
12 deal of effort. We truly do appreciate everything  
13 that you've done and hopefully we will have a  
14 great meeting today. Thank you.

15 CHAIRMAN BORSON: Thank you very much,  
16 Peggy [sic].

17 I wanted to make sure for those members  
18 who have called in, they have an opportunity to  
19 introduce themselves. So Damon, if you are on the  
20 line, please say hello.

21 And Catherine. Catherine Faint.

22 MS. FAINT: Hello, I'm here.

1           CHAIRMAN BORSON: Oh, very good. Thank  
2 you. Would you like to explain what your role is  
3 in PPAC or who you represent?

4           MS. FAINT: I am vice president of NTEU  
5 245. I'm an interlocutory attorney with the  
6 Trademark Trial Appeal Board and NTEU 245  
7 represented the trademark examining attorney.

8           CHAIRMAN BORSON: Okay, thank you,  
9 Catherine. And I apologize to Terry. Thank you,  
10 Terry, for your comments.

11           All right. Very good. Does anyone have  
12 any questions or comments for Terry before we move  
13 ahead?

14           I'd like to just mention that we do have  
15 a microphone available for any member of the  
16 public that's sitting with us today. If you have  
17 any comments we have a microphone available. And  
18 if you do have a comment, please speak into the  
19 microphone. Well, thank you very much.

20           Next, then, I'd like to move onto the  
21 patent remarks. Bob Stoll, commissioner for  
22 Patents.

1           MR. STOLL: Thank you very much, Ben.

2           Good morning, everybody.

3           SPEAKERS: Good morning.

4           MR. STOLL: I first would like to  
5           apologize to my good friends on the West Coast.  
6           My guess is it's probably about a quarter after  
7           5:00 a.m. there. I think those that are listening  
8           are unbelievably dedicated to the machinations at  
9           the Patent and Trademark Office. I would hope  
10          that I could encourage my good friends on PPAC to  
11          maybe move this meeting a little bit later in the  
12          morning so our friends at the West Coast can be  
13          more awake during our discussions and participate  
14          to a greater extent.

15                  Thank you, Ben, for stepping in for  
16          Damon at this meeting. Damon, if you are  
17          listening and still unable to speak, I hope you  
18          are reunited with your wallet and your briefcase  
19          and things get moving very quickly.

20                  I think Terry did a great job in talking  
21          about a lot of the activities that we have been  
22          engaged in and we will be engaged in. The big

1 one, of course, the elephant in the room, is the  
2 implementation of what we expect to be a very  
3 comprehensive new patent act which will take a lot  
4 of effort. We will be very much engaging PPAC on  
5 these issues.

6 I'd first like to apologize. With  
7 everything moving so quickly here at the Patent  
8 and Trademark Office I don't think we've done as  
9 good a job as we should have getting information  
10 to you guys. The efforts that were done on the  
11 quality initiatives partnering with PPAC were  
12 fantastic. We're very appreciative of them. We'd  
13 like to duplicate those efforts as we move forward  
14 on implementing the new legislation and use the  
15 wealth of information and input from the members  
16 of PPAC in doing so. So I will be redoubling  
17 efforts for patents' side to be able to supply  
18 information in a more timely manner.

19 We are really engaged on significant  
20 improvements here. The patent end-to-end  
21 processing is moving forward. Jim Dwyer will be  
22 talking to you about that. Debbie -- I mean Terry



1 alluded to the efforts made in the MPEP. I think  
2 this is a seminal event for engaging the public  
3 and will eventually be very useful for everyone to  
4 be able to implement and understand and possibly  
5 suggest changes to the MPEP. Peggy will be  
6 talking about a lot of the operational efforts  
7 here at the Patent and Trademark Office, and I'm  
8 very interested in a productive meeting today and  
9 look forward to working with you as always. So  
10 thank you for your time.

11 CHAIRMAN BORSON: Well, thank you, Bob.  
12 I think that was an invitation for us to start the  
13 meeting at noon, which that's noon West Coast  
14 time.

15 MR. STOLL: I'll take it.

16 CHAIRMAN BORSON: Okay. Well, thank you  
17 very much, Bob.

18 You know, we on PPAC look forward --  
19 we've enjoyed working with you and we believe that  
20 we have a very productive relationship and will  
21 continue to do so.

22 Okay, very good. I'd like to now

1 introduce Al Transhaw, excuse me, Tramposch, who  
2 will give us some remarks about the -- no, that's  
3 not -- yeah, that's it. Okay, sure.

4 Al, on harmonization, it's a big effort  
5 that's going on worldwide and so --

6 SPEAKER: Al's not here. Al's not here  
7 yet.

8 CHAIRMAN BORSON: Okay. Al is not here  
9 yet I'm informed. So should we go to you, Peggy?

10 MS. FOCARINO: I think Al's here.

11 CHAIRMAN BORSON: Oh, he is here. Okay.  
12 Yeah, sorry. We are ahead of schedule a little  
13 bit which is fine by me.

14 So when Al comes up we will talk about  
15 the harmonization efforts. For those of you that  
16 are unaware, the U.S. Patent and Trademark Office  
17 has made major strides in working with other  
18 patent offices throughout the world to create a  
19 more harmonized patent system in the United States  
20 with the rest of the world and vice versa. So I  
21 think that -- Al, thank you for coming. We look  
22 forward to hearing your remarks.

1           MR. TRAMPOSCH: Thanks very much. As I  
2 think has been reported to the PPAC before,  
3 they've worked very hard to resuscitate the patent  
4 harmonization discussions and we organized a  
5 meeting in March of this year of the Asia-Pacific  
6 Patent cooperation forum. This was on the margins  
7 of the APEC cooperation meeting that was held in  
8 Washington. And the -- Nick Godici, who you all  
9 know, and a team put together a paper outlining  
10 the various harmonization issues that have been  
11 discussed over the past 25, 35 years -- I don't  
12 even remember anymore how long it's been --  
13 presented it to that group and over two days that  
14 group discussed those issues without intending to  
15 come to any final decisions or even a finalist of  
16 issues. But the outcome of the meeting was there  
17 were very positive feelings towards reviving the  
18 harmonization discussions, taking them forward,  
19 and especially taking them global.

20           Now, because this was an Asia-Pacific  
21 meeting, of course, Europe was not involved except  
22 as an observer. WIPO was also an observer.

1 Immediately after the meeting, Dave and Bob Stoll  
2 went to Europe to visit a number of European  
3 capitals and meet with the heads of some European  
4 offices to try to move the discussions, the center  
5 of gravity of the discussions, closer to Europe,  
6 get the Europeans involved so that it would become  
7 more global.

8           Those discussions were very successful.  
9 Europe itself held a coordination committee -- a  
10 coordination meeting among the heads of offices of  
11 the members of the European Patent Office on the  
12 margins of its Administrative Council meeting at  
13 the end of June and then Dave and I went over to  
14 Munich just last week, I believe, to meet with  
15 five or six key heads of offices to discuss how to  
16 go forward. The meeting was convened by the  
17 European Patent Office, but the European Patent  
18 Office, as they make it clear and especially as  
19 their member states make it clear, they do not  
20 have any mandate to discuss harmonization. They  
21 don't have competence to negotiate harmonization.  
22 This is in the hands of the member states. But

1 they acted as a facilitator and convener of the  
2 meeting, and we also met with the heads of the  
3 German office and the German Administrative  
4 Justice, the U.K. office, French office, and the  
5 Danish office, as well as the Commissioner of the  
6 JPO.

7           The outcome of the meeting was that we  
8 would move forward very quickly with what was  
9 described as information gathering or fact finding  
10 on the remaining harmonization issues after patent  
11 reform is accomplished. All this is predicated on  
12 adoption of patent reform in the United States.  
13 And we will move forward with creating a table or  
14 a matrix of the remaining issues and how each of  
15 the trilateral regions deals with those  
16 harmonization issues that are remaining. And the  
17 heads of offices will meet once a team of experts  
18 has done its work. The team of experts will work  
19 over the summer, perhaps meet in September, and  
20 then we'll recommend when it's time for the heads  
21 of offices to meet again.

22           Meanwhile, a similar process is going

1 forward in the IP5. This was spearheaded by  
2 Japan. That will include also China and Korea, of  
3 course. The B+ process has not died. B+ will  
4 meet in September to discuss how they can  
5 contribute to this process. Dave is considering  
6 whether and when it might be good to reconvene the  
7 Asia-Pacific countries to perhaps join in this  
8 process and fill out the matrix on their own  
9 behalf. The value of the matrix approach is it's  
10 very easy to bring in other countries. You just  
11 basically give them the matrix and ask them to  
12 fill it out. And the hope is once we have all  
13 that information gathered that the requirements  
14 for negotiation will become very clear. It will  
15 become very clear which issues are very close to  
16 being decided, which issues are very controversial  
17 and need to have the heads of offices address them  
18 directly.

19 So this process will go forward. The  
20 USPTO will host the virtual communication among  
21 the committee of experts over the next two months  
22 and then we hope to complete the matrix at least

1 among the trilateral groups by the end of the year  
2 and have some real genuine forward movement.

3 CHAIRMAN BORSON: Thank you. Just a  
4 point of clarification if you might. Could you  
5 please define what the B+ process is?

6 MR. TRAMPOSCH: The B+ was originally  
7 called the Alexandria group. It was initiated by  
8 the USPTO as a result of the stalemate at WIPO  
9 between the industrialized countries and the  
10 developing countries where the developing  
11 countries basically refused to discuss  
12 harmonization and some of them still refuse to  
13 discuss harmonization in the context of WIPO.

14 It was called B+ because in WIPO Group B  
15 refers to the industrialized countries but not the  
16 central European countries, so the plus refers to  
17 the central European countries that are now  
18 members of the European union or the members of  
19 the European Patent Office. They worked from  
20 about 1995 to 1997, for a few years, came very  
21 close actually to an agreement. Had a good list  
22 of issues on a final paper that was very close to

1 agreement but they couldn't -- they couldn't pull  
2 it off. The grace period and 18-month publication  
3 were the real issues that stopped that process.

4 So they moved over to discussing PCT  
5 issues for a couple of years with the hope that  
6 eventually they could get back to discussing  
7 harmonization. The idea was that if you get the  
8 industrialized countries together, you don't have  
9 the developing countries there, then they'll be  
10 able to come to an agreement. That was almost the  
11 case but not quite the case.

12 CHAIRMAN BORSON: Okay. And one other  
13 thing. Would you be so good as to summarize some  
14 of the issues that have been resolved or are  
15 approaching agreement and then those that are  
16 still outstanding for which there has not been  
17 much progress?

18 MR. TRAMPOSCH: There are a couple of  
19 issues that will clearly be resolved by patent  
20 harmonization, including the Hillmon Doctrine and  
21 best mode, although best mode is solved not by  
22 doing away with the requirement but by doing away



1 with any possibility of invalidating a patent  
2 based on that requirement.

3 We believe that first to file -- first  
4 and better to file is solved but we have to still  
5 convince Europe of that because when we call it  
6 first and better to file they think it still has  
7 vestiges of the first to invent system. So that  
8 will still be on the table for discussion but we  
9 feel like that's solved. We feel like the  
10 definition of prior art is more or less solved but  
11 our language in the statute, as you know, is in  
12 some ways unclear even to us. So that would be a  
13 basis of discussion as well, although we think  
14 that we're very close to harmonization on that.

15 The areas that we have to talk about  
16 would be things like the definition of novelty,  
17 the definition of non-obviousness, things like  
18 whether (inaudible) are used for novelty only or  
19 for novelty and non-obviousness, self-collision.  
20 Bob, I couldn't read your lips.

21 MR. STOLL: Grace period.

22 MR. TRAMPOSCH: Grace period. Yes, the

1 key issue, of course, is the grace period. Yes.  
2 How could I forget that, Bob? I thought it was so  
3 obvious I didn't need to mention it. Thanks very  
4 much.

5 The key issue will be the grace period  
6 and the question is if the U.S. has gone so far as  
7 to harmonize in patent reform on a number of the  
8 other key issues, then what is the incentive for  
9 other countries to adopt the grace period? And  
10 the incentive is that it really is a best  
11 practice. It's part of a really good 21st century  
12 patent system. There are a lot of countries,  
13 including European countries, that do want the  
14 grace period for their own benefit. There are one  
15 or two holdouts that we'll be talking with and  
16 working with but we were very gratified at this  
17 meeting last week that the idea of moving forward  
18 and having grace period on the table was fully  
19 accepted by the Europeans.

20 CHAIRMAN BORSON: Okay, thank you. Are  
21 there any other comments? Any questions from the  
22 PPAC members? From the public?

1           Okay. Well, I then wanted to move on a  
2 little bit and ask you what the efforts are that  
3 you believe that have been successful on the part  
4 of the United States in having some of the other  
5 -- some of our other partners moving more towards  
6 a common ground. We've obviously made major  
7 efforts in patent reform. Have other countries  
8 done similar things?

9           MR. TRAMPOSCH: I think the most  
10 significant thing that's happened recently is  
11 Japan has adopted a six- month open-ended grace  
12 period. They had a six month very restricted  
13 grace period but they revised their laws just a  
14 couple of months ago to adopt a six-month  
15 open-ended grace period, very similar to the one  
16 that we have, and they indicated that as part of a  
17 harmonization package they would be prepared to go  
18 to a 12-month grace period. So this is a very,  
19 very significant event.

20           The other -- the key thing that's  
21 happening in Europe are the discussions around the  
22 unitary patent which it used to be called the E.U.

1 Patent, which used to be called the community  
2 patent. This actually has been adopted by the  
3 Council of Ministers and the regulation is sitting  
4 with the European Parliament. If they approve it  
5 then that will go forward but it will also depend  
6 on a solution to the single court -- single patent  
7 court issue which is not as close to solution but  
8 the member states believe that they have a way of  
9 going forward and getting that done within the  
10 next 12 months or so.

11 CHAIRMAN BORSON: Okay. Then, you know,  
12 I hate to stay with you but this is a very  
13 important, very interesting area. In the event  
14 that harmonization talks proceed and you and other  
15 partners do reach some agreement, what will be the  
16 necessity on the part of the U.S. Legislature and  
17 Congress to follow through? And what sort of  
18 timing do you think would be appropriate or  
19 necessary?

20 MR. TRAMPOSCH: Those are all excellent  
21 questions, which is always the response when you  
22 don't have a really good answer to the questions.

1           That is something, of course, that is  
2     the second step. The first step is getting  
3     general agreement, first on the principles and  
4     then getting the technical language down and then  
5     deciding how to bring that forward. Of course,  
6     whether the legislature will need to get involved  
7     or not depends on what the actual provisions are.  
8     If it would require changes to our national laws  
9     then, of course, those would be proposed, and of  
10    course, that's a fairly long-term type of  
11    arrangement. In Europe, if they adopt a grace  
12    period it could require an amendment to the  
13    European Patent Convention, which usually takes a  
14    few years to accomplish and to get into effect.

15           The hope is always in these discussions  
16    that if agreement is reached it can be brought  
17    back to WIPO. That's politically difficult under  
18    the current circumstances but if we can go forward  
19    with the sequential processes of getting the B+  
20    involved and then getting the APPC countries, of  
21    which many are developing countries, getting them  
22    onboard, it may be possible to bring this back to

1 WIPO for a diplomatic conference. That would be  
2 everyone's preference. If that's not possible  
3 then we'll have to look for an alternative at that  
4 time. Timeline, I think we're talking about a  
5 couple of years at least, best case.

6 CHAIRMAN BORSON: And do you expect that  
7 there will be a package of harmonization efforts  
8 and perhaps progress on these or do you think it  
9 would be more worthwhile to sort of take what you  
10 can get now and keep working?

11 MR. TRAMPOSCH: It's always been a  
12 process of take what you can get. If you go back  
13 to the 1991 Diplomatic Conference that was held by  
14 WIPO, that was a very comprehensive package,  
15 although even that didn't include everything.  
16 What's being discussed now is a subset of those  
17 issues, so it's something that will always be  
18 ongoing because there will always be need for more  
19 harmonization, both at the higher level but also  
20 on the implementation level which really makes a  
21 big difference as well. So it will be an ongoing  
22 process, although the adoption of a package that

1 would include the grace period would be a major  
2 step forward.

3 CHAIRMAN BORSON: Okay, thank you. Are  
4 there any further questions or any other  
5 individuals like to add a comment?

6 Okay. Well, in that case we are still  
7 ahead of schedule then, so why don't we move ahead  
8 then to get a legislative update? Dana Colarulli,  
9 director of Office of Governmental Affairs.

10 MR. COLARULLI: I'm happy to. Thanks.  
11 And good morning, everyone.

12 Well, to realize a lot of the  
13 harmonization that Al just talked about we need to  
14 pass legislation here in the U.S. And many of the  
15 core issues, I think it's fair to say, and Al was  
16 saying, are addressed in the current legislation.  
17 So I'm going to focus again during this session on  
18 the America Invents Act with the hope that we'll  
19 finish progress on this. Maybe by the next PPAC  
20 meeting they can focus on other IP issues that are  
21 very important. This has been the most  
22 significant and I think we're hearing the end of

1 the tunnel, I'm hoping. But let me just start  
2 with the basic background and we'll go with where  
3 the bill is today.

4 As everyone knows, the Senate passed  
5 their version of patent reform in early March.  
6 The House then passed its version in June. Both  
7 bills include many of the key provisions that have  
8 been discussed over the last five Congresses.  
9 Exhaustively, importantly, the transition to first  
10 inventor to file, the changes to interparties re-  
11 examination in creating a post-grant opposition  
12 system, fee-setting authority, and funding  
13 provisions among many others.

14 Now, the difference between the House  
15 and the Senate bills, the Senate bill included a  
16 revolving fund. From our analysis it really does  
17 give us the confidence that in that Senate version  
18 that PTO would be able to keep and be able to  
19 access all the fees that it collects. The House  
20 preferred a different approach to retain PTO  
21 within the appropriations context. We worked with  
22 leadership as they were brokering a deal. I think



1 we were very clear. We said we don't think this  
2 is a long-term solution, but if certain things are  
3 -- work appropriately, then it is a step forward.  
4 It does -- it would guarantee, if it guarantees,  
5 that all fees are appropriated and not subject to  
6 negative score affects in later years, if there  
7 was -- that was one issue. A second issue was if  
8 the treatment under a continuing resolution was  
9 the same as under the intent under regular  
10 appropriations, that's still a little unclear but  
11 that's the second thing that we think is important  
12 for us to have confidence that this is a step  
13 forward. Those are the two major issues.

14 We worked with the House. I'm not sure  
15 we got all the assurance we wanted from the House.  
16 We're continuing to work with the Senate to make  
17 sure that the Senate appropriators are reading and  
18 the Senate Judiciary Committee are reading the  
19 language the way that we're reading it to ensure  
20 that this is indeed a step forward. But I think  
21 that's really the biggest, largest focus for us  
22 right now.

1           If it works the way we think it's going  
2     to work, it is a very good step forward. And  
3     certainly within the -- over the next few years,  
4     gives us the confidence that we'll have the  
5     resources we need to continue improving patent  
6     operations, continue addressing the backlog, all  
7     the things we know have been working over the last  
8     few years to fund those operations. So we've been  
9     spending a lot of time on the funding provisions.

10           Bruce will start talking a little bit  
11    about what we're thinking in terms of implementing  
12    that. What that will mean for our financial  
13    operations when we get to the CFO report. But I  
14    wanted to address where we think it is. We're  
15    still watching. We're hoping there will be some  
16    additional assurances from the Senate as we move  
17    through the process.

18           So I mentioned the funding. Again, the  
19    difference, the House bill creates a reserve fund,  
20    not a revolving fund. It keeps us within the  
21    appropriations process and lays out a process for  
22    accessing those funds. And one of the things we

1       approached the House leadership and we've been  
2       talking to Senate is what exactly is that process.  
3       We understand it's similar to a reprogramming  
4       process that's used elsewhere in appropriations  
5       bills. There's a 15-day notice essentially to  
6       access those fees that are deposited into the  
7       excess fund. But from our understanding those are  
8       available until expended upon that notice.

9               Significantly, the House bill also  
10       includes our percent increase on patent fees that  
11       we've included in the past two budget submissions,  
12       presidential budget submissions. It also includes  
13       language for us to restart our track one,  
14       essentially codifying the track one language.

15              And then the last big difference is the  
16       inclusion of a prior user defense in the House  
17       bill. And this was an issue that was debated a  
18       bit in the House, significant concerns raised by  
19       universities. A lot of work by Chairman Smith and  
20       the committee staff to make changes to satisfy  
21       those concerns, namely to essentially care out  
22       university patents and also move the bar back to

1 reduction to practice and commercialization, both  
2 of those two problems a year before filing. So  
3 that provision at the end acquired the support of  
4 the majority of the university community. Some  
5 still had some concerns but that provision was a  
6 new provision. A good policy, we think.

7 Additional I won't say lesser provisions  
8 but, you know, additional provisions that were  
9 added through the House process which we hadn't  
10 highlighted in past meetings, you know, the first  
11 line I'll say is it encourages PTO to continue  
12 doing some of the things it's already doing. We  
13 already have a pro bono initiative started working  
14 particularly with the University of Minnesota.  
15 Our ombudsman program is already up and running.  
16 This is further encouragement in particular to  
17 work with small businesses to address their  
18 concerns.

19 There are a number of studies and the  
20 next three bullets really are the studies. I  
21 believe there's about 11 studies, maybe nine of  
22 them PTO is responsible for, ranging from

1 deadlines from four months after the president  
2 signs the bill to four years. So a number of  
3 studies throughout the implementation on issues  
4 such as prior user rights, issues on nonpracticing  
5 entities, issues on the effect on small business  
6 of the first inventor to file provisions among  
7 other required studies.

8           The Weldon Amendment is language that  
9 has been carried through USPTO's appropriations  
10 language over the last -- since I think about 2004  
11 is the first time I remember the discussion. And  
12 it's now codified in this bill. And then the last  
13 provision is the so-called MEDCO provision  
14 codifying the rule that the PTO has already  
15 translated into practice in the wake of District  
16 Court litigation.

17           So, you know, last is outlook. The  
18 Senate bill essentially is being -- is in a  
19 holding pattern along with other progress in the  
20 Senate on other legislative matters, really, until  
21 there is some progress in the debt ceiling. So  
22 it's possible that there may be action before the

1 August recess. We're hopeful that that will be  
2 the case. The Senate staff frankly doesn't know  
3 and is pushing for some agreement that as soon as  
4 the debt ceiling issue is resolved or at least  
5 there's some motion on the debt ceiling that that  
6 reform will be one of the first things taken up.  
7 That could happen before the August recess. It  
8 may happen after. It's just something we're  
9 watching day by day.

10 I think as we've approached the Senate  
11 floor there have been a few different options for  
12 taking up this bill. One has been whether the  
13 Senate could take up the bill on a unanimous  
14 consent basis with a few amendments. I think  
15 that's very unlikely. The next is whether the  
16 Senate would move towards closure to end debate on  
17 this measure. I think that's probably more  
18 likely. It's really going to be a question of  
19 when. I think the formal informal conference was  
20 certainly one of the options on the table but it  
21 is, I think, also probably unlikely at this point.  
22 I think as soon as possible I know that Chairman

1 Leahy would like this. They'll likely try to move  
2 towards closure, end debate, move this to the  
3 floor, and move the bill towards the president's  
4 desk. I think it's unlikely that they'll amend  
5 the bill and send it back to the House. If that  
6 does happen, for me the outlook for getting this  
7 done this Congress becomes very dim.

8 CHAIRMAN BORSON: Thank you. Wayne, do  
9 you have any comments or questions? Okay.

10 If I may, Dana, you mentioned that the  
11 House version has a number of studies that are  
12 written into it including obviously the one  
13 related to genetic information and biological  
14 testing. Could you explain in general terms, for  
15 example, how the House expects or would envision  
16 such studies being carried out, under whose  
17 authority, how would they be set up? And perhaps  
18 Bob, you might have a comment or two about that.

19 MR. COLARULLI: Well, each of the  
20 studies has its own language within the bill  
21 directing either the undersecretary for  
22 intellectual property here at the PTO to direct

1 the study. In a couple cases the GAO, the  
2 Government Accounting Office. And there is  
3 specific timelines and also a specific scope. So  
4 we would be carrying those out the way we've done  
5 many other studies, likely in some cases taking in  
6 public comment, very important, to kind of build  
7 the record. We'd be looking at PPAC to help us do  
8 that as well. But I think, you know, otherwise it  
9 will be case by case.

10 The one that worries me the most just in  
11 terms of time is the prior user defense study.  
12 That needs to be done within four months. I think  
13 there is a good basis of research out there  
14 already on prior user rights in other countries  
15 but this would be a new study that we'd need to do  
16 within a short period of time. But I think we're  
17 already thinking about how we might move forward  
18 on that study.

19 CHAIRMAN BORSON: Okay, thank you.  
20 Well, in addition to the America Invents Act, are  
21 there other legislative proposals that you have  
22 seen that are in the works that you expect to see



1 or that are being proposed?

2 MR. COLARULLI: You know, there are.

3 I'd be remiss if I didn't mention the other few

4 things. Certainly, counterfeiting --

5 anti-counterfeiting efforts are starting to get a

6 lot of attention in both the House and the Senate.

7 In the Senate, Chairman Leahy has moved forward

8 with his Protect IP Act that focuses particularly

9 on online privacy. I think there will be some

10 more activity on that in the next few months. The

11 House has also talked about introducing its own

12 anti-counterfeiting bill. That probably would not

13 be limited to online counterfeiting but be broader

14 than that. We're not clear what the contents of

15 that would be yet but we're watching. We're

16 watching that.

17 You know, the anti-counterfeiting I

18 think is the one that will probably take the most

19 IP attention and legislation over the next few

20 months. Beyond that we're trying to do some

21 additional thinking about proposals for The Hague

22 and PLT to implement -- certainly the PLT, once

1 patent reform is enacted, is going to change the  
2 statute in some ways. We're going to have to  
3 review our PLT proposal that we sent up a couple  
4 Congresses ago and see if there are any changes  
5 that are necessary. But that's the next step for  
6 us. So I think between protect IP and PLT and  
7 Hague, those are two that are that are on our  
8 radar.

9 On Friday, the House Judiciary Committee  
10 is also holding a hearing on fashion design.  
11 We're not testifying at that hearing. Again,  
12 another issue that we're watching. An important  
13 issue for development of IP in that area,  
14 particularly fast moving area. There's been a  
15 number of proposals on fashion design in recent  
16 years that have been discussed but haven't really  
17 moved forward, so we'll be interested to see what  
18 happens at that committee hearing.

19 CHAIRMAN BORSON: Okay, then -- do you  
20 have a comment?

21 MR. MILLER: Yeah, I'd like to make a  
22 couple comments. One issue that I see with the

1     legislation that you didn't mention is that the  
2     director gets fee authority and that this body  
3     then will have a much larger responsibility to be  
4     looking at the overall fees that the office would  
5     charge.  And on that, you know, I think this  
6     committee is willing to work with the executives  
7     in the Patent Office to make that happen quickly.  
8     I think we're going to have to have a process to  
9     do that given the limited amount of time that we  
10    call can spend on PTO matters and have that fairly  
11    well regulated.  And maybe somebody could address  
12    that.

13           My second issue is that obviously some  
14    of these provisions kick in fairly quickly and  
15    will require new regulations and processes within  
16    the patent office.  And I again think that this  
17    committee and the public would very much  
18    appreciate the opportunity to work with everyone  
19    in the office to help with those regulations to  
20    make sure they fit with what the public can best  
21    do for best practices.  And I'm wondering what  
22    efforts have been made so far to begin thinking

1 about the new regulations that may come into  
2 effect quickly under the new legislation.

3 CHAIRMAN BORSON: Terry?

4 MS. REA: Thank you, Steve. That is  
5 actually an excellent question because that is why  
6 we are waiting for America Invents Act to pass  
7 with baited breath. We are doing what we can  
8 right now to anticipate and plan. We've already  
9 created a point person for all the changes in the  
10 legislation. We realize that the fee setting is a  
11 completely separate issue from a lot of the other  
12 rules and regs that we will have to implement.  
13 The time period based on the act right now is  
14 indeed very short. It's going to be difficult to  
15 get all the rulemaking done that we need to do  
16 within a year and we're aware of that. And  
17 unfortunately, what is going to likely result is  
18 we like to be as transparent as possible and  
19 solicit as much user input as possible.

20 However, if we have to implement  
21 legislation within a year, that's going to be  
22 difficult. So I think that to leverage the

1 talent, the knowledge, the experience that we have  
2 with PPAC, we do anticipate working heavily and  
3 closely with PPAC because you are a bit more  
4 responsive and you're sort of part of the PTO  
5 family as I indicated in my opening remarks. I  
6 think once we find out if there is, you know, once  
7 the legislation passes in the exact form in which  
8 it will be, I think to triage all of the work that  
9 we have to do along with PPAC would be prudent  
10 because while you are limited to the amount of  
11 time that you're allowed to spend on PPAC, to  
12 maximize those hours it is very important. We're  
13 well aware of that. And we've actually had  
14 discussions where we're -- whatever projects you  
15 have ongoing right now will be modified or changed  
16 for the issue du jour, which might be breaking up  
17 the issues on the new patent reform legislation  
18 which each one of you have an expertise and work  
19 with us and help, you know, sort of spearpoint it.

20 But at any rate, we have given it some  
21 thought. We haven't actually started doing any  
22 work yet. It would be premature for us to do so

1 right now because we don't know what the sausage  
2 will look like. Thank you.

3 MR. COLARULLI: Well, to amplify it, I  
4 think closely, robustly work with the PPAC, and  
5 quickly. We're balancing two legislative intents  
6 in this bill. One is to get a number of things  
7 done within a year. And the other is to set fees  
8 in a way that we have a lot of communication.  
9 We've talked throughout the legislative debate  
10 that this would take us, you know, a year to 18  
11 months. Well, if it takes us 18 months we won't  
12 implement within a year so we need to balance that  
13 off. I think the only experience we have in the  
14 past, and Bob can talk to this, is in the wake of  
15 the AIPA. A significant but not as dramatic  
16 change to U.S. law as this is. So we'll need to  
17 work very closely.

18 MR. STOLL: Thanks very much, Dana. I'm  
19 going to be more blunt than my friends over here.  
20 I have seen lists of different pieces of the bill  
21 that must be implemented, for example, within 10  
22 days of signing, including track one. And there

1 are more than a handful of those provisions that  
2 need to be implemented within 10 days. There are,  
3 as Terry says, a little bit more time for fee  
4 setting but it's still a shortened period. I, by  
5 way of this comment we're in now, am asking PPAC  
6 to take a look at the bill as it currently is  
7 formulated over in the Senate and give us input as  
8 soon as possible. I don't think there is enough  
9 time to wait. We'll make the modifications based  
10 upon any changes that occur in the future but I  
11 really need your input and I need it now. So I  
12 don't agree with waiting. I would like you to  
13 please provide input on the version that is  
14 pending before the Senate now.

15 MR. ADLER: To whom?

16 MR. STOLL: To --

17 MR. ADLER: There's a point person but I  
18 don't know who that is.

19 MR. STOLL: To me.

20 MR. MILLER: Well, thanks. I think  
21 that's very helpful because I think, you know,  
22 this is the biggest change in the patent laws

1 since 1937. And all of us have a stake in this,  
2 practitioners as well as the office.

3 MR. STOLL: We need your input. I mean,  
4 and desperately because, you know, you guys are  
5 the ones practicing some of these. We need to  
6 know how you think we should be implementing each  
7 of these provisions. So we greatly appreciate  
8 your efforts here and we need it now.

9 CHAIRMAN BORSON: Wayne, please.

10 MR. SOBON: Connected but aside there's  
11 -- obviously the main focus right now has been to  
12 pass the legislation than to do the  
13 implementation. I would just recommend, you may  
14 already have this in your planning, but it's  
15 obviously been a very contentious debate and I  
16 think it behooves the office and I recommend that  
17 you really think about an engaged public relations  
18 explanation of the bill and its effects on the  
19 overall various user communities explaining and I  
20 think as much as possible based on statistics and  
21 facts and economics about why it does advance the  
22 intellectual property system in America. Because



1 I think that would be very important to both put  
2 that point of view out as well as, you know, maybe  
3 soothe some of the raw issues that have been  
4 raised during the debate itself. And I think it  
5 would be very beneficial for the office. So I  
6 recommend that. And I think we'd be happy to help  
7 in helping craft some of those messages and that  
8 sort of thing. So.

9 MS. REA: Thanks, Wayne. We're trying  
10 to -- we will try and communicate with the user  
11 community as much as possible and keep people  
12 informed but there are a lot of issues and a lot  
13 of moving parts. And so anything that PPAC can  
14 issue spot and let us know in advance, we'd  
15 appreciate it. Thanks.

16 CHAIRMAN BORSON: Any other questions or  
17 comments?

18 Then if I may just ask you what your  
19 sense is of what the Senate is likely to do, what  
20 are the touch points that are still being  
21 considered. You know, I understand that there  
22 could be several different processes occur but

1 what do you think are the key issues that are yet  
2 to be resolved between the two bills?

3 MR. COLARULLI: I think there's very  
4 little yet to be resolved between the two bills.  
5 I think practically it's going to pass the Senate  
6 almost as is. It's just a matter of when at this  
7 point. Any change that's made at this point would  
8 need to be sent back to the House and that's  
9 additional legislative action. And it's, again,  
10 it's unlikely in my mind that significant change  
11 would happen before it goes back. Now, there  
12 could be and we're seeing this good legislative  
13 history, good discussion interpreting what the  
14 provisions means. That's helpful to us. That's  
15 helpful to the agency as we start going through  
16 the implementation, particularly on the fee  
17 issues.

18 MR. STOLL: I fully agree with Dana's  
19 analysis from the contacts that I've been talking  
20 to. Let me add in that I believe right now the  
21 reason it hasn't passed the Senate already is the  
22 debt ceiling issues which are holding everything

1 up. But I believe that the Senate may at some  
2 point realize they need to create jobs and they  
3 need to do something and may let this go anyway.  
4 But that I think is the issue right now.

5 MR. COLARULLI: Agreed and, you know,  
6 it'd be a great effort. Some efforts say let's  
7 separate patent reform from the debt ceiling  
8 issue. You know, yet another issue showing that  
9 Congress has not moved forward. I think, you  
10 know, there may or may not be progress here soon  
11 but to the extent that we separate this as a job  
12 creation initiative I think that makes sense. I  
13 think that's something that Congress can do in the  
14 short term; certainly something the president  
15 wants to do as well and has mentioned even in the  
16 course of the discussions about the debt ceiling.

17 MR. MILLER: And I also -- you didn't  
18 mention that yesterday the Appropriations  
19 Committee apparently had a markup for the CJS  
20 bill. Could you comment a little bit on what  
21 happened in that process and what the PTO is  
22 likely to see as their appropriation for the next

1 fiscal year?

2 MR. COLARULLI: Happy to. And Thanks,  
3 Steve. So the compromise that was reached by the  
4 House leadership or broken by the House leadership  
5 had two parts. One part went into the statute and  
6 we see that in the America Invents Act. The other  
7 part they committed, and this was somewhat --  
8 using the word codified loosely -- codified in a  
9 letter that Hal Rogers sent. They committed to  
10 include language in future appropriations bills  
11 that would lay out the process for accessing the  
12 access fees. So the legislative language in our  
13 appropriations bill, the Commerce Justice and  
14 Science appropriations bill under which PTO falls,  
15 was circulated earlier this week. The report  
16 language for that bill was circulated also a  
17 couple days ago. The language I think from our  
18 perspective faithfully keeps to the compromise.  
19 We still have the same questions that I outlined  
20 before. What happens in the context of a  
21 continuing resolution? What happens with the  
22 actual process for accessing the fees? In fact,

1 one of the questions I have is if we're under a  
2 continuing resolution is the process for accessing  
3 the fees different as well? Again, this is a  
4 question we've asked staff. We've been talking to  
5 the Senate with. We're hoping there will be some  
6 more assurances there.

7 But the language on the face is  
8 consistent with what we understand the staff  
9 discussions to be. There was some additional  
10 language in the House report that we're still  
11 looking at, both requirements for PTO and for the  
12 Department of Commerce as a whole. One  
13 particularly interesting provision in the House  
14 report would require PTO to give notice before any  
15 PTO official, any Department of Commerce official  
16 traveled to China. There's another provision that  
17 speaks to the need to upgrade our national  
18 security filters. Things the defense agencies  
19 currently tell PTO that we need to flag for  
20 national security, we're looking at that as well.

21 One of the things adopted yesterday  
22 during the markup as an amendment to the Committee

1 report from Jeff Flake from Arizona was an  
2 amendment actually that would affirm that all fees  
3 collected by the PTO actually stay with the PTO.  
4 That's excellent. It's report language but it's  
5 further in congressional attempt in stating that  
6 the congressional intent is that PTO can access  
7 and use all the fees that it collects. So, you  
8 know, we're still looking at the House report to  
9 see what other gems might be there. The process  
10 is the House now has marked up their report. The  
11 full committee took up the report. The Senate has  
12 their own track. And they're going to come up  
13 with their own report language and potentially  
14 changes to the legislative language as well.

15 So it's the first step in the process.  
16 I think anyone who has watched this process for a  
17 number of years doesn't have a lot of faith this  
18 will be done before October 1st. I'm going to be  
19 subtle in saying that. We'll likely be under a  
20 continuing resolution. So we're already planning  
21 for that contingency. Even if the Senate starts  
22 their activity soon I think we still expect that

1 to be the case.

2 CHAIRMAN BORSON: Okay, well, thank you  
3 very much, Dana. Comment? Marc?

4 MR. ADLER: Regardless of how the  
5 legislation handle the Patent Office's ability to  
6 access the users' fees, the basic issue has always  
7 been that innovation and patents leads -- this is  
8 a belief we all have -- leads to jobs. And jobs  
9 are important politically as well as economically  
10 to, you know, independent inventors, small  
11 businesses, and large corporations, universities,  
12 everybody. But there's no real economic --  
13 quantifiable economic studies that really show how  
14 big a problem the withholding of those fees are to  
15 the U.S. economy and how that's impaired our  
16 economy over the past let's say 10 years.

17 I've had some conversations with the  
18 USPTO's economic czar, Stu Graham, and I would  
19 just like to sort of suggest at this meeting that  
20 it would be -- the user community would like to  
21 cooperate with the PTO in any kind of a study that  
22 you could initiate to demonstrate the actual

1 specific relationship between what's done here and  
2 how people get good, high paying jobs. And I  
3 think if we could do that, even if it takes some  
4 period of time, it will be useful as evidence to  
5 rebut future attempts when they occur to dip into  
6 our fees.

7 So I just wanted to put that again out  
8 on the table. Stuart knows this. We've discussed  
9 it. And I just think that the various patent  
10 association organizations would be very willing  
11 and able to provide case studies or other  
12 information that might be of help.

13 CHAIRMAN BORSON: Thank you, Marc. I  
14 think that's a great idea. We'll follow through  
15 with that.

16 Ester, you had something?

17 MS. KEPPLINGER: Yeah, it's my  
18 recollection from internally in the PTO when I was  
19 here, when the Patent Office started collecting  
20 their own fees in like '93, in that period of time  
21 diversion started shortly after that. And as a  
22 consequence the PTO was unable to hire even at



1 replacement level. Kaz Kazinsky had gone back in  
2 like 2003, 2004, something like that, and took the  
3 model and ran it to show that had the PTO received  
4 those things and been able to hire, even at a  
5 replacement level, we would not have had a backlog  
6 of applications even at that point. So that's  
7 something that we might be able to dig up to put  
8 into that.

9 CHAIRMAN BORSON: You have that?

10 MS. KEPPLINGER: Yes.

11 CHAIRMAN BORSON: Is that something that  
12 is available to us?

13 MS. KEPPLINGER: Yes.

14 CHAIRMAN BORSON: Good.

15 MR. STOLL: We also need to study tying  
16 jobs to the issuance of the patent applications.  
17 And I am in full agreement with that. And we need  
18 a -- I mean, we need a seminal, uncontroversial  
19 clear study that is not biased, that is not  
20 ambiguous, that really will have the force of  
21 allowing us to make the arguments to the  
22 appropriators in future years.

1                   CHAIRMAN BORSON: Great. Great. Any  
2 other comments? Questions? Ester, do you have  
3 anything more? Steve?

4                   MR. MILLER: Yeah, I'll make a comment.  
5 I'm never one to shy away.

6                   And this is more for the public than for  
7 the PTO but I think this is a process where we as  
8 PPAC will try to keep you informed as the public  
9 as to what's happening within the appropriations  
10 process so that people can hopefully get upset and  
11 call their congressmen or whatever if fees start  
12 to be diverted. And I think that's a commitment  
13 that we as PPAC can certainly make to members of  
14 the public that in these meetings or in other  
15 forums where we foresee that maybe fees are being  
16 diverted we should let the public know about that  
17 so that users can voice their complaints and have  
18 that kind of data available. So hopefully we  
19 don't have this problem again.

20                   MR. ADLER: Can I add to what Steve --  
21 the whole process of the counting, the scoring,  
22 the appropriation process is pretty inside the

1 beltway kind of thing. Most people in the public  
2 don't really understand this and so we really see  
3 it as our job to try to help explain that to the  
4 public so that they know who to call and when to  
5 call to prevent this from happening.

6 MR. STOLL: I'll very quickly say good  
7 luck with that because I've been here for almost  
8 30 years and I don't know what scores and doesn't  
9 score in some years. Our CFO will tell you that  
10 that opinion seems to change from year to year.

11 MR. ADLER: We're not going to attempt  
12 to explain it. We're just going to tell them  
13 they're about to try to take our money.

14 CHAIRMAN BORSON: Okay. Is there  
15 anything further on the legislative update?

16 Actually, I wanted to ask one final  
17 question if I may. Maybe it's not a final one.  
18 You've talked a lot about the current legislative  
19 efforts, the future legislative efforts, Bill.  
20 What has happened in the last year that the public  
21 should know about?

22 MR. COLARULLI: Other IP legislation?

1                   CHAIRMAN BORSON:  Yes, that's correct.

2                   MR. COLARULLI:  Well, you know, in the  
3                   last year the things that we've watched and we've  
4                   seen go through is the Trademark Technical  
5                   Corrections Bill.  Maybe that's just over a year  
6                   actually now.  I'm losing track.  I think, you  
7                   know, that was important changes, a proposal that  
8                   came up from us.  It also included the Trademark  
9                   Litigation Study which we engaged and we completed  
10                  and circulated earlier this year.  Actually, just  
11                  over a year.  We had a year to complete it.

12                  You know, that's really the biggest one  
13                  that got done.  That, next to a historic first  
14                  time ever supplemental appropriations of \$129  
15                  million to the PTO last year that at least started  
16                  to address the problem as part of our fee problem  
17                  as we came out of -- as we were coming out of the  
18                  economic depression.  Those are the two most  
19                  significant things I think that have affected the  
20                  PTO.  Whereas, we've engaged in a lot of  
21                  discussions about other IP legislation and we're  
22                  continuing to do so.  I think those are the two

1 that had the biggest effect.

2           Important note is that the 129 million  
3 really I think was a one-time thing. And the  
4 long-term legislation to affect diversion, to  
5 affect fee withholding is really the best  
6 solution. What's in the Senate bill is a good  
7 step forward, as I said. But I think echoing some  
8 of the things that were already said, continuing  
9 efforts by the office and by the user community to  
10 make sure that folks know the importance of these  
11 fees is going to be essential.

12           CHAIRMAN BORSON: Okay. Very good.  
13 Just to reiterate something that Steve said, the  
14 Committee is willing -- ready, willing, and able  
15 to help out in any ways that we can. And one  
16 thing that I'd like to propose to the PPAC is that  
17 we revisit the issue of increasing our web  
18 presence. We do have an ability to do that.  
19 Perhaps documents such as those studies that you  
20 were referring to, if they can be made available  
21 to the public we can post them on the website. We  
22 may be able to ask some assistance in producing

1       précis or summaries of them to make it very easily  
2       accessible to the public. I'm not sure that the  
3       public would want to read a full study but if  
4       there is some way that we can create a  
5       downloadable, easily readable, understandable,  
6       these are the key issues in front of us now, that  
7       could help us out.

8                Okay. Next? I guess we -- a break. A  
9       break. A break has been called for. Let's take a  
10      break.

11               We are scheduled from 9:25 to 9:35, so  
12      how about if we return at 9:35? That will give us  
13      plenty of a break. Very good. Thank you very  
14      much.

15                               (Recess)

16               CHAIRMAN BORSON: All right. I would  
17      like to thank you all for getting back in time.  
18      I'd like to move ahead with our agenda, it now  
19      being 9:37.

20               Let's now talk about finance. So we've  
21      got Tony Scardino and Bruce Kisliuk, who is the  
22      deputy CFO. If you would be so kind.

1           MR. SCARDINO: Thank you. Since we met  
2 last a lot has happened. Internally, Mark  
3 Olechowski, the deputy CFO has left, and  
4 thankfully, we've been fortunate enough to have  
5 Bruce Kisliuk, as you just mentioned. He will  
6 serve as the acting deputy CFO until September  
7 30th, getting us through the fiscal year which is  
8 a very challenging, challenging period. So we're  
9 very thankful for that. And Bruce is actually  
10 going to run you through some slides in a little  
11 bit. I just wanted to kind of set the stage of  
12 what we have been going through over the last  
13 three months.

14           Since we met last, the continuing  
15 resolution for Fiscal Year 2011 has expired and we  
16 have a full year appropriation at the level of  
17 \$2.09 billion, which is more than we had earlier  
18 in the year but less than we think we're going to  
19 collect this year. You're all familiar with the  
20 concept of fee diversion. Right now we estimate  
21 roughly \$80 million will be collected that we will  
22 not have the authority to spend. That is an

1 unfortunate happenstance because it's required  
2 that we make some difficult decisions this fiscal  
3 year, such as a hiring freeze. Right now we've  
4 cut things like training, travel, overtime  
5 operational issues that we can control, but things  
6 that don't help us with our backlog and pendency  
7 issues.

8 Congress, thankfully, is well aware of  
9 this and they are taking great, great steps to fix  
10 this problem. The Senate passed a bill in March  
11 as you know, S. 23, which would make us a public  
12 enterprise fund or revolving fund, which would  
13 eliminate fee diversion forever because we would  
14 have full access to our fees every single day.  
15 And then the House recently passed H.R. 1249,  
16 which differed greatly on the fee side in that we  
17 would remain an appropriated account. However,  
18 there would be a reserve fund created which would  
19 in essence eliminate fee diversion. Now, there is  
20 a lot of talk back and forth as to whether it  
21 definitely eliminates fee diversion, how that  
22 would work. We'd still be part of the



1 appropriations process, which means we'd still be  
2 subject to continuing resolutions. So there would  
3 still be challenges.

4           Obviously, you know, you listen to Dana  
5 and no one has got a crystal ball to know where  
6 this is going to end up, but we still try to work  
7 our little crystal balls because we don't know  
8 what's going to happen. We have to prepare for  
9 several scenarios. At the beginning of next  
10 fiscal year, Fiscal Year 2012, we could have  
11 another CR, which means that we're at \$2.09  
12 billion for anybody's guess -- a month, six  
13 months, eight months? We don't know how long a CR  
14 could go for. We could get the President's budget  
15 request before the bill is enacted. That's \$2.7  
16 billion. You know, that's a huge swing between  
17 \$2.09 billion and \$2.7 billion. Or we could get  
18 something in the middle. Anything could happen.  
19 They could do an anomaly, which means we'd get  
20 full access to our fees on a prorated basis. We  
21 could get the 15 percent surcharge that is called  
22 for in both Senate and House bills. Track one

1       could be enacted. There are so many variables and  
2       Bruce will walk you through some of our  
3       challenges.

4               While we're trying to prepare for '12  
5       and live in '11, we're also planning for Fiscal  
6       Year 2013 where a budget is required to be  
7       submitted to the Office of Management and Budget  
8       by September 13th. So there are so many balls in  
9       the air we're just trying to figure out -- because  
10      each year builds on the prior. So some of the  
11      hiring that we didn't do this year affects the  
12      fees that we'll collect next year. Obviously, it  
13      affects our workload. So as we're planning for  
14      initiatives for 2013, we're not really sure what  
15      we're going to get done in 2012.

16             So without further ado I'm going to kind  
17      of let Bruce take over from here to give you the  
18      specifics.

19             MR. KISLIUK: Thank you, Tony. Good  
20      morning. You can go ahead to the first slide. As  
21      Tony said, we are facing a lot of different  
22      scenarios and we don't know the specific outcome

1 yet.

2           So where we're going to start is kind of  
3 a snapshot of where we are today, then I'll get  
4 into some of the variables that we're trying to  
5 manage with. Like Dana had said earlier, we are  
6 watching the bills closely hoping, but from a  
7 financial point of view we are, you know, fiscally  
8 cautious, because we must prepare for the worst  
9 case scenario at this point in time.

10           So the snapshot right now is on our  
11 current fee collections, and this slide is  
12 probably not up-to-date. The "as of May" amount  
13 is still a range. The range that you see on the  
14 slide is a range that was developed for our  
15 submissions early in the year and that range as  
16 you can see is pretty big. The reasons it's so  
17 big, because like Dana had mentioned, it assumes  
18 as our earlier budget submissions were that we had  
19 a 15 percent surcharge. So that range includes  
20 having the surcharge and not having the surcharge.  
21 So that is a pretty big range.

22           Right now our straight-line projection

1 collections are \$2.17 billion. Okay? So it's  
2 kind of on the lower end of that range. And then  
3 the two components, the patents component and the  
4 trademark component of that collection.

5 Now, the middle piece is worded here as  
6 surplus. As Tony had referred to, this is really  
7 the amount that we could possibly collect and not  
8 have the authority to spend. And as Tony said,  
9 we're sitting at \$2.09B spending authority plus  
10 carryover this year. So right now, again, this  
11 range included the potential of having the  
12 surcharge money. We know that surcharge money at  
13 least wouldn't be coming until later. And as Dana  
14 had mentioned, right now as the legislation is  
15 written if it passed we would actually have  
16 potentially the authority to spend that surcharge  
17 money outside of the appropriations. But again,  
18 another variable that's hard to judge. So the  
19 range right now is not important. The snapshot  
20 is, as Tony mentioned, that right now we're  
21 projecting collections at about \$80 million over  
22 our authority.

1           And the bottom piece is projected  
2 obligations, which is basically our spending.  
3 This is a true update, not a range. We are about  
4 at \$2.19 billion, and the important thing as we go  
5 into the slide is this is our FY11 snapshot. As  
6 Tony mentioned, we are monitoring what would  
7 potentially be one of our worst case scenarios, is  
8 going into '12 under a CR at a low level,  
9 potentially the \$2.09 billion. So we are trying  
10 to maximize our carryover. And our carryover is  
11 basically the money that we don't spend under our  
12 authority. Not over the not the \$80 million --  
13 but underneath. And right now we're looking at  
14 carrying over roughly \$140 million into the start  
15 of '12.

16           So as Dana mentioned and Tony referred  
17 to, we are anticipating -- anxiously anticipating  
18 -- the passage of the Act, and we are starting our  
19 planning. So the way I like to describe it is  
20 we're trying to get a running start to the passage  
21 without putting ourselves in a financially  
22 uncertain position. And by doing that one of the

1 things we have done is start the process for  
2 hiring. And what that allows us to do is put out  
3 vacancies, have people apply, go through a  
4 selection process before we actually make offers.  
5 So we can get that ball rolling, get going, and  
6 basically hold off on giving the offers, which is  
7 the point at which we'd kind of be starting to  
8 obligate. And hopefully by the time the  
9 legislation passes and we can turn that hiring on  
10 relatively soon.

11 Other things, we have frozen a lot of  
12 other things this year, again, because of the  
13 situation we're in and because of the unknowns of  
14 '12 and we're trying to again maximize our  
15 carryover to make our position in '12 good. So  
16 we'll, as soon as the legislation passes, again,  
17 revisit the things that we froze, particularly the  
18 workload specific things, such as hiring and  
19 overtime. And try to turn those on again,  
20 conscious of the fact that we still may not know  
21 our specific CR language. So we have to manage  
22 and kind of guess in a worst case to make sure

1 that the first few months under the CR in '12 we  
2 can operate and operate financially safely.

3 And this kind of repeats what I just  
4 laid out -- the Fiscal Year 2011 funding is  
5 critical. It's critical because of the carryover.  
6 And I mentioned what would happen in a potential  
7 worst case CR at the \$2.09 billion level. A year  
8 of that in '12 would be, for lack of a better  
9 word, devastating operationally, particularly to  
10 our strategic plan objectives. Tony mentioned  
11 through '12 there are a lot of scenarios that we  
12 simply don't know so we are kind of planning for  
13 the worst and hoping for the best. So we are  
14 gearing up to turn everything on but cautiously  
15 holding back to make sure that we can make it  
16 through a CR. And hopefully timing-wise we get  
17 the passage in time to have our carryover or  
18 potentially a little bit higher carryover into  
19 '12, get CR language that is consistent with what  
20 was passed in the House version of the CJS [bill],  
21 at least the intent so that at least the beginning  
22 of '12 -- and '12 looks like a good year -- we can

1 move ahead with our plans.

2 And while we're juggling the end of '11  
3 and the unknowns of '12, we are formulating the  
4 '13 budget. And so the PPAC can expect to receive  
5 fairly shortly -- we're sharing those Fiscal Year  
6 2013 initiatives currently with the Under  
7 Secretary. When those get approved we will be  
8 sharing them with the PPAC and moving forth with  
9 our planning.

10 And that's a summary of where we are.

11 CHAIRMAN BORSON: Thank you very much,  
12 Bruce. Any comments from the Committee? Yes,  
13 please.

14 Wayne.

15 MR. SOBON: I think I'm a little dim but  
16 how does the carryover work? Again, I don't quite  
17 understand that piece of the financial puzzle.

18 MR. SCARDINO: Okay. Well, USPTO funds  
19 remain available until expended. So it's not like  
20 at the end of the fiscal year the money goes away.  
21 So we always have carryover. The issue is how  
22 much money do we need to carry over to meet our



1 obligations for the following year. So we have a  
2 multiyear budget plan. We know that by hiring 856  
3 examiners or whatever it was this year so far that  
4 we have certain obligations in the first quarter  
5 specifically next year. So under a CR we really  
6 couldn't afford all of our payroll needs as well  
7 as operation needs. It would be very, very  
8 challenging. So we are planning for that by  
9 carrying over, or planning to carry over, a  
10 certain amount of money. Similarly, under a  
11 revolving fund we would need to kind of  
12 self-populate the fund. Day one, October 1st if  
13 it was enacted, we'd need money in the fund  
14 because all we could do is spend whatever we  
15 collected day one. If we collect \$8 million,  
16 that's all we'd have in our bank account. So we  
17 need to prepare for that.

18 So that's where we talked about we're  
19 preparing for several different scenarios, whether  
20 it's S. 23 wins a day, H.R. 1249 or something in  
21 the middle. We don't know what's going to happen,  
22 so we're doing everything we can to, as Bruce

1 said, turn everything on or get up to the point  
2 where we can spend some money but we're actually  
3 not spending the money, such as hiring. We're  
4 preparing for hiring but it takes months to bring  
5 people onboard. Once a bill is enacted, either an  
6 appropriation bill or the America Invents Act,  
7 we'll know what we're going to basically have to  
8 deal with in 2012. And then we can make some  
9 further decisions. Carryover just means the  
10 ability to spend money next year with money that  
11 you're collecting this year.

12 CHAIRMAN BORSON: Yes, Marc.

13 MR. ADLER: So, Tony, I mean, part of  
14 the budget calculation is with the surcharge and  
15 without the surcharge.

16 MR. SCARDINO: Correct.

17 MR. ADLER: How do you decide -- how is  
18 the PTO going to make the decision about when to  
19 impose the surcharge with regard to the House  
20 bill? I mean, how do you make that decision?

21 MR. SCARDINO: We don't actually get the  
22 choice there. It's 10 days after enactment.

1 Statutorily we'll have to implement.

2 MR. ADLER: So the users will be paying  
3 35 percent more without --

4 MR. SCARDINO: Fifteen percent more.

5 MR. ADLER: I'm sorry, 15 percent more.  
6 Thank you. Fifteen percent more. Sorry, yeah,  
7 thanks. I don't want -- we'll be paying 15  
8 percent more and you may not actually be able to  
9 use it.

10 MR. SCARDINO: No, no, no. That's not  
11 true. We would actually -- H.R. 1249 provides  
12 instant access to those fees. It doesn't need to  
13 be appropriated further.

14 MR. KISLIUK: Bob can probably add --

15 MR. ADLER: As long as you don't go over  
16 the -- up to what you were --

17 MR. KISLIUK: No, no. This is separate.  
18 When we originally -- some of these numbers you  
19 are seeing in our original plans, we didn't know  
20 what authority we would have so we were estimating  
21 the 15 percent in our collections without knowing  
22 what authority we would have to spend it. Now

1 with the language as written on the House side,  
2 that 15 percent money would be available to us  
3 immediately outside of the appropriations.

4 MR. STOLL: Until it's spent.

5 MR. KISLIUK: Outside the  
6 appropriations.

7 MR. STOLL: And Marc, that is also true  
8 with the track one money.

9 MR. KISLIUK: In other words, they don't  
10 score. The scoring as you were talking about  
11 earlier, it does not score.

12 MR. ADLER: Separate money.

13 SPEAKER: Thank you. I didn't realize  
14 it was separate. Thank you.

15 CHAIRMAN BORSON: Very good. Thank you  
16 very much for that question.

17 Okay. I'd like to move ahead then if we  
18 could. The next item on our agenda is policy  
19 update, Robert Bahr, senior patent counsel. You  
20 can -- how many titles do you have now, Bob?

21 MR. BAHR: Two or three. I'm collecting  
22 them.

1           CHAIRMAN BORSON: All right. Please.

2           MR. BAHR: Thanks, Ben. Quite frankly  
3 I'm giving a policy update but after discussing  
4 the pending America Invents Act it seems, you  
5 know, like a sideshow almost. But there are a few  
6 other items we should mention.

7           The first is with respect to restriction  
8 practice. We did request comments last year and  
9 we studied them. As you probably know many of the  
10 comments suggested that we should look at moving  
11 to a unity -- a unity of invention standard with  
12 respect to restriction. We are studying that but  
13 in the meantime we also wanted to make some other,  
14 you know, changes in the interim to smooth out the  
15 rough edges, if you will, around the current  
16 restriction practice. And we are in the process,  
17 the late stages of drafting a Federal Register  
18 notice that announces those changes. And  
19 primarily what it involves is, you know, giving  
20 more training to the examining course so there's  
21 more consistency and also giving greater review to  
22 late and prosecution restrictions.

1           With respect to -- I'm sorry.

2           CHAIRMAN BORSON: Yeah, I just had a  
3 question about the timing of that.

4           MR. BAHR: Sure.

5           CHAIRMAN BORSON: When is that proposal  
6 going to come forth to the Committee?

7           MR. BAHR: Okay. First of all I sent a  
8 first draft of the notice to the Committee, to the  
9 PPAC already. We're working on editing it.  
10 Actually, we're working out some things with a  
11 labor union right now and once that's done we'll  
12 send it back.

13          CHAIRMAN BORSON: And how long do you  
14 think that'll be prior to the actual enactment?

15          MR. BAHR: I'm hoping they're very  
16 close. I think we're talking weeks.

17          CHAIRMAN BORSON: The question isn't  
18 when we're going to get that; rather, you know,  
19 what the timing is of us receiving that compared  
20 to the actual sign off and the publication.

21          MR. BAHR: Well, it would be, I'm going  
22 to say, before. So, you know, a couple weeks

1 before hopefully.

2 CHAIRMAN BORSON: All right. The only  
3 point here is that it would be very nice if we had  
4 it in enough time so that we actually could  
5 respond if we had any comments to it.

6 MR. BAHR: Okay, yeah, well, that's the  
7 idea.

8 CHAIRMAN BORSON: I understand that's  
9 the idea but sometimes --

10 MR. BAHR: I know.

11 CHAIRMAN BORSON: -- it hasn't worked  
12 out quite that way.

13 MR. BAHR: Okay.

14 CHAIRMAN BORSON: So if you would,  
15 please. Okay, thank you.

16 MR. BAHR: The next is three track. And  
17 as you probably know, we published a notice of  
18 proposed rulemaking on three track I think it was  
19 in early March, and we actually published a final  
20 rule on three track in early April. But what  
21 happened is after that our budget for this year  
22 really didn't allow us to implement track one --

1 this is the track one to go fast track -- without  
2 negatively impacting other applications. So we  
3 published a third notice basically indefinitely  
4 delaying track one. And after that, Congress  
5 basically put in provisions that would in essence  
6 codify the track one provision. And, you know,  
7 set the fee by statute. And as was discussed  
8 earlier, the way that it was written, the revenue  
9 that's generated by track one would come to us and  
10 was available to expend it without the need for  
11 further appropriations. So that would allow us to  
12 turn it on. And of course, if this passes those  
13 provisions go into effect within 10 days. So we  
14 would be able to basically turn on the track one  
15 proposal that we had published in April and we'd  
16 be able to turn it on within 10 days of enactment.  
17 Well, on 10 days of enactment it would go.

18 CHAIRMAN BORSON: Yes, good.

19 MR. BAHR: Okay. With respect to the  
20 third track, which is the go not so fast track, we  
21 are in the stages of developing a notice of  
22 proposed rulemaking and we're just working out



1 some kinks and that should be ready to send to you  
2 I'm hoping within a month or two.

3 CHAIRMAN BORSON: Okay, that's fine. We  
4 will talk in executive session about the other  
5 strategies for rulemaking based on the passage of  
6 the America Invents Act, so we'll defer that  
7 conversation until later.

8 MR. BAHR: Sure.

9 CHAIRMAN BORSON: Do you have anything  
10 else, Bob?

11 MR. BAHR: Oh, quite a few.

12 CHAIRMAN BORSON: Please, please  
13 continue.

14 MR. BAHR: On 101, on 35 U.S.C. 101  
15 patent eligibility, I'm sure everyone knows last  
16 summer the Supreme Court decided *Bilski v. Kappos*  
17 and we were hoping at that time that there was  
18 sort of a logjam of 101 cases at the Federal  
19 Circuit and that the Federal Circuit would give us  
20 further guidance in light of the decision of  
21 *Bilski*. But in the year since then what has  
22 happened is, first of all, the Federal Circuit has

1     only decided two cases and the Supreme Court has  
2     taken one of them up on Prometheus.  So, you know,  
3     we're not giving out -- basically, we're not  
4     giving out further training to the core because we  
5     just don't have enough new data points, if you  
6     will, to give further training on.  And of course,  
7     you know, you're going to have another Supreme  
8     Court decision within, you know, six to eight  
9     months so that's where we are, if you will, on  
10    that.

11                 On reexamination, we conducted a  
12    roundtable and had a public comment period that  
13    closed fairly recently.  We were in the process of  
14    digesting those comments and coming up with  
15    proposals, you know, in light of those.  You know,  
16    obviously if some of them require rule changes  
17    we're going to have to come out with a notice of  
18    proposed rulemaking to implement them and some of  
19    them, you know, internal process changes we could  
20    do without rulemaking.  So, you know, we could  
21    possibly do internal process changes quicker than  
22    that.

1           With respect to the patent prosecution  
2 highway, we recently modified our requirements  
3 with a number of countries to make it more widely  
4 available. The prior system was designed based  
5 upon, you know, the Office of First Filing versus  
6 the Office of Second Filing where you have  
7 leapfrog situations. Now it will be focused on  
8 the Office of First Examination and the Office of  
9 Subsequent Examination. And we are, again, we are  
10 discussing -- we are in the process of developing  
11 a notice of proposed rulemaking to modify our duty  
12 of disclosure requirements based on the Federal  
13 Circuit's case (inaudible).

14           Any questions?

15           CHAIRMAN BORSON: I'd like to thank you.  
16 It was very concise.

17           Ester, do you have a comment?

18           MS. KEPPLINGER: Yeah, I had one  
19 question. Recently we got an action that  
20 indicated that certain steps would be right out of  
21 the claim. Things like calculating and  
22 classifying. And the examiner said that they were

1       mental steps and wouldn't contribute to the  
2       patentability of the claim and said that the  
3       office had taken -- that this was a policy  
4       decision within the office and that's what they  
5       had been instructed to do.

6               MR. BAHR: I mean, I'd have to see the  
7       specific case but I know that in some Federal  
8       Circuit decisions, like informing type steps, you  
9       know, are basically not given weight for 102, 103  
10      reasons if there's no, you know, functional  
11      relationship. But, you know, this is a very --  
12      these are very particular situations. There's no  
13      like per se rule that this type of step isn't ever  
14      given weight.

15             MS. KEPPLINGER: That was my question.  
16      I mean, what the examiner had said was that they  
17      had been given instructions to do this. So I was  
18      just curious.

19             MR. BAHR: Well, the instructions we  
20      give, I mean, you know, the guidance to examiners  
21      and memos and stuff, we post that all on our  
22      website, you know, under the patent examination

1 place. So if it's been given to the examiners  
2 it's posted there. And I can't recall anything  
3 like that being posted there that would say a per  
4 se treatment.

5 CHAIRMAN BORSON: Yes, Wayne, please.

6 MR. SOBON: Going back to 101, I guess I  
7 would make or ask one question which would be have  
8 you done any studies over the last year of the  
9 statistics of 101 rejections in various art units  
10 and/or can information be given to the Committee  
11 so we can see is there any sort of factual  
12 statistical changes that have happened in the core  
13 post-Bilske?

14 And secondly, I would just make the sort  
15 of suggestion/plea that I'm not sure the user  
16 communities can afford to wait for, you know,  
17 further guidance and I'm not sure. It may be  
18 chimeric to wait for potential pronouncements  
19 that, again, might not be anywhere near what the  
20 kinds of clarity that you're looking for. And I  
21 would just suggest that the office -- between you  
22 and the other skilled staff, and I'm certainly

1 personally happy to help assist and I think the  
2 PPAC would well assist in helping craft concrete  
3 guidelines to implement the Bilske decision in a  
4 way that's practical for the office. So, you  
5 know, I just would make that suggestion/plea.

6 MR. BAHR: I appreciate that suggestion.  
7 If you have any specific suggestions, I'm all  
8 ears. My concern is twofold. First, if you, you  
9 know, obviously in reading the Supreme Court's  
10 decision and Bilske in the Supreme Court decision  
11 and KSR, they don't like tests. So that makes it  
12 kind of hard to give concrete tests to examiners.  
13 And the second is that, you know, with another  
14 Supreme Court lurking in the background, you know,  
15 one never knows what's going to come out. But if  
16 you can come up with, you know, things that might  
17 ease the burden of examination without running  
18 afoul of these decisions we'd appreciate it.

19 MR. SOBON: And I would suggest that,  
20 you know, in some sense it's a chicken and egg  
21 problem in a sense but I think in some sense the  
22 courts look to the office for, you know, well

1 conceived guidance that can help them understand  
2 at a practical level how these things work out.  
3 Right? So I'm happy to offer my personal views on  
4 this but I think the PPAC as a whole can come and  
5 help assist on these things.

6 MR. BAHR: Yeah, I'm willing to take  
7 either.

8 MR. SOBON: That would be great.

9 CHAIRMAN BORSON: Good. Thank you.  
10 Marc?

11 MR. ADLER: So track one is limited to a  
12 certain number of cases. Right? Like 10,000?

13 MR. BAHR: Right. Well, the way the  
14 legislation is drafted it's limited to 10,000 in  
15 each fiscal year until we -- until we issue  
16 regulations changing it.

17 MR. ADLER: Okay. I was going to the  
18 track two proposal that hasn't been put out yet.  
19 Would that also --

20 MR. BAHR: Track three.

21 MR. ADLER: Well, he said two.

22 MR. BAHR: Okay. If I said two, I'm

1 wrong. I meant track three.

2 SPEAKER: Three?

3 SPEAKER: Three.

4 MR. ADLER: So would that also be  
5 limited to a certain number of --

6 SPEAKER: Yes. In our planning it is to  
7 limit it to a certain number.

8 CHAIRMAN BORSON: Any further comments  
9 for Bob? Questions?

10 Okay. What I'd like to do is take a  
11 short detour. We do have a question from a member  
12 of the public. This actually relates -- and I'll  
13 just quote it, "Would the quality of patent  
14 applications be improved if working examples were  
15 required for some categories of mechanical and  
16 electronic technology? Similarly, working  
17 software would be required for software  
18 inventions." Could be, not would. So any  
19 comments about that from the quality shop? Marc,  
20 do you have any comments or --

21 MR. MILLER: I'll comment. I'm not sure  
22 I totally understand the question. But anytime we



1 can get more clear on 112 and what people are  
2 defining as their invention, the better  
3 examination and the better quality patents we  
4 would get. So if there are the ability to include  
5 working examples I think that's always helpful.  
6 But I don't know it's the best practice.

7 MR. ADLER: You aren't suggesting -- you  
8 aren't suggesting that working examples are  
9 required but the more explanation for enablement  
10 and detailed description the better so that  
11 everybody in the public understands what the  
12 invention is would be helpful. That's the only  
13 way I can answer that question I think.

14 CHAIRMAN BORSON: Well, I would just  
15 offer the comment that certain countries require  
16 working examples and that you would end up being  
17 limited to a working example in your patent claim.  
18 And so I think that's a potential countervailing  
19 force that what we in the United States like to do  
20 is describe the invention and not necessarily one  
21 specific embodiment thereof. And we like to  
22 ensure that the claims be given reasonable

1 breadth. And if there is a generic claim that's  
2 supported by the application under 112 that that  
3 be granted.

4 So I think that, you know, just to  
5 parent what Marc and Steve were saying is that the  
6 enablement standard I think is reasonably clear at  
7 this point. And I'm not sure whether the person  
8 who asked this question believes that it is  
9 unclear. And maybe I would invite the person to  
10 submit another question explaining further if they  
11 think that the 112 standard is unclear at this  
12 point.

13 Okay, thank you. Well, Bob, thank you  
14 very much. I'd like to move on all the way over  
15 to Robert Bahr. He is the -- who will then talk  
16 about the MPEP demonstration.

17 MR. BAHR: Thank you. We've been --  
18 we've had an MPEP reengineering effort underway  
19 the last couple of years and I just wanted to go  
20 over the fruits of that effort. In all fairness,  
21 I shouldn't be listed here as the principal. The  
22 people who are going to be giving this

1 presentation are Magdalen Greenlief and Terrel  
2 Morris. Those are the folks who are actually most  
3 involved in working on this. And so without much  
4 further ado I'll turn the program over to Terrel.

5 MR. MORRIS: Thank you, Bob. What you  
6 see on the screen right now is our working example  
7 of the electronic MPEP that will be presented to  
8 the examiners in the near future. The previous  
9 tools that we've had have been paper and I think  
10 stone tablets before that. But paper. And then  
11 we have moved into the electronic MPEP in the form  
12 of a program that is no longer supported called  
13 Insight. That particular application has had a  
14 number of issues with it as it's matured over the  
15 years and the support for it has fallen off and we  
16 are now migrating to this electronic version where  
17 it is web based. So we will have much more  
18 flexibility as we move forward into the future.

19 What you can see up here is, of course,  
20 the first page of the manual. The examiners now  
21 have access to the entire manual. They can  
22 navigate through it on the left here and you see

1 the table of contents, including the ability to  
2 select a particular section, like Section 700, one  
3 of the most popular sections, and our largest  
4 subsection, which is 706. We can go down here and  
5 pick that out. That's a good one. It'll pull it  
6 up and it gives you the ability to see the entire  
7 section. Examiners can now easily highlight  
8 content and paste it into their office actions so  
9 they can get verbatim content from the MPEP and  
10 directly insert it into their office actions to  
11 support their positions or to make points.

12 In addition to this, examiners have the  
13 ability to search. Currently, there are several  
14 different searching schemes available, everything  
15 from our in-house, very specific BRS search that  
16 allows proximity operators and those types of  
17 operations as well as Googlesque-type searches,  
18 either from the Internet or from other journal  
19 sites on the web provide their own search  
20 capabilities as well. So what we've tried to do  
21 here is standardize the search language that will  
22 be presented to the examiners to that which is

1 most similar to what they use in their daily work  
2 environments. So this will use a BRS-type syntax  
3 so I can do things like put in double NEAR patent  
4 and it will provide me with a list of search hits.  
5 And as you can see, the search results appear in  
6 the middle here and we have 86 results for this  
7 particular search. And the left side changes from  
8 a table of contents to a faceted list so what it  
9 does is categorizes in which sections these  
10 actually fall out and you can then further select  
11 based on these.

12 For example, if we go down to 804, which  
13 is where a double patent mainly occurs, it limits  
14 the search to just the 800 section, the 804  
15 section that I put it on. Then clicking on one of  
16 the links, which I have done accidentally, takes  
17 you directly to it and you can see that the terms  
18 are highlighted throughout the selection.

19 Examiners can do this and they can also save their  
20 searches so they can repeat them later and of  
21 course, navigate further through it. We have the  
22 ability to add annotations to any point in the

1 MPEP and these will also be retained for examiner  
2 use as we go from version to version into the  
3 future, unlike today where if they had annotations  
4 there removed from the manual because they don't  
5 exist in the new manual, this one will preserve  
6 those as we move from version to version.

7           Unfortunately, I don't have a lot more  
8 to present to you. If you have any questions I'd  
9 be happy to take those.

10           CHAIRMAN BORSON: Yes, I have a  
11 question. This seems like a very useful tool for  
12 examiners and I think applicants would also find  
13 it to be a very useful tool. So I wanted to ask  
14 if you have any plans to make this available  
15 widely to the user community.

16           MS. GREENLIEF: The web-based part on  
17 the displaying and the searching of the MPEP  
18 content, we plan to make that available to the  
19 external folks. As to the annotation parts, we  
20 are still working on that to see whether we can  
21 make that available.

22           CHAIRMAN BORSON: That would be very

1 interesting. And I presume that would be a one  
2 way so it would not be a WIKI-type thing where the  
3 applicant would say, oh, I think this provision of  
4 the MPEP is just plain wrong and argue against it.  
5 I know that that was discussed some time ago and  
6 was discarded but I just wondered if, you know,  
7 what the scope is of what you think ultimately  
8 might be available to the outside.

9 MS. GREENLIEF: This application only  
10 provides displaying and searching the content. As  
11 to a collaboration tool, that is a separate tool  
12 and I believe Marti Hearst has provided a demo for  
13 PPAC. And that's called IdeaScale where it would  
14 link the user to the MPEP content and if a user  
15 has a particular comment, the user can type that  
16 in and we will take all those comments into  
17 consideration.

18 CHAIRMAN BORSON: And when you mention  
19 you will take them into consideration, does that  
20 mean it will go through the formal process and  
21 ultimately will be incorporated into the MPEP or  
22 whether it would remain as part of the legislative

1 history, if you will?

2 MS. GREENLIEF: The comments that we  
3 think are appropriate to include we will include  
4 all those. And right now in Ideal Scale we have  
5 posted chapters 500 and 600. We have received a  
6 number of comments. We're reviewing those  
7 comments now and we are working on revising these  
8 two chapters, 500 and 600, to incorporate any  
9 comments.

10 CHAIRMAN BORSON: Thank you very much.  
11 Yeah, Wayne.

12 MR. SOBON: I noticed that you have the  
13 links to the statute and to the rules and  
14 regulations but any thought about linking to  
15 underlying case law as well for the examiners to  
16 see the underlying cases?

17 MR. MORRIS: Actually, in the content  
18 that we have provided, if the case law is used in  
19 the MPEP now it is linked.

20 MS. GREENLIEF: Let me just clarify that  
21 a little bit. We currently don't have links to  
22 particular cases and this is a feature that we're



1 working on for the future so that we hope to  
2 include all the Federal Circuit cases and the  
3 Board decisions and maybe a repository so that we  
4 will provide the link because this is one of the  
5 comments that we received from all users, internal  
6 and external saying that we would like a link to  
7 the particular case. So that's a feature that we  
8 will be working on in the future.

9 CHAIRMAN BORSON: Good. Thank you very  
10 much. That's very interesting.

11 Okay. Any further comments or  
12 questions? If not, thank you very much. We  
13 appreciate your time. Okay. All right. We do  
14 have -- oh, good. This is the follow-up question.  
15 This fellow was talking about patent models.

16 Are you going to -- are you saying that  
17 submitting a working model of the invention is  
18 always allowed as part of the application?  
19 Working model, I don't know whether you're talking  
20 about a working model or a working example. A  
21 working example is something that's written and  
22 described and may include flow diagrams if it's

1 software or it might include code or it might  
2 include pseudo code as a working example. If  
3 you're talking about a working model this might  
4 mean a physical device such as a mock up of a  
5 washing machine, you know, harkening up to the  
6 original days in the previous century. So I don't  
7 know. Just let me open this up to members of the  
8 community here.

9 Peggy, would you like to comment on  
10 this?

11 MS. FOCARINO: Well, we do -- I know in  
12 some areas we still get some working models but we  
13 see fewer and fewer of those as each year goes by.  
14 But there are some areas where the applicant will  
15 bring in a working model or supply it.

16 CHAIRMAN BORSON: Are you seeing that  
17 more in a particular technology area?

18 MS. FOCARINO: Not really. I don't know  
19 if Bob Bahr can speak to that.

20 MR. BAHR: Very few. Yeah, there are  
21 very few. Usually they only come in when there's  
22 some question as to whether or not it works or

1 exactly how it works. And so it's fairly rare for  
2 an examiner to ask for a model but there are -- or  
3 a demonstration. But there are provisions for it  
4 when it's necessary.

5 MS. FOCARINO: What we typically see now  
6 as a replacement is a disk with a video on it that  
7 shows the operation and so that's what you're  
8 getting now more and more than what we used to  
9 have to, you know, see with the model being  
10 brought in years ago.

11 CHAIRMAN BORSON: Sure. Okay. Well,  
12 thank you. And I'd like to thank the person who  
13 wrote this question. He's obviously paying  
14 attention and following up. And if you have any  
15 further comment or question or clarification,  
16 please let us know. Thank you.

17 Okay, then next we'd like to move to  
18 patent office operations with Deputy Commissioner  
19 Peggy Focarino.

20 MS. FOCARINO: Thank you. Good morning.  
21 So I'm going to take you through basically what's  
22 a high level overview of the operations and what's

1     happening in various areas and some of the metrics  
2     that we're tracking. So the first one is to show  
3     you the backlog and we usually show you this every  
4     time we meet. And I think many of you know that  
5     we had a really strong campaign going towards the  
6     end of last year and our goal was to get our  
7     backlog down to under 700,000 applications  
8     awaiting an action. And we didn't make that goal.  
9     We came really close but you can see the trend and  
10    basically the far right of the chart shows you as  
11    of July 11th we are down below 700,000, so we hit  
12    the 692,000 mark and we continue to focus on  
13    attacking our backlog. And of course, a lot of  
14    that is dependent on our filing rate. So as  
15    filings pick up it becomes more of a challenge to  
16    keep driving that number down but at least you can  
17    see the trends and we're definitely making a lot  
18    of progress in spite of the fact that we've had to  
19    turn off overtime and we've had to curtail hiring.  
20    So, you know, this is a really good sign.  
21    Examiners are working really hard and so it's  
22    good. Good news.

1           That backlog number does not include  
2 RCEs and we've talked about this at length before,  
3 too, especially in the previous meeting. So I  
4 wanted to show you what's happening with the RCE  
5 filings. And on the right you'll see the volume  
6 in thousands and on the left axis is the growth  
7 rate. And the takeaway news from this, the good  
8 news is that the growth rate is tapering off so we  
9 seem to be seeing a leveling off and by the end of  
10 this fiscal year we project that the growth rate  
11 will actually be around one percent from the  
12 previous fiscal year.

13           So, you know, we're tracking. This is a  
14 new dashboard dial, if you will. You can see the  
15 actual inventory of RCEs that we have in the  
16 backlog and it's right around 62,000 I think right  
17 now. That red dotted line in the middle  
18 represents when we changed the crediting of the  
19 RCEs, they're worth less to an examiner in terms  
20 of the amount of credit. We also moved the RCEs  
21 from the amended docket of examiners to the  
22 special new case docket. So that's obviously

1 driving some of the backlog numbers here.

2 Wayne.

3 MR. SOBON: Sorry to interrupt. But do  
4 you have any sense about what is behind this  
5 rather stark drop in RCE growth rate? Is it --  
6 can we sense about what are the causes?

7 MS. FOCARINO: I think one of the  
8 factors is that they're not being picked up as  
9 quickly so --

10 CHAIRMAN BORSON: I think Ester could  
11 answer that.

12 MS. FOCARINO: Yes, there you go.

13 MS. KEPPLINGER: The allowance rate has  
14 gone up. So I think when the allowance rate goes  
15 up, if you look at the timeframe that we're  
16 looking at, we have experienced now some  
17 allowances. So those people don't have to file  
18 RCEs would be my guess.

19 MR. STOLL: That's part of it I would  
20 agree. But I also believe that the fact that they  
21 are not put onto the amended docket, people  
22 recognize it's not actually as expeditious in

1 getting them handled and they may be more willing  
2 to amend, exchange, and take allowable subject  
3 matter earlier. At least since we're only talking  
4 about a decrease in the amount of increase.

5 MS. FOCARINO: That's right. That's  
6 right.

7 CHAIRMAN BORSON: Well, have you heard  
8 any comments, Peggy, from the user community about  
9 that? I mean, I think these are important  
10 questions about whether there is an increase in  
11 allowance which is dropping --

12 MR. STOLL: Yeah, Ester calls me and  
13 yells at me a lot about that.

14 CHAIRMAN BORSON: Well, I'd like to  
15 thank Ester Kepplinger for her efforts.

16 MS. FOCARINO: I think there are several  
17 factors here and all the comments you've heard so  
18 far are accurate comments.

19 So let's take a look at the backlog. I  
20 mentioned this but you can see that the backlog  
21 has been growing and part of that is because we  
22 did move the applications from the amended

1 document of the examiner to the special new case  
2 docket of an examiner. So we're watching this  
3 closely obviously and we are discussing situations  
4 where if the backlog gets really high, you know,  
5 we may be wanting to do something about that so  
6 we've been talking to Bob Stoll about this  
7 particular issue.

8 Pendency continues to go down slightly.  
9 The green line is first action pendency and the  
10 blue is total pendency. And just the little red  
11 --

12 MR. STOLL: Can I interrupt for just a  
13 second?

14 MS. FOCARINO: Sure.

15 MR. STOLL: I just want to add one more  
16 piece back on the RCEs. We are in discussions  
17 with our union who has been working with us very  
18 closely on a lot of issues to see whether or not  
19 we can't expand what we handle after final. And  
20 we're in discussions to see if we can't maybe find  
21 a mechanism that doesn't necessitate the RCE as  
22 much as it has in the past. And hopefully we will



1 be able to find something along those lines. And  
2 we've been working very closely with POPA on this.

3 CHAIRMAN BORSON: Well, I wanted to ask  
4 you, Bob, what sort of a listening device did you  
5 use at the PPAC dinner last night in which we  
6 discussed this very issue? Yeah, we have some  
7 further follow-up on this in the executive  
8 session.

9 MR. STOLL: That's fantastic.

10 MS. FOCARINO: That's great. That's  
11 great.

12 MR. STOLL: Go ahead. I'm sorry.

13 MS. FOCARINO: Okay. So the pendency,  
14 as I said, the green is the first action pendency.  
15 It is dropping, although not as much as we would  
16 like. But the red line shows you the effect of us  
17 not being able to have the hiring and the overtime  
18 in place. We had projected a lower first action  
19 pendency. We also projected a lower total  
20 pendency. It's not enough to show it on the chart  
21 there in the blue line but certainly we're  
22 experiencing a change in our pendency projections

1 because we can't hire at the rate that we had  
2 wanted to and because we had to suspend overtime.

3 Our actions for disposal, we've talked a  
4 lot about this in the past and the good news here  
5 is that it continues to go down. The dotted line  
6 there that you see in black is basically what Dave  
7 Kappos has asked us to have as a target, which is  
8 just over 2.0, so he would like us to get down in  
9 the very low 2.1 -- between 2.1 and 2.2 actions  
10 per disposal.

11 This is something that we track in our  
12 quality index data set so we're watching this very  
13 closely. And obviously certain technologies are  
14 normally going to have higher actions per disposal  
15 but we certainly are looking at areas that have  
16 outliers, both good and bad and doing a lot of  
17 training to try to bring that number down to a  
18 reasonable level.

19 Ester.

20 MS. KEPPLINGER: And this number  
21 includes designs?

22 MS. FOCARINO: This is just UPR, utility

1 plant reissue.

2 MS. KEPPLINGER: Okay. So you've gone  
3 back that way which we had done before?

4 MS. FOCARINO: Right. Yes. Yes. Yes.

5 MR. ADLER: Is there any correlation --  
6 do you have any data that correlates this with the  
7 first action interview program?

8 MS. FOCARINO: I know we have allowance  
9 rate data but I've got to believe that there's a  
10 strong correlation between first action interview  
11 pilot cases and this number.

12 MR. ADLER: I would think. I would  
13 hope.

14 MS. FOCARINO: And certainly we can --

15 MR. DWYER: Yeah, we're (inaudible)  
16 since the first action (inaudible) you have to  
17 make sure that a lot of them get through the  
18 process (inaudible). So we're right at that stage  
19 now where we can start looking at and see how is  
20 this affected. Just anecdotally it's very clear  
21 that the action (inaudible).

22 CHAIRMAN BORSON: I'm sorry, I hate to

1 interrupt but I'm not sure that everybody on the  
2 outside world could hear the comment. Could you  
3 repeat what you said at one of the microphones,  
4 please, Tony or Jim? Whoever it is.

5 MR. DWYER: Yes, just with respect to  
6 taking the data with QIR and looking to see how  
7 first action interview has affected our actions  
8 per disposal, is it important when you start a  
9 project by first action interview you let it play  
10 out especially in this case because with disposals  
11 you have to get the cases all the way through and  
12 get enough of them through in order for the data  
13 to be accurate. And we're at a stage now that we  
14 have enough cases that have gone through to  
15 allowance and to abandonment through the first  
16 action interview that we could start looking at  
17 this. But anecdotally it's pretty clear that the  
18 first action interview program has lowered the  
19 actions per disposal.

20 CHAIRMAN BORSON: Yes, Marc, did you  
21 have a comment?

22 MR. ADLER: Good.

1 MS. FOCARINO: Okay. Our allowance rate  
2 is rising slowly so we are right about at 48  
3 percent now. So again, I think a lot of factors  
4 are contributing to this, including the interview  
5 practice and the focus on that and compact  
6 prosecution. And so that's another trend that's  
7 good news hopefully.

8 We talked about the backlog. We talked  
9 about pendency and we're seeing those go down in  
10 spite of the fact that we haven't been able to  
11 hire and we had to suspend overtime. One of the  
12 big factors that contribute is this attrition  
13 rate. I know we like to say again that it's the  
14 economy is a big factor in this and certainly it  
15 does play a role but we can see our attrition rate  
16 is just around three percent right now. So it's  
17 really low. So what's happening is we have a  
18 group of examiners and we currently have just  
19 under 7,000 patent examiners. They are staying  
20 with us. They are getting promoted so their  
21 output is higher so they're able to really attack  
22 the backlog.

1           And if we follow our historic trends,  
2       what we see is if we keep an examiner for three  
3       years the attrition rate goes down to just about  
4       two percent. So hopefully these examiners will  
5       stay with us in spite of when the economy picks up  
6       that we'll pick a significant number of them.

7           Wayne.

8           MR. SOBON: Do you -- you may have  
9       talked about this in the prior sessions but do you  
10      have anything like internal engagement surveys or  
11      climate surveys about just, you know, personnel  
12      engagement as well to help support attribution  
13      aside from external economic factors? You know,  
14      how the workforce is feeling about the  
15      environment?

16           MS. FOCARINO: We do. Right. We have  
17      survey data. We have the Employee Viewpoint  
18      Survey that is given every year and it's a survey  
19      that's government-wide actually.

20           MR. STOLL: Pat, did you want to add  
21      anything to that?

22           MS. FOCARINO: Oh, I didn't see Pat down

1       there.

2                   MS. RICHTER:   Good morning.   Hi.   Yes.

3       As Peggy mentioned, we have the Employee Viewpoint  
4       Survey that's administered by the Office of  
5       Personnel Management, OPM.   And actually, we just  
6       found out the other day because the survey took  
7       place in the last couple of months and we got the  
8       finalized participation rate and I'm happy to say  
9       that our employees participated -- 65 percent of  
10      our employees participated in the Employee  
11      Viewpoint Survey which was up 17 percent from last  
12      year.   So we hope to get -- the data should come  
13      out in the fall and then we take a look at the  
14      data and we work with each of the business units  
15      to see where there are opportunities where we can  
16      improve things or engage employees or where we've  
17      had successes that we can help replicate in other  
18      units.

19                   MR. SOBON:   Would that be -- is that  
20      public or is that sharable with this --

21                   MS. RICHTER:   Yeah, you usually see it  
22      on -- the Partnership for Public Service usually

1 takes -- extracts information from that Employee  
2 Viewpoint Survey and publishes it every year.

3 MR. SOBON: Great.

4 MS. RICHTER: So you can look for past  
5 years and then you can look and they'll have a  
6 number of questions, factors that they'll show.  
7 And a lot of it is, employees, how they feel about  
8 work, how they feel about their supervisor, et  
9 cetera, et cetera.

10 MR. SOBON: Awesome. Thanks.

11 MS. FOCARINO: And I'm sure we can  
12 publish that on the PPAC website as soon as our  
13 data becomes available. But even last year the  
14 2010 results were very positive showing an  
15 increase in satisfaction. So it's another thing  
16 that we look at and it's good news.

17 Our historical quality measures, the two  
18 of the in-process compliance rate and the final  
19 disposition rate just to see -- give you a look at  
20 how we're tracking, they were certainly within our  
21 range and there's a one percent range for our  
22 target. And we have, as you know, five additional



1 measures that we've started to look at, so at the  
2 end of the fiscal year you'll be seeing those  
3 baseline measures along with our two historic  
4 measures. So again, looks good. I know, you  
5 know, we definitely had some good input from the  
6 work that we've done with you and our roundtables  
7 and what other things we need to be looking at.  
8 And we also look at our quality index data set  
9 that really drills down to very specific things  
10 that gives us a really -- another good measure to,  
11 you know, find areas that we really need to focus  
12 on and offer training to try to bring examiners  
13 back into sort of the norm for the particular  
14 technology area that they're working in.

15 CHAIRMAN BORSON: Peggy, I just wanted  
16 to reiterate something that we've mentioned before  
17 which is that there are really sort of two  
18 purposes for the quality approach. Obviously, one  
19 of them is internal to the office about, you know,  
20 training examiners, trying to identify outliers  
21 and bring those back into the fold. And the  
22 other, at least from our side, we were trying to

1 drive consideration of best practices. And those  
2 best practices can come from a number of different  
3 areas, including board decisions, district court  
4 decisions, Federal Circuit decisions, and Supreme  
5 Court. So we just wanted to make sure that we all  
6 have that perspective as well as the internal  
7 perspective.

8 MS. FOCARINO: Right. Okay. Interview  
9 time. We've been tracking this closely since we  
10 decided to grant examiners time for reaching out  
11 to applicants to hold examiner initiative  
12 interviews. So you can see again that we've  
13 noticed an increase in that. And I think this is  
14 another thing that's contributing to reduction in  
15 RCEs, reduction in actions per disposal, more  
16 contact prosecution because we're getting together  
17 with our applicants earlier in prosecution and  
18 talking about the issues earlier. So even though  
19 the time spent on this is going up which is not  
20 production time, certainly it's having a good  
21 effect in terms of disposing of applications  
22 sooner and hopefully preventing filing of any

1 continuing applications.

2 MS. REA: Peggy, can I just add  
3 something there? I think it's important for our  
4 user community to appreciate the fact that it's  
5 not just the interview time that's going up, that  
6 really a lot of PTO resources have gone into  
7 actually training our examiners. The training  
8 modules for interview practice are actually very,  
9 very good. We're getting our examiners training  
10 modules and negotiation skills, for instance. And  
11 I think we're just upping the quality of our  
12 examiner and their comfort level. So I think that  
13 overall we didn't just ask them to conduct more  
14 interviews. We're actually providing what I  
15 consider to be amazing, excellent training to give  
16 them the confidence to have more interviews so  
17 that indeed prosecution is more compact. But I  
18 think the caliber of our examiners is going up  
19 because of it and their confidence level.

20 Thank you.

21 CHAIRMAN BORSON: Yes, Robert.

22 MR. BUDENS: I want to -- back on

1 Terry's comments about when it comes from the  
2 other side, from the examiner point of view, too,  
3 because I think we're seeing more and more  
4 applicants and their attorneys coming to the table  
5 in interviews willing to talk and willing to work  
6 on cases and work with the examiner to come to  
7 allowable subject matter. And I think that's  
8 reflected in two things. One, statistically in  
9 the increase in the allowance rate. Two,  
10 anecdotally in the more and more attorneys we see  
11 at the guard stations trying to get past us to get  
12 into interviews and stuff so I think, you know,  
13 there's improvement in a sense of more  
14 collaboration I think we're getting on both sides  
15 of the table.

16 CHAIRMAN BORSON: Yeah, that's very  
17 good. Thank you, Robert.

18 Okay, please. Thank you.

19 MS. FOCARINO: So I'll move quickly so  
20 we can keep on schedule. We talked before about  
21 our effort now to clean out the older cases. And  
22 so the idea here is to clean off -- clean out the

1 tail of old cases. But just to give you an idea  
2 of where we are, we're making great progress this  
3 year on our goal. We wanted to work off 235,000  
4 cases in this tail of older applications. And so  
5 to date we worked off a little over 190,000 of  
6 them. And we have about 45,000 left to do before  
7 the end of the fiscal year. So it's a great  
8 effort.

9           It's been -- the examiners have really  
10 embraced this effort so it's been a fun campaign  
11 and Terry's been our champion of this. And we had  
12 a function yesterday here in the auditorium where  
13 examiners came and sort of rallied around the  
14 goal. And so it's been really successful. So the  
15 burgundy color there represents how many  
16 applications have been examined and the blue is  
17 what's remaining to go. But you can see that  
18 examiners have really, really focused their  
19 efforts on this and the supervisors have been  
20 great at trying to move work and working with one  
21 another. The tech center directors have been  
22 really great and collaborative in moving work

1 around to areas where there's an excess  
2 examination capacity. So it's really taken a lot  
3 of cooperation and our managers really changing  
4 the way they think about who owns the work and the  
5 examination of the work. And this is just the  
6 first step. We'll continue after this fiscal year  
7 to keep refining so we're actually chopping the  
8 tail off so that we can get to that 10 month first  
9 action pendency.

10 CHAIRMAN BORSON: Ester.

11 MR. ADLER: So as we work off the tail,  
12 obviously there will be a new tail. So we need  
13 to, I assume, see a new chart next year.

14 MS. FOCARINO: Yes.

15 MR. ADLER: And then you can start  
16 chopping those off.

17 MS. FOCARINO: Absolutely. So you can  
18 see there's still some tail left. It's hard to  
19 see on a chart but the next effort will be to  
20 actually chop off a portion of the right of the  
21 tail and then to keep squeezing so that we've got  
22 very few cases on either side of that 10-month

1 filing date.

2 CHAIRMAN BORSON: Okay, good.

3 MS. FOCARINO: Just some other  
4 initiatives we're doing. We're really looking --  
5 I'm sorry.

6 MS. KEPPLINGER: Yeah, I did have one  
7 question. So clearly with the RCE numbers,  
8 because the growth rate has decreased and you're  
9 beginning to see a flattening of the RCEs and more  
10 than that number is filed. The examiners -- some  
11 of the examiners are picking the RCEs up and doing  
12 them so that's good. I did have a question. With  
13 this -- with the COPA chart, if you placed RCEs in  
14 this, where would they fall in the date? If you  
15 compared them to continuations which are in this  
16 chart, do you know where the RCEs that are in the  
17 backlog would be falling since they're not in the  
18 COPA?

19 MR. DWYER: With respect to the RCE  
20 backlog and how would overlay on this chart, most  
21 of the RCE backlog is recent because it's the  
22 recent change that occurred. So I don't think

1 you'd see much with respect to the RCEs in this  
2 tail. When we do redo it next year there might be  
3 a different story.

4 MR. STOLL: Right now we did RCEs on the  
5 amended docket so the age is not that old.

6 MR. SOBON: I guess the related question  
7 is the perennial question but this pendency is per  
8 application pendency. It's not total life  
9 pendency of first original application plus RCE or  
10 plus two RCEs equals, you know, 90 months  
11 pendency. Right? It's --

12 MS. FOCARINO: This is basically the age  
13 of the applications.

14 MR. SOBON: Of the particular  
15 applications.

16 MS. FOCARINO: Right. So it's not  
17 reflecting pendency at all. These are  
18 applications that are waiting to be worked on.  
19 Right.

20 MR. SOBON: Right. But so to be exact,  
21 the filing date is the filing date of that  
22 particular application, not the original priority



1 date of the full family --

2 MS. FOCARINO: That's right.

3 MR. SOBON: -- that it's descending on.

4 MS. FOCARINO: That's right. This is  
5 the actual filing date.

6 MR. SOBON: Right.

7 MS. FOCARINO: Okay. So we're really  
8 focused that first effort there, PPOP as we like  
9 to call it. We've got Greg Mills, who is  
10 providing us with regular updates and we're  
11 focused on working on the oldest application. So  
12 we are making great progress there. We have some  
13 very old applications, some of them because  
14 they've actually fallen off the radar screen, if  
15 you will, and have not been reflected in a pending  
16 status. So we've been really focused on that  
17 effort and on tech centers who are doing a great  
18 job.

19 The second thing is our patent examiner  
20 technical training program where we've reached out  
21 to our stakeholder community and have great  
22 participation levels there. We've had over 30

1 organizations come in and give our examiners  
2 technical training and this is on their own time  
3 and at their own expense. And so we've had over  
4 3,000 examiners that have gotten technical  
5 training because of the participation of our  
6 stakeholder community. So that's been a really  
7 great effort.

8           This year also for the first time we've  
9 offered examiners a bank of time so they can use  
10 it as they see fit within categories of training.  
11 There's technical training, there's legal  
12 training, there's leadership development training.  
13 So for the first time we've given each examiner a  
14 bank of time that they can use to, you know,  
15 further develop their skills. So that's been a  
16 really good program also.

17           We've also given all of our SPES  
18 coaching and mentoring training. And this is  
19 really to help them incentivize examiners to reach  
20 out to applicants to hold better interviews, to be  
21 more collaborative, and to really be more of a  
22 coach and mentor and help facilitate applications

1 moving through the process.

2           And the last one here Terry had just  
3 mentioned, our negotiation training is a new  
4 training that's really more in-depth than our  
5 interview training. And we can provide you with  
6 this training also. We'll post it. But it's a  
7 really great package, very robust and it's focused  
8 on examiners working with applicants to really get  
9 through the issues and have it as a collaborative  
10 process and not as more of a conflict resolution  
11 process but really to focus on collaboration and  
12 working together to move the application through  
13 the process. So that's a really great training  
14 package.

15           CHAIRMAN BORSON: Well, Peggy, I wanted  
16 to thank you for that. As you may recall, some of  
17 the comments that we made in the annual report  
18 involve mentoring and training of SPEs and  
19 management skill training, and I'm very pleased to  
20 see that that's moving ahead. And I look forward  
21 to, you know, hearing more about these, you know,  
22 the special time, these 25 hours of the time bank

1 is just such a great idea. You know, it gives --  
2 it demonstrates to examiners that you trust them  
3 and that they will be operating in their best  
4 interest to develop themselves. So thank you so  
5 much. I appreciate that.

6 Just one sort of offhand comment --

7 MR. ADLER: I have a question.

8 CHAIRMAN BORSON: Yeah, I understand.

9 Just an offhand comment. Well, go ahead. Why  
10 don't you do it, Marc?

11 MR. ADLER: I'm curious about some data  
12 that you may or may not have. Do you have data on  
13 the percentage of cases that become abandoned by  
14 tech center as in comparison to the time to first  
15 office action? In other words, if they didn't get  
16 an office action in 32 months, what percentage of  
17 those drop off the table?

18 MS. FOCARINO: We do have -- you're just  
19 talking about abandonments versus time to first  
20 action, just that --

21 MR. ADLER: Yeah. I'm thinking of the  
22 track three in terms of trying to understand the

1 relationship between what happens to cases where  
2 nobody cares about whether they're, you know,  
3 anybody picks them up and whether you know that by  
4 tech center. Do you understand?

5 MS. FOCARINO: We would, yes. We do  
6 have that data. And we can actually -- we could  
7 get it. I don't know if, Jim, if you want to make  
8 a comment.

9 MR. DWYER: Yes. You're talking about  
10 express abandonment.

11 MS. FOCARINO: Right.

12 MR. DWYER: Yes. Well, it could be  
13 express abandonment or just failure to respond. I  
14 mean, is that -- I mean, nobody files an express,  
15 I mean --

16 MR. ADLER: It could.

17 MR. DWYER: Well, yeah, if they have yet  
18 to be acted on there's nothing the applicant needs  
19 to do to keep the case alive so the only thing to  
20 make it into abandon status would be through  
21 express abandonment.

22 MR. BAHR: I think what you're asking

1 for is a relationship between when we did the  
2 first office action, how long that took and the  
3 likelihood -- and how often those cases go  
4 abandoned.

5 MR. ADLER: Correct. Yeah.

6 MR. BAHR: The cases where we do an  
7 office action early, you know, in pendency, do  
8 they tend to get responses more frequently?

9 MR. STOLL: We could find that  
10 information.

11 MR. ADLER: I'm just wondering. We're  
12 focusing on all this tail stuff. I wonder whether  
13 maybe some of those would have just gone on  
14 anyway. I can't imagine people would be sitting  
15 around waiting to find them.

16 MR. STOLL: Dave, could you run that for  
17 us, please, and get the information over to the  
18 (inaudible)? Thank you, Dave Fitzpatrick. Do you  
19 understand my question?

20 MR. FITZPATRICK: Yes.

21 MR. STOLL: Okay, thanks.

22 CHAIRMAN BORSON: Okay, thank you very

1 much, Peggy. We do have a question from the  
2 outside. Has the current budget situation  
3 impacted the Board of Patent Appeals and  
4 Interferences and to what extent? For example,  
5 with respect to staffing and rulemaking. Do we  
6 have -- is Bruce still here? No? Is Tony still  
7 here?

8 MS. REA: I could provide a brief  
9 comment. The Board of Patent Appeals and  
10 Interferences would probably have hired additional  
11 examiners had we received all of the fees that  
12 came into us last fiscal year. That was one of  
13 the things that was also delayed. I believe we  
14 have about 92 judges, administrative patent judges  
15 right now. We'd like to hire more now even before  
16 patent reform is passed. So it has indeed  
17 affected their operations. However, James Smith  
18 just joined us back in May and he is  
19 revolutionizing the Board of Patent Appeals and  
20 Interferences. And he has a plethora of wonderful  
21 ideas, some of it requires money, other of it  
22 doesn't. So we do expect significant changes

1       there just because of the new leadership at the  
2       Board and also with patent reform and the  
3       instrumental action that they're going to, you  
4       know, that they're going to take with these  
5       interparties review type procedures.

6                   CHAIRMAN BORSON:  Thank you very much,  
7       Terry.  Comment, Wayne?

8                   MR. SOBON:  Yeah, actually following up  
9       on that.  I think it would be great if he could  
10      perhaps come to our next PPAC meeting that we'll  
11      be having and present some of those things as well  
12      as I think we'd be interested in the statistics  
13      because I'd be most interested in the detail  
14      statistics given the sort of fall off on growth  
15      rate of RCEs.  Another obvious part of the  
16      hydraulics is potential, you know, increases of  
17      appeals at the Board and how those are being  
18      processed and, you know, processing rates and  
19      allowance rates.

20                  MS. REA:  I'm sure he'd like to do that  
21      so I will make that suggestion and he will come  
22      with tremendous amounts of data so you can all get



1 a feel for where we're at right now.

2 MR. SOBON: Awesome.

3 CHAIRMAN BORSON: Very good. Thank you  
4 so much. Yes.

5 MR. FOREMAN: Peggy, I was just curious.  
6 On the tail, was there any traumatic impact from  
7 the exchange program where applicants could take a  
8 current application and move it up in place? Did  
9 that help work off the tail at all?

10 MS. FOCARINO: Not at all.

11 MR. FOREMAN: Not at all.

12 MS. FOCARINO: I think the volume of  
13 cases that we actually realized in that program  
14 was probably around 50.

15 MR. FOREMAN: And of the 190,000 or so  
16 that have been worked off, how many of those when  
17 you contacted the applicant they just said my  
18 application is obsolete at this point? Five years  
19 ago when I applied I thought I had  
20 state-of-the-art technology but today it's  
21 irrelevant because technology is surpassed. And  
22 that's why they were willing to get these, you

1 know, disposed of.

2 MS. FOCARINO: Well, I don't believe  
3 that we -- we actually just picked them up for  
4 examination like we would any other case so it's  
5 not an effort where we reached out to applicants  
6 asking them if they still wanted --

7 MR. ADLER: This is sort of where I was  
8 -- this is sort of where I was going. I'm just  
9 wondering whether the technology by technology  
10 center, some of those applications, those  
11 inventions may be totally obsolete. You might be  
12 working on things that nobody cares about anymore.

13 MR. BUDENS: I think, Marc, the problem  
14 is we probably wouldn't know that until -- except  
15 for cases where they got restricted and they  
16 didn't respond to the restriction requirement or  
17 something. Other than that the cases are just  
18 having a first action sent out on them and then we  
19 have to wait and see whether they go abandoned  
20 after first action.

21 MR. ADLER: So the real question is is  
22 there -- are there cases in the tail that, you

1 know, right now there's no incentive for them to  
2 bail out because if they don't have another  
3 application that's pending they're not going to  
4 jump in line. At the same time, their technology  
5 may be obsolete but nobody's contacted them. Is  
6 there another way to incentivize these applicants,  
7 just abandon. Right? Maybe it's giving them some  
8 sort of a refund or a partial refund since there's  
9 no examination been taking place anyway. And I  
10 know you don't want to give money away --

11 MR. STOLL: Or implementing track three  
12 which allows them to defer payment on some of  
13 these things.

14 MR. BAHR: There is a provision for  
15 cases filed after 2004, I think, that you can  
16 (inaudible) abandon and get a refund but just  
17 people don't do it.

18 CHAIRMAN BORSON: Okay. Thank you very  
19 much. I'd like to move ahead with our agenda.  
20 Next on our agenda is a description of the  
21 telework legislation update with Patricia Richter,  
22 Chief Administrative Officer. Please, Patricia,

1 welcome.

2 MS. RICHTER: Good morning. Thanks for  
3 having me. I appreciate it. This is my first  
4 opportunity to address the groups so I'm very  
5 happy to be here. And I was asked to come just to  
6 give an overview of the Telework Enhancement Act  
7 of 2010. And what that means both for the Federal  
8 government as well as the PTO.

9 So to go forward, okay, in terms of the  
10 Federal government, because not everybody is  
11 advanced in telework, the legislation codifies  
12 granting federal employees eligibility to  
13 telework. Agencies had to let employees know  
14 whether or not they were eligible to telework by,  
15 you know, virtue of their position. Requires  
16 federal agencies to establish telework policies.  
17 Requires agencies to develop -- to designate a  
18 telework managing officer, which we do have in  
19 Denette Campbell here. On or before June 7th,  
20 federal agencies were expected to establish the  
21 policy, determine employee eligibility, notify all  
22 employees of their eligibility, establish

1 interactive training programs for teleworkers and  
2 telework managers, and include telework in  
3 business continuity plans or COOP plans. And  
4 actually, because we've had telework here at this  
5 agency for quite a long time, we already had done  
6 all of those things but we are moving to the other  
7 phase of the legislation which is to establish an  
8 advisory committee, an oversight committee, and  
9 the program.

10 So in terms of the legislation for the  
11 PTO, this will allow us -- and we were  
12 specifically named in the legislation -- to  
13 conduct a seven year test pilot program. And the  
14 program is designed to enhance cost savings or  
15 other efficiencies that would accrue to the  
16 government. We have a committee that's comprised  
17 of equal representation of labor and management  
18 and our program participants would be full-time  
19 teleworking employees. That's what constitutes  
20 their eligibility.

21 So we established the committee in March  
22 of 2011. Okay. And it's made up of -- there were

1 two representatives from Patents Management, two  
2 representatives from Trademarks Management, myself  
3 as the chief administrative officer, the head of  
4 labor relations, two representatives from POPA,  
5 NTEU 245, and NTEU 243. So there were 12 of us  
6 and then we had alternates in the room, as well as  
7 other subject matter experts in things that helped  
8 us develop the operating procedures that's  
9 required under the legislation.

10 Okay. So prior to the program  
11 implementation we are in the process of finalizing  
12 a cost benefits analysis and the criteria for  
13 evaluating the program. And that's a lot of what  
14 the Telework Oversight Committee worked on in the  
15 last several months, how we would judge whether or  
16 not we were successful in the program, et cetera.  
17 And it's to be submitted to the administrator of  
18 general services, you know, GSA, and to the  
19 appropriate committees of Congress.

20 So in our process we do vet documents  
21 through the Department of Commerce and we're  
22 working with Governmental Affairs to make that

1       happen. And the operating procedures actually  
2       have been developed and we did have a signatory  
3       with the three union presidents as well as myself  
4       to establish the memo saying that we are  
5       establishing the operating procedures.

6               In the cost benefits analysis, some of  
7       the items that we'll be looking at is the impact  
8       on the agency efficiency, the impact on real  
9       estate, continuity of operations, reduction in  
10      transit subsidy, environmental impacts, staffing  
11      impacts, and administrative support. So these are  
12      all sub-elements of that that are all factored in  
13      to the cost benefits analysis.

14             In terms of the operating procedures, we  
15      are -- it's going to provide for the appropriate  
16      functioning of the program. So we laid out  
17      actually the criteria, how people will apply,  
18      what's the eligibility criteria, et cetera. And  
19      we, as part of the legislation it requires  
20      agencies to make sure that we use reasonable  
21      technological alternatives to employ travel before  
22      requiring employees to travel back to our campus

1 here. The program is applied consistently and  
2 equitably throughout the Patent and Trademark  
3 Office and the operating standard is developed and  
4 implemented that maximizes telework and minimizes  
5 agency travel expenses.

6           And since we have very different  
7 bargaining units as well as three different unions  
8 that represent employees at different parts of our  
9 organization, it was certainly a challenge but one  
10 I'm glad to say that the Oversight Committee I  
11 think really met, and in all seriousness, I think  
12 did a good job in pulling together what would be  
13 enough common ground so that we could establish  
14 our program.

15           In terms of eligibility, what we've  
16 established initially is that in order to -- you  
17 have to be eligible to telework a full pay period  
18 but for the bi-weekly reporting requirement we do  
19 have hoteling programs now. We do know some  
20 employees choose not to opt into them. Some we  
21 know from a survey that we conducted while we were  
22 creating the operating procedures that some



1 employees are actually waiting until this goes  
2 into effect. There's a requirement under OPM that  
3 employees report back once a bi-week currently  
4 when this is their home office. And so once the  
5 program is enacted the employee is going to  
6 voluntarily change their official duty station to  
7 outside of the 50- mile radius which is considered  
8 to be the local commuting area. So right now  
9 anybody who lives outside the 50 miles, and we do  
10 have about 500 and change employees that currently  
11 live outside the 50 miles, they come back once a  
12 bi-week. Once we enact the pilot program they  
13 won't have that reporting requirement anymore.

14 Employees do waive rights to travel  
15 expenses for a number of employee-paid trips which  
16 we did negotiate with our union partners. And I  
17 think we came to a good number that's going to  
18 work both for the employees and the agency. And  
19 the employee will ultimately, you know, has to be  
20 identified as part of the pilot program.

21 We're going to phase in participation  
22 because, you know, we want to make sure that we

1 are successful in implementing the program. So  
2 after reviewing everything we had we settled on  
3 taking 25 percent of our current full- time  
4 teleworkers who were offered -- will be offered  
5 the opportunity to join the pilot program. So for  
6 our POPA employees, mostly the patent examiners,  
7 there are 668 slots. For the NTEU 245, that's the  
8 trademark folks, there will be 84 slots. And for  
9 NTEU 243, which that union actually covers almost  
10 every business unit, there will be 88 slots  
11 initially. Okay. As the program goes on and  
12 phases on, we will keep that number as more people  
13 are eligible to full- time teleworker employees.  
14 You know, we hired a large number of patent  
15 examiners in the last year as they're here for two  
16 years and they're eligible to full-time telework.  
17 And that augments the number of eligible  
18 teleworkers, full- time teleworkers, and we'll  
19 keep the number at 25 percent going into the first  
20 year.

21 Okay. For the alternate worksites on  
22 the test program, all the alternate are temporary,

1 you know, worksites, work space. Worksites must  
2 meet security, safety, and privacy requirements.  
3 We can't have employees working in public areas,  
4 so even though we know some folks might like to  
5 work at Starbucks, et cetera, that's kind of off  
6 limits.

7           Okay. An approved official duty station  
8 is one in a city, town, and/or country and state  
9 in which the individual employee works. We are  
10 limiting the program initially to employees  
11 relocating within the 48 contiguous states  
12 currently.

13           In terms of impact on employee pay, for  
14 our patient examiners it's not as much of an  
15 impact actually because since they have a special  
16 pay rate and it's carried out nationwide, unless  
17 they move to a cost of living area that was higher  
18 than what they're currently paid, they would  
19 retain their pay rate. For other employees  
20 participating in the program, if they were to move  
21 to a lower cost of living area and they don't have  
22 a special pay rate, then their pay would drop to

1 the lower cost of living area because their duty  
2 station will change.

3 MR. ADLER: Why would they do that?

4 MS. RICHTER: I guess I heard a question  
5 on the side as why would some folks do that.

6 Well, actually, when we surveyed employees,  
7 employees had a lot of different reasons as to why  
8 they would like to relocate outside 50 miles.

9 Some of it's for family, some of it's because they  
10 have parents or other family members who are ill  
11 and they need to be near them, et cetera. So  
12 folks, that's a personal decision obviously  
13 everybody's going to make.

14 The travel requirements is we're  
15 authorized to establish a reasonable maximum  
16 number of occasional visits to headquarters before  
17 employees are eligible for payment of any accrued  
18 travel expenses. And the intent of the program as  
19 I said before is to bring employees back as few  
20 times as possible and where possible what we  
21 discussed was to combine purposes for trips so  
22 that there's not necessary travel or expense on

1 either the employee or the agency's part.

2           Obviously, in order to know if, you  
3 know, we know where we've been, we need to know  
4 what's happened along the road. So this is some  
5 of the factors we'll look at to measuring the  
6 program's success, and that'll include the  
7 agency's performance, the cost effectiveness,  
8 employee satisfaction. I know before there was a  
9 questionnaire like employee surveys and we were  
10 also looking to see if we could get OPM to maybe  
11 enhance some of the telework questions that they  
12 ask on the Employee Viewpoint Survey as well as  
13 make determinations if we were to follow up with  
14 surveys of our own to see how -- what the impact  
15 of the program has been in terms of employee  
16 satisfaction, for recruitment purposes,  
17 stakeholder satisfaction, as well as retention.  
18 So these are some of the major factors we'll look  
19 at.

20           In terms of evaluation, we have  
21 quantitative analysis of production data and at  
22 designated intervals we will be assessing the

1 production data and examination time for the  
2 different populations of employees to make sure  
3 we're on target and on track. Qualitative  
4 perception data survey analysis, so we'll have  
5 surveys to gather information about job  
6 satisfaction, time savings, et cetera, job  
7 performance, collaboration, and retention. And a  
8 lot of that is dependent, of course, on our tools  
9 that we'll have. And as we get newer tools and  
10 they get deployed throughout the work place,  
11 that's going to enhance our ability to -- and  
12 maximize the effectiveness of having a telework  
13 process.

14 So I don't know if anybody has any --

15 CHAIRMAN BORSON: Okay. Thank you,  
16 Patricia.

17 MS. RICHTER: -- questions?

18 CHAIRMAN BORSON: Are there any comments  
19 or questions?

20 Yes, Wayne.

21 MR. SOBON: I think it's great because  
22 all workforces are going towards these models.

1 And one question I have obviously from the user  
2 community is going to be the biggest concern is  
3 availability and effectiveness of the telework  
4 program. So going to the point about stakeholder  
5 satisfaction, are there thoughts about how to do  
6 sort of anonymous surveys or, you know,  
7 post-action surveys to see was your examiner  
8 available or, you know, to find that kind of data  
9 just to see from the user community how well  
10 that's working?

11 MS. RICHTER: We did talk a lot about  
12 that and there is a gentleman that's on the patent  
13 staff that does do a lot of survey work or  
14 information work. And he explained to us some of  
15 the pros and cons if we were to try to design  
16 something and what it would take to maintain a  
17 database because obviously the stakeholders or the  
18 user community is so wide and we may or may not  
19 have the capability of really updating and keeping  
20 that database and being able to reach out to  
21 everybody the way we might like. So we're going  
22 to look at the other factors that we do have or

1 the way we look at whether it's feedback from the  
2 user community, forms like this or other forms of  
3 focus groups. And I know that the patent  
4 organization does do a lot of quality control type  
5 things and that does include some stakeholder  
6 feedback. So we're going to judge by that.  
7 Obviously, one easy measure is if complaints go up  
8 then we have to take a look at what's the  
9 rationale.

10 MR. ADLER: Would an applicant know  
11 whether the examiner is teleworking or not?

12 MS. RICHTER: I don't think so because  
13 we actually have over 2,500 full-time teleworkers  
14 currently.

15 MR. ADLER: So it might be hard to  
16 collect feedback if there were complaints.

17 MS. RICHTER: Except if we knew who the  
18 complaint was against or the particular art unit  
19 it was against, then we would have the sense of  
20 who was teleworking or not.

21 MR. ADLER: All right.

22 MS. RICHTER: That's one way to do it.



1                   CHAIRMAN BORSON:   Okay.   Well, Patricia,  
2   thank you very much.

3                   MS. RICHTER:   No, thank you.

4                   CHAIRMAN BORSON:   Thank you for your  
5   comments.   I'd like to move ahead to a break now.  
6   We are a little bit behind schedule but we'll take  
7   a 10 minute break and then we'll return.   I have  
8   12:02.   We'll return at 11:12.   11:12, not 12:12.  
9   Thank you.

10   (Recess)

11                   CHAIRMAN BORSON:   Okay, we're a few  
12   minutes behind in our agenda but we'll be  
13   finishing up well before 6 o'clock tonight so  
14   that's okay.   I'd like to move on now to the  
15   patent process re-

16                   Engineering, Jim Dwyer, assistant deputy  
17   commissioner is here.   And oh, okay.   And  
18   Christian Chase is also here.   So please,  
19   gentlemen.

20                   MR. DWYER:   This is just an update from  
21   our April 14th when we reported out to PPAC.   And  
22   at that time we talked a little bit about

1 restriction practice. And Bob Bahr gave a little  
2 bit more specifics of where they are in  
3 restriction. We've been working on double  
4 patenting color drawings, the classification and  
5 transfer. That's cases within the technology  
6 centers as to getting them to the best examiner  
7 available, enhancing technical knowledge.

8 Originally, we looked internally at how examiners  
9 can share their knowledge in a more efficient  
10 manner. And we went back to that team and asked  
11 them to look at the external as to how you can  
12 bring folks from the outside in to answer  
13 technical questions and so forth.

14 We looked at CRU thoroughly as to their  
15 processes. We looked at pre-exam and post-exam  
16 and for one specific area of that that we believe  
17 we can do ahead of our PE2E -- the next slide here  
18 -- is to looking at the applicant or office  
19 interface. This is a piece where if we give the  
20 applicant a little bit more control over the  
21 bibliographic data, metadata that they submit with  
22 respect to applications, that the chances of

1 accuracy go way up. And our correction cycles and  
2 time cycles within the pre and post. And if you  
3 look down to the fourth bullet there, systems to  
4 allow applicant to review change and validate data  
5 prior to publication, this is kind of the same  
6 concept of giving the applicant more ability to do  
7 review prior to actual publication. And  
8 obviously, that reduces our time at post and also  
9 reduces the number of certificate of corrections  
10 that might come through.

11 The second bullet is interviewing button  
12 and pair. This as a suggestion I think came from  
13 an AIPLA subcommittee and the concept of the  
14 ability for applicant to submit using private pair  
15 and a request for an interview would then pop up  
16 into an examiner's e-mail as a request so that we  
17 would have basically a -- that would be the first  
18 indication that there was a request for an  
19 interview. And that's very important with  
20 statistics to find out actually how many interview  
21 are requested and how many interviews are granted.  
22 So it would again start the discussion between the

1 examiner and the applicant to set up an interview  
2 time.

3 IDS reference submission. This is  
4 basic. We already have form fillable. One of the  
5 things that the teams looked at is how can we  
6 increase the use of this because we know this is a  
7 piece of where we have a lot of errors because of  
8 transcription and the more the applicant controls  
9 in this piece the better the quality of our  
10 product.

11 And looking at the last bullet is  
12 basically looking at ways in which we can do more  
13 education to the public to use the systems to  
14 their advantage and to our advantage.

15 CHAIRMAN BORSON: Ester, please.

16 MS. KEPPLINGER: Yeah, just a follow up  
17 on what Jim is saying. We had this discussion  
18 yesterday, and particularly about the form fill --  
19 the fillable forms for IDSs. We need to do some  
20 additional outreach to encourage applicants to use  
21 those forms because it takes -- and one of the  
22 things that I think we can focus for applicants is

1       that if the office has to actually transcribe this  
2       information from a PDF into an electronic format  
3       it takes a considerable amount of tech support  
4       time.  And that's tech support time that could  
5       otherwise be used in doing other tasks that would  
6       decrease the time between amendment entry and the  
7       applicants, things like that, at least right now  
8       before we get to the electronic files.  So I think  
9       we need to try to do things to encourage greater  
10      participation in using those forms.

11               MR. DWYER:  Okay.  Looking at other  
12      ongoing efforts, IDS.  I know that's a big issue  
13      internal to the office and external.  In looking  
14      at the practice and how we can improve and  
15      certainly in view of recent court decisions, how  
16      can we reduce the efforts of applicant and the  
17      examiner in going through submissions and ideas.

18               PCT, again, this is a big issue with  
19      respect to reuse of work and the processes that we  
20      currently use, both through our contractor and in  
21      chapter two where it's done by your examiners.  On  
22      the petitions front, this team -- I was looking at

1 some of the things that were done in E-Petition  
2 and how to expand that consistency among TCs. So  
3 this group is in the middle of looking and mapping  
4 out all our petition processes, both specific in  
5 the patent core and also in the petition shop.

6 The next bullet talks about -- and this  
7 is basically coming up with a -- using the  
8 international standards. When we publish either  
9 applications or patents, again, this will help us  
10 in our future harmonization efforts.

11 The last bullet is to look internally to  
12 the technology centers and look at management  
13 operations and try to make the supervisor's job a  
14 little bit more efficient in the things that they  
15 do day-to-day. Consistency also is very important  
16 such that we can operate from our manager's  
17 perspective more efficiently.

18 Further efforts, you know, sequence  
19 listings have been, you know, a problem for many,  
20 many years so that we have a team looking at, you  
21 know, for recommendations on how to handle the  
22 large sequence listings.

1           On the 371 case processing, and I think  
2     it was mentioned about PPOP coming up -- one of  
3     the things we did that we kind of started by the  
4     COPA initiative is to look at cases that were old  
5     and why were they old. And we found out that  
6     there was a tremendous number of cases, 371  
7     filings, that were in various stages within  
8     initial exam. I think you had some data specific  
9     to what the clean-up looked like.

10           MR. CHACE: Yeah, they went through from  
11    April 2010 to July 2011, pre-exam inventory was  
12    reduced by 24,000 applications. These we get  
13    about 50,000 new requests per year and we have to  
14    wait the 30 days for the WIPO documents. Well, we  
15    wait the 30-month time period and then we also  
16    have to wait for WIPO documents. So there's some  
17    opportunities for automation improvements here.  
18    The processing improvements have been done and  
19    currently there's only about 7,600 new requests.  
20    And again, those are waiting the time they're  
21    required to and for the document. So what  
22    happened with this, and we're forming a team to

1 look at 371 processing to find out exactly what  
2 the improvements we need to make there are to  
3 smooth this out. But what happened was that huge  
4 reduction created a bubble when they did that. So  
5 now that bubble is starting to make its way  
6 through the tail. So that's the --

7 MR. DWYER: I think that was a question  
8 from the last PPAC meeting as to what does the  
9 tail actually look like? You know, what's in that  
10 tail? Is it cases that have been transferred back  
11 and forth between examiners? And actually, there  
12 was -- a good portion of that tail is the 371  
13 clean-up that was done in initial exam. And there  
14 was also a clean-up again based on, you know, COPA  
15 moving -- trying to move the tail cases where  
16 there were cases that were awaiting -- that either  
17 needed to be reconstructed in some manner with  
18 applicants' help or there were some revivals that  
19 were in pre-exam that those cases got pushed to  
20 the awaiting new office action or awaiting first  
21 action which was part of our COPA tail. So, you  
22 know, one of the benefits from looking at doing



1 the COPA is that we've actually cleaned house.  
2 What re-engineering is looking like, for instance,  
3 on the 371, is make sure it never happens again.  
4 You know, put in processes and checks and balances  
5 so that we know we have a confidence level that it  
6 won't occur again.

7           So further initiatives are the core  
8 processing of an appeal on pre-appeal. These are  
9 the appeal and pre- appeal conferences. You know,  
10 we're looking to study how HTC handles these and  
11 making sure there's consistency and that there's  
12 meat with respect to -- in these conferences, that  
13 the right people are there and the people that can  
14 make the right decisions are there so that we can  
15 improve that process.

16           Cooperative patent classification. Re-  
17 engineering was asked to take a two-week look at  
18 all the issues that this CPC -- going to CPC is  
19 going to create that need to be answered -- where  
20 we need to get answers for some of the issues that  
21 come up from changing from a USP patent  
22 classification to this cooperative patent

1 classification.

2           The next one, surprise, surprise,  
3 models, exhibits, and artifacts. Part of the  
4 re-engineering team. We found that this was a  
5 process that didn't have a lot of -- didn't have a  
6 process to speak of. You know, we've had our  
7 artifact room for years but examiners don't know  
8 where it is and applicants don't know what to do.  
9 So this is just forming but we're looking at, you  
10 know, providing the applicant with an easier  
11 avenue and to submitting models, exhibits, and  
12 artifacts. And then how do we translate that into  
13 a telework world? How do we get -- if this is  
14 important information, how do we get it to the  
15 folks that may be remote?

16           This is -- the next one is the board and  
17 patents interface. And I know there's been  
18 several attempts at this. But we were looking at  
19 basically it's a better working relationship and a  
20 process relationship between the two to improve  
21 that, the throughput of the board.

22           And the last ones that are up next is

1 internal data requirements. And I think this came  
2 up earlier with respect to data collection. How  
3 many 101 cases went from, you know, any tech  
4 center, you know, year to year did it decrease or  
5 increase based on court decisions? And some of  
6 this internal data requirements are going to be  
7 requiring PE2E to be in place so that once we have  
8 full text of all our work then we can do some  
9 really creative ways of looking to see where our  
10 problems are and addressing issues of if there is  
11 a court case have we seen results from that based  
12 upon the behavior of our examiners. Are they  
13 getting it? Do they need more training or are we  
14 in good shape?

15           And the final one is it goes back to  
16 this issue of we know with re-engineering  
17 especially when we get into the PE2E world that  
18 some jobs for some folks are ever going to change  
19 and that's basically making sure that we  
20 understand what those changes are and that we have  
21 retraining efforts along the way so when time  
22 comes we have places for our staff.

1           And basically, you know, things that are  
2 always in front of us is respective funding. You  
3 know, and that's basically -- a lot of that is  
4 PE2E funding. The resources, again, we've asked  
5 our first line supervisors to come to these  
6 re-engineering teams, both post and pre folks and  
7 so forth that, you know, this is a strain on their  
8 day-to-day jobs so they basically have two jobs.  
9 One through re- engineering. So we're trying to  
10 manage that from a resource issue.

11           And then a lot of the things that we  
12 want to do also have to have policy, you know,  
13 with respect to IDS practice and restriction and  
14 so forth that those need to go through the policy  
15 shop and obviously through the higher management  
16 for decisions on this.

17           Okay. And the last thing that  
18 re-engineering is going to be expected to do is to  
19 help out with when we go into PE2E is working with  
20 procurement to develop the exact things that we  
21 need to put in our procurement contracts to make  
22 sure that when we get to the final product it

1 meets our need. When we get to the -- when we  
2 start to implement some of these processes we know  
3 there is going to be training so this team is  
4 going to be asked to look through and find out  
5 what level of training is necessary and who needs  
6 to get trained.

7           And the concept of the re-engineering,  
8 we don't look at this as, you know, we're  
9 finished. We closed the book and go home. We  
10 want the staff to be on call at any time to look  
11 at things as things change or whatever our needs  
12 are to pull the team back together quickly and to  
13 continue to go through, you know, using techniques  
14 to uncover problems and solve them.

15           MR. ADLER: Can I ask a question? It's  
16 sort of -- I don't know if this is right but phase  
17 two early stages, could you say something about  
18 the time savings that you achieve in the  
19 re-engineering of the classification system?  
20 Because I think it's significant and you should  
21 take credit for it.

22           MR. CHACE: Thank you. We looked at the

1 -- in the classification and transfer group, they  
2 looked at the process we have for classifying,  
3 assigning cases, and finally getting them  
4 examined. And it's sort of a bowl of spaghetti of  
5 a diagram. It went through several people.  
6 There's a lot of different decisions being made  
7 and there was nothing preventing it from  
8 re-entering that loop.

9 We did discover -- this wasn't a  
10 significant portion of cases in the COPA tail, for  
11 example, but if we didn't do something to fix it,  
12 it could theoretically someday be significant. So  
13 the team redesigned, again, using the lean six  
14 sigma format, redesigned the process to an  
15 examiner doesn't think it's theirs, SPE agrees,  
16 goes to a central transfer unit type thing and a  
17 decision is made. That decision is final, period.  
18 It's examined. So we're taking a process that  
19 could have taken eight years or more and knocking  
20 it down to perhaps three weeks.

21 MR. DWYER: Yeah, just to add on some of  
22 the data that we collected. We had 900

1 submissions in our open houses from examiners, and  
2 this came up 30 times. And the common theme in  
3 those 30 times was a single, you know, some people  
4 talked about bringing back or we used to have post  
5 classifiers. But what they were asking for was a  
6 third neutral party to make these decisions  
7 because there was always the perception that they  
8 were getting cases not because there was best  
9 examiner but it was because of the politics of  
10 who's making those decisions and they wanted a  
11 neutral party.

12 CHAIRMAN BORSON: Any other comments?

13 Yes, Wayne.

14 MR. SOBON: Given the post-(inaudible)  
15 world, and it may be already part of your  
16 discussions, but it would be interesting to hear  
17 what you may be thinking about from an engineering  
18 and policy standpoint on especially resolving  
19 McKesson-type self-citations to related cases.  
20 And ideally, is there thinking around expanding  
21 that to other significant examining authorities so  
22 that an applicant can relate all of their related

1 cases for a family with all the major patent  
2 offices and examiners could get electronically  
3 updates to the record without having us to cite  
4 all these things, especially internal patent  
5 office.

6 MR. DWYER: Yeah, the IDS team has  
7 looked at that. They looked at it from both the  
8 applicant and from the examiner's perspective. It  
9 had to make it easier for both parties to manage  
10 the IDS situation we're in.

11 The team at this stage just reported to  
12 the core and re-engineering team so no one else in  
13 the agency has yet seen some of the  
14 recommendations. So we want to move it up to the  
15 next step, and at that point I think it would be  
16 open because we believe there's a lot of options  
17 available that we can make it easier again for the  
18 examiner and for the applicant to get through  
19 large submissions.

20 CHAIRMAN BORSON: Okay. Thank you very  
21 much. Moving on then if we could to the OCIO  
22 update.



1           John Owens is unavailable but Kevin  
2       Smith will be filling in for John. Very good.

3           So this team is John, Kevin, and David  
4       Landrith, who will probably have some comments  
5       about the OCIO update and the PE2E process. So,  
6       gentlemen, thank you for coming.

7           MR. SMITH: No, absolutely, thank you.  
8       As you can tell, it was last minute as you can  
9       tell from my name tag. John, apologizes for not  
10      being able to make it in today.

11          So we'll just kick it off with patents  
12      end to end and then go into the other updates. So  
13      I'll hand it over to David Landrith, who you've  
14      all met before.

15          MR. LANDRITH: So this is a high-level  
16      update that John had prepared in advance of the  
17      deep dive that we'll do later.

18          As everyone here knows, we had funding  
19      reduction that reduced our funding from \$45  
20      million to \$18 million. The impact that had was  
21      on our ability to train a full complement of IT  
22      stakeholders in agile development and agile

1 awareness. We also had to cut back some of the  
2 research that we had planned to do into some of  
3 the foundational functionality for Fiscal Year  
4 2012 deployment. That included search-research,  
5 patent classification research, and work into the  
6 breadth and the depth of XML schemes, which are  
7 the structure definition for the structured  
8 content we're going after.

9           The ongoing initiatives that we have are  
10 the design for the CRU release that we will have  
11 for Fiscal Year 2011. And the plan that we will  
12 have for improving that with Fiscal Year 2012,  
13 expanding the data models to encompass a larger  
14 set of functionality as well as data interchange  
15 between the existing systems and once again, the  
16 XML scheme of development because the structure  
17 content is core to the effort.

18           So the primary risk that we have is we  
19 have a very aggressive set of features with a very  
20 aggressive time frame. I think we reviewed the  
21 scope at the last presentation that we had and so  
22 it's a very hands-on process for us to make sure

1       that we stay on course, we stay focused, and  
2       ensure that there aren't any missteps so we can  
3       make these deadlines.

4               MR. SMITH: All right. So on the next  
5       section we'll talk about some general technology  
6       things within patents that actually fed through  
7       the rest of the organization as well. Within  
8       PALM, over the past consecutive Mondays -- this  
9       happened late June going through -- we had three  
10      Mondays. Two of them including count Mondays  
11      where there are some issues on PALM that affected  
12      the examining core.

13              We have been all hands on deck looking  
14      at these issues and it's a description kind of  
15      like when you peel layers of the onion away. We  
16      found an issue in the first occurrence that then  
17      uncovered another issue in the second occurrence.  
18      We've reached ourselves down to a combination of  
19      things that made this situation happen. So based  
20      on the fact that we've gotten to that level of  
21      detail with what caused the outage to occur, we've  
22      actually been able to design a process and some

1 monitoring to basically watch the right things to  
2 then come up and predict this is going to happen  
3 as a failure and recover the system within a few  
4 minutes instead of it being off for a few hours.

5 All the OCIO can do from this standpoint  
6 is say we apologize for the fact that it went off.  
7 We took our measures to make sure it doesn't  
8 happen again, and we're taking measures continuing  
9 to make sure that we improve the system to get  
10 past this. We have documented some short-, mid-  
11 and long-term plans to go forward and correct all  
12 the known issues we have right now within the  
13 current PALM system. This doesn't take away from  
14 the fact that it's always been under a large plan  
15 to redesign the whole system based on going in to  
16 PE2E, based on the way this application was  
17 written in the past and the way it's grown upon  
18 itself. It's very hard to move in scalability.

19 And so this is a known fact. We're  
20 trying to cover the bases of known issues that may  
21 cause symptoms and cause issues. We have a plan  
22 to fix those that we're aware of now and still as

1 fast as we can migrate the functionality into PE2E  
2 and a more elegant technology format to make sure  
3 it can actually scale and expand past some of  
4 these issues we currently have.

5 And as I said, we've identified the  
6 specific indicator positions. We've been working  
7 with patents, as well as how to communicate these  
8 issues to the examining core when they do happen.  
9 But as I said, we're talking about a recovery  
10 within 10 minutes, not hours. And so we've  
11 actually gone through the recovery process and  
12 have had minimal complaints from the examining  
13 core, not realizing we're going through the  
14 recovery. So we actually -- we didn't want to  
15 test it but we've tested it and it works.

16 CHAIRMAN BORSON: Okay. Ester, you had  
17 a question?

18 MS. KEPPLINGER: It's more a comment.  
19 It comes from a suggestion that Ben had made and  
20 we talked about some yesterday. And I just wanted  
21 to reiterate it for the larger group. And that is  
22 for the PTO to consider staggering the timeframes

1 for the reporting because, of course, the problems  
2 on count Monday stem from the fact that everybody  
3 is having their work counted on count Monday and  
4 at the end of the quarter. So it gets worse as  
5 the fiscal year progresses. And I know there are  
6 challenges to doing that but it is -- the  
7 differences between the usage of the systems  
8 between a lower time and the peak time is 20-fold.  
9 So they have equipment that's sitting fallow and  
10 very much underused at certain periods of time.  
11 And then coming close to crashing or crashing at  
12 these peak times. So if the employees were  
13 balanced across that time you wouldn't have those  
14 problems. Now, there are any number of issues  
15 that the office would have to consider in doing  
16 this but it is certainly something for them to  
17 consider.

18 MS. FOCARINO: We did form a team  
19 actually late last week, Patents and OHR and our  
20 OGC staff because there are a lot of issues that  
21 it touches on but the team has begun working  
22 options to stagger the cutoff times.

1           MR. SMITH: Yes, and to support Peggy's  
2        comments, we elaborated on that a little bit  
3        yesterday and said that basically it's a situation  
4        where, you know, it was described very well. The  
5        systems are running -- we're not going to say idly  
6        but they're not running at full maximum capacity  
7        except for a handful of times a year. And so 20  
8        times the performance on a few certain days for  
9        count Mondays and then, you know, a 20th of that  
10       for most of the time throughout the rest of the  
11       year. Not just to take away some of the user load  
12       -- that's one of the conditions that create some  
13       issues -- it's also whenever we go through  
14       technology we're going to do the redesigns in the  
15       future. There's talks about cloud. There's talks  
16       about moving to better performance and  
17       architectures for systems. Anytime you can  
18       minimize the peak load that you have it's going to  
19       be more cost effective going forward because you  
20       still don't have to buy to fit that maximum  
21       capacity. So it makes good sense either way. And  
22       we're going to work with Patents to see what we

1 can do with this and if it makes sense at this  
2 point to entertain.

3 CHAIRMAN BORSON: Thank you.

4 MR. SMITH: So on the ULP update,  
5 production deployment started in March 2011. To  
6 date -- and this thing moves every day -- to date  
7 2,100 on this. I think I checked a day or two  
8 ago, it was up to 2,200. We're doing 65 a day  
9 rollouts to the end-users. A significant amount  
10 has been done with CFOs, CIO, and OGC, a lot of  
11 the back office. I'd say significant. There are  
12 a few outliers but a majority of those staffs have  
13 been complemented.

14 Within the patents organization we  
15 worked on tech centers 2900 and 1600, which were  
16 the designs in the biotech and organic chemistry  
17 groups. Those have been done, those phases, and  
18 we're now moving into tech centers 2100 and 2600,  
19 which are the computer architecture and software  
20 management groups, as well as the communications  
21 groups. So we look at the rollouts within those  
22 teams being much more fluent and much quicker.



1 These are guys who are used to technology, used to  
2 the hindrances that happen with some of the new  
3 platforms. And hopefully we can move forward  
4 smoothly through those groups.

5 And as I said here, I didn't touch on it  
6 but we're still expecting and shooting for May of  
7 2012 to have this finish throughout the agency.  
8 So that's the plan for the government employees.

9 Call center update. There are some  
10 issues within call center when some of these  
11 issues happen within PALM. They've happened every  
12 time there's an outage. People call the call  
13 center. But based on recent events within the end  
14 of this last quarter we actually added 20 tier one  
15 call center agents. So the first people who get  
16 the phone call, we've doubled that staff. There's  
17 still another escalation point of tier two staff  
18 who are more technical, and tier three staff are  
19 even more technical on very advanced problems.  
20 That structure is still in place but at least to  
21 handle the front burden of calls that come in  
22 we've added 20 people and doubled that staff.

1 This right now has taken the average call that we  
2 had from eight minutes in June -- a lot of issues  
3 with PALM in June. People were waiting on the  
4 phone to declare other time, document the fact  
5 that they were affected by the issue. Waiting for  
6 eight minutes is unacceptable from our standpoint.  
7 We understand that. And we went back and we added  
8 the staff and we've actually reduced it now to 50  
9 seconds. I realize it takes a catastrophic issue  
10 to see what will happen, but the fact that we've  
11 doubled the staff, we should be having these  
12 numbers.

13           Something else that we're working on in  
14 that last bullet is we're working with Patents to  
15 create a system where people don't have to call  
16 the call center, wait on the phone, speak to an  
17 agent, to then document that they were affected by  
18 the issue. We're going through an application  
19 where -- and we're working through the final  
20 stages of how the process will work but someone  
21 should be able to call the call center, understand  
22 there's an outage, go to a simple website and

1 document the fact they were affected. And we're  
2 thinking that's going to offload a ton of calls to  
3 the call center because people know that it's out  
4 and it's off basically. When service calls are  
5 made we make an announcement but people are still  
6 waiting on the phone to basically document they  
7 were personally affected. This will take a lot of  
8 the bulk of that load off of the call center and  
9 hopefully reduce the times even more. So we're  
10 taking measures and working with Patents  
11 management to finalize the process of when to roll  
12 that out.

13 That from the OCIO standpoint was all  
14 that we had at this point to present but we're  
15 open for questions as always.

16 CHAIRMAN BORSON: Good. Thank you very  
17 much. You know, the perpetual question is what do  
18 you plan to do if the funding situation does not  
19 improve?

20 MR. SMITH: With the funding situation  
21 today we've got money to keep the lights on, the  
22 general operations and maintenance to keep things

1 moving, and we've declared within the director's  
2 office and Patents the key initiatives going  
3 forward for priorities. And what we're going to  
4 do is just continue with the funding we have to  
5 keep things running. Hopefully not have to make  
6 any tough decisions in that standpoint and  
7 continue these next generation applications, these  
8 key capital investments, and go through the  
9 stages. I'd have to say based on the way we're  
10 going through the development doing it agilely,  
11 each time we make a step in the right direction,  
12 each time we do some developments there's  
13 something to use. So we're going to have pieces  
14 to use along the way instead of without funding  
15 waiting a year to have something done. We'll be  
16 able to make some decisive, you know, measures if  
17 we have to throughout the year but we appear to  
18 have the money to go forward right now and  
19 continue the key investments that have been  
20 declared up front. And we'll do them to the best  
21 of our ability.

22 CHAIRMAN BORSON: Good. Thank you very

1 much. Are there any comments or questions from  
2 the Committee? Are there any comments or  
3 questions from the floor?

4 Well, if not, then, you know, moving on  
5 to just sort of to wrap up today's public session,  
6 we've had some very good reports from the office  
7 and we thank you very much. And just to reiterate  
8 our willingness to work closely with you. We will  
9 have to sort out some issues in executive session  
10 about how we can do that efficiently within the  
11 60-day limit but I expect that we'll be able to  
12 get through those.

13 Just to reiterate for the members of the  
14 public that are still with us, if you have any  
15 questions or comments or would like to make  
16 contact with the PPAC, you can do so through the  
17 e-mail or Internet or telephone. And I'd like to  
18 thank you very much.

19 MR. STOLL: We're not done.

20 CHAIRMAN BORSON: Oh, you're not done  
21 yet. Oh, David. Sorry about that.

22 MR. LANDRITH: I apologize. So this is

1 a deep dive that I mentioned earlier.

2 We'll start out with a timeline. It's  
3 similar to what we saw before but we're further  
4 along. We've refined some of the dates and we've  
5 added some strategic information. As you can see,  
6 we are still on track for the September 30th  
7 deliverable to the CRU. Right now we are between  
8 the first and second sprints. We had our first  
9 sprint completed last Friday with a successful  
10 demo on Monday. And the second sprint is well  
11 underway for the functionality there. And then  
12 beneath we've added some strategic information for  
13 Fiscal Year 2012. The major requirement areas are  
14 going to include the examination tools (which  
15 expand on what we've built so far) the applicant  
16 tools, the workflow. And structured text content  
17 acquisition is something that we'll continue  
18 during Fiscal Year 2012. So all of those are  
19 planned primarily to be rolled out to the CRU. So  
20 for Fiscal Year 2013 through 2015. In 2013, we're  
21 going to focus on rolling out to broader  
22 audiences. So for the examination tools that will

1 include the examiner core. For applicant tools  
2 that will include going beyond the initial pilot  
3 audiences. And in Fiscal Year 2014 and 2015, the  
4 focus will be defining and pursuing a  
5 decommissioning strategy.

6           So with the front end summary, we have  
7 integrated front end design and implementation.  
8 The first stages of that are complete the  
9 development continuances for additional stages.  
10 The front end development is delivered as a fully  
11 functioning web application rather than some kind  
12 of mockup that's done by the back end developers.  
13 The actual services that make it work are stubbed  
14 out with sample data, and the process of doing the  
15 back end development involves filling those in so  
16 they access the appropriate back end resources to  
17 make it a dynamic and secure system. And the  
18 front end development occurs, you know, between  
19 two and four weeks in advance of where the back  
20 end development is. So that's a cycle where we  
21 can readily uptake the front end into the back  
22 end.

1           We've completed the service level  
2    architecture that defines the high level needs for  
3    how services will be defined to interact with the  
4    front end. And with the data models there's two  
5    elements to that. One is to drive data points  
6    that are manifested in the front end and the other  
7    is to handle the stuff that's under the covers on  
8    the back end. So that's touched on again in the  
9    back end. For here we have, again, the data model  
10   has been completed and deployed for the first, and  
11   at this point actually the second sprint as well  
12   with a good deal of progress done toward the third  
13   sprint.

14           So this is a screen shot of where the  
15   front end was I believe about 10 days ago. So  
16   what we see on the left is the case table of  
17   contents. On the right is the claims examination  
18   tool with claims tree. So this actually  
19   represents things that in the back end will be  
20   developing, and some of them will be developing in  
21   sprint three. Some of them have already been  
22   developed in sprint one. Just to give you an idea



1 of where that's headed and generally what it looks  
2 like.

3 MR. STOLL: I have a question. I've  
4 been on vacation so I haven't had time to talk to  
5 you.

6 MR. LANDRITH: Sure.

7 MR. STOLL: But have you all begun  
8 coding yet?

9 MR. LANDRITH: Yes. In fact, that's the  
10 sprint that we completed on Friday and then  
11 demonstrated on Monday.

12 MR. STOLL: Okay. So that's fantastic.  
13 Thank you.

14 MR. LANDRITH: Thank you. So the user  
15 involvement on the front end, the front end  
16 sprints occur in two week increments so they are a  
17 little bit more rapid than the back end sprints.  
18 We're meeting weekly with the examiners, both the  
19 CRU and the examination core. And the purpose of  
20 those is to design functionality for the next  
21 sprint and to evaluate what's been done in the  
22 previous sprint. And we do a major holistic

1 evaluation of total progress every six weeks.

2 We have a usability council that is  
3 updated with fresh eyes on a regular basis. We're  
4 keeping POPA representatives completely informed.  
5 The reactions have been generally positive. We  
6 have received some very good critical feedback in  
7 the last week and a half which has led to some  
8 solid improvements in the UI. And the agile  
9 process that we're pursuing, where we are  
10 evaluating in very short measures and getting this  
11 in front of the user as soon as possible, is ideal  
12 for incorporating that feedback.

13 So the back end summary, this touches on  
14 what Bob had mentioned. So we kicked off  
15 development on the 20th, so that was two weeks  
16 later than we had hoped. That was due to  
17 procurement options that we had to pursue because  
18 the SDING protest and financial adjustments we had  
19 to make. The high level physical architecture for  
20 the infrastructure is complete. We have the  
21 development and the testing environment designed,  
22 and we're developing the requirements for the

1 staging and production environments. And in the  
2 back end database we are also proceeding a pace  
3 with the data model that accommodates the needs  
4 there.

5           Again, returning to our XML schemas, we  
6 have -- at this point we have 7 schemas. This  
7 isn't reflected in this presentation, but they  
8 cover 23 different document types specifically and  
9 we have two schemas that are lightweight schemas  
10 to accommodate incoming and outgoing documents  
11 that are more generally applicable to a large  
12 number of document types. We vetted and finalized  
13 the technology stack for the Fiscal Year 2011  
14 release.

15           As I mentioned, we actually -- although  
16 the procured solution developers were not deployed  
17 on June 6th, we did have some internal developers  
18 beginning to work on some transformation tools and  
19 the continuous build environment that we're using,  
20 which allows for code that is checked in to be  
21 tested in real-time to make sure that it works  
22 rather than the normal process which is you

1 accumulate a bunch of stuff, try it and see if it  
2 works, and that doesn't allow for the same kind of  
3 feedback and agility. As I mentioned, the  
4 timeline of sprints are on schedule with the  
5 Fiscal Year 2011 release.

6 So this is a tech stack. Some of the  
7 more technical people here may want to dig into  
8 the specifics but if you look at it, we're using  
9 industry-leading products here that are based on  
10 widely accepted open standards, which is a key  
11 priority of the patents end to end project to  
12 ensure that it's maintainable and scalable over a  
13 long period in the future.

14 So for Fiscal Year 2012, as I mentioned  
15 with the timeline, the four major requirement  
16 areas are examiner tools, applicant tools,  
17 workflow elements, and structured content  
18 acquisition. And then within the development  
19 areas we have the several major development areas.  
20 These include lightweight improvements to existing  
21 systems. As we touch on some of the existing  
22 systems there's going to be an opportunity to make

1 improvements. A lot of them are geared toward  
2 collecting datasets toward the older dataset. To  
3 the extent that we can upgrade them quickly to  
4 facilitate higher quality -- the collection of  
5 higher quality data, we'll do that. Also, PE2E  
6 improvements will be rolled out to pilot audiences  
7 during Fiscal Year 2012. And we'll also be doing  
8 AIS integration solutions for the existing system  
9 for data exchange and migration. And we'll also  
10 be trying to scale up the content acquisition.

11 In Fiscal Year 2013, as I mentioned  
12 earlier, rollout to a broader audience. We hope  
13 to have the feature set fairly fixed by that  
14 point. There's still going to be room for  
15 improvement. Most of the changes that we make in  
16 Fiscal Year 2013 are going to be operational and  
17 the technology that is needed to facilitate those  
18 in order to scale up from the CRU to successively  
19 larger groups within the patent core. And then  
20 Fiscal Year 2014 and 2015, we want to define and  
21 pursue a decommissioning strategy to begin pulling  
22 offline the existing systems.

1           So the risks again, this is very much  
2       consistent with what we mentioned in the overview,  
3       are preserving the Fiscal Year 2011 scope in light  
4       of the procurement delay and the acquisition of  
5       production-level structured XML, which is ST96,  
6       also known as XML4IP. It's another name for that.  
7       Both of these risks are related to the tight  
8       deadline that we have and the aggressive function  
9       set that we've defined. So this is a very  
10      hands-on development process, as I said to  
11      maximize our ability to stay on course and ensure  
12      that we're on focus and that we minimize missteps.

13           CHAIRMAN BORSON: Thank you very much,  
14      David. Any other questions? Are there any other  
15      slide sets that I've ignored so far?

16           MR. STOLL: You're fine.

17           CHAIRMAN BORSON: All right. Well,  
18      thank you very much. We are exactly on time and  
19      I'd like to thank you all very much for coming.

20           I just had one question for you, David.  
21      Actually, the same one as for Kevin. What about  
22      funding? And how crucial is the immediate funding

1 to the roll out and your timeline?

2 MR. LANDRITH: It's crucial. So for the  
3 FY '11 you saw the different areas. For  
4 examination tools we're looking at search and  
5 office actions which are both huge areas in  
6 addition to the workflow complement that is needed  
7 to support those as well as the connection to the  
8 front end. So we will be rolling out multiple  
9 concurrent projects. And if we do not have  
10 funding for that we're going to have to rigidly  
11 prioritize those. And instead of having a stream  
12 of new functionality, we'll have to minimize that  
13 to a trickle.

14 CHAIRMAN BORSON: I understand. So the  
15 point is that even if you don't get fully funding  
16 and you don't have a full rollout of everything  
17 you would like, at least you'll have some things  
18 that are online.

19 MR. LANDRITH: That's exactly right.

20 CHAIRMAN BORSON: Good. Okay. All  
21 right. Well, thank you very much. If there are  
22 any further comments, please speak now.

1       Otherwise, I'd like to thank you all for  
2       attending, and I'd like to thank the public for  
3       tuning in on the web or telephone or however  
4       you've managed to do it.  And this is the end of  
5       the public session of the Patent Public Advisory  
6       Committee.  Thank you all very much.

7                               (Whereupon, at 11:57 a.m., the  
8                               PROCEEDINGS were adjourned.)

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