

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Thursday, September 23, 2010

1 PARTICIPANTS:

2 USPTO:

3 ROBERT STOLL, Commissioner for Patents

4 PEGGY FOCARINO

5 FRED SCHMIDT

6 ROBERT BAHR

7 ANTHONY SCARDINO

8 MARK OLECHOWSKI

9 JOHN OWENS

10 PPAC:

11 D. BENJAMIN BORSON, Acting Chair

12 SCOTT KIEFF

13 ESTHER KEPPLINGER

14 STEPHEN PINKOS

15 STEVEN MILLER

16 MAUREEN K. TOOHEY

17 LOUIS J. FOREMAN

18 UNION:

19 ROBERT D. BUDENS

20 CATHERINE FAINT

21 RANDY MYERS

22 \* \* \* \* \*

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

2 MR. BORSON: Good morning. I'd like to  
3 ask everyone to take a seat, if you could, please.  
4 My name is Ben Borson, I'm standing in for Damon  
5 Matteo who is unable to make today's meeting. So  
6 we do have an agenda today, we'll move through the  
7 agenda. And what I'm hoping everybody will be  
8 able to do is, participate in the last hour of  
9 today's meeting, which will be a public comment  
10 period relating to the annual report.

11 So I just wanted to let everybody  
12 outside and inside know that we would like to take  
13 comments from everyone about what you would like  
14 to see, if anything, in the annual report. PPAC  
15 is in the process of creating a final draft of the  
16 report to send to the office for comment, and then  
17 at the end of that period, we'll finalize our  
18 final report and submit it.

19 Anyway, so thank you all very much for  
20 attending. This is the public session of the  
21 Patent Public Advisory Committee, PPAC. And  
22 again, my name is Ben Borson. And without further

1 adieu, I'd like to ask the members of the  
2 Committee around the table to introduce themselves  
3 briefly.

4 MS. FOCARINO: Peggy Focarino.

5 MR. FOREMAN: Louis Foreman.

6 MS. TOOHEY: Maureen Toohey.

7 MR. MILLER: Steve Miller.

8 MR. PINKOS: Steve Pinkos.

9 MR. SCARDINO: Tony Scardino.

10 MR. OLECHOWSKI: Mark Olechowski.

11 MR. BAHR: Bob Bahr.

12 MR. BUDENS: Robert Budens.

13 MS. KEPPLINGER: Esther Kepplinger.

14 MR. STOLL: Bob Stoll.

15 MR. BORSON: Good, well, thank you very  
16 much. What I'd like to suggest the -- I've  
17 already made a few remarks about the annual  
18 report. The PPAC is a Public Advisory Committee,  
19 and we're authorized by a statute, the American  
20 Investor's Protection Act, to assist the Patent  
21 Office and others to develop and maintain the  
22 patent system.

1           And what our job primarily is to do is  
2   to provide a bridging function between the public,  
3   that is, the outside user community, inventors,  
4   patent applicants, attorneys, practitioners, to  
5   work with the office. And I'm very pleased that  
6   we're able to have such a close collegial working  
7   relationship with members of the office, and  
8   particularly the Commissioner and the Assistant  
9   Commissioner. So without further adieu, we can  
10  get on to the agenda items. First of all, we'd  
11  like to have Bob Stoll, Commissioner Stoll talk  
12  about the -- his opening remarks from the Patent  
13  Office; Bob.

14           MR. STOLL: Thanks very much, Ben. Good  
15  morning, everyone. It's a great pleasure to be  
16  with you again. Welcome back to the Patent and  
17  Trademark Office. We have many updates to share  
18  with you. Before we start, however, I'd like to  
19  mention Damon Matteo and say we are thinking of  
20  him and his family, and we wish them well, and we  
21  hope everything turns out very well there.

22           Ben, I'd also like to thank you for

1 stepping in at the last minute to chair the  
2 meeting. The meeting is in very able hands with  
3 you handling it. This is our last meeting before  
4 the end of the fiscal year, and overall, I think  
5 we've had a phenomenal year.

6           At the beginning of the fiscal year, the  
7 agency was furiously working just to stay afloat.  
8 Under the astute leadership of Director Kappos and  
9 the extremely talented employees at the USPTO, we  
10 have made it past a critical point and have made  
11 some tremendous progress. We did not wait for our  
12 situation to improve, we improved our situation by  
13 revamping many of our programs and policies.  
14 We've launched many new programs aimed at easing  
15 the applicant burden in filing and obtaining a  
16 patent. Green Tech, Project Exchange and Three  
17 Track have all received accolades from our  
18 applicant community, and there are many other  
19 programs that we've been working on.

20           We continue to find new and innovative  
21 ways to assist our applicants. A campaign to  
22 increase our communication and collaboration and

1 transparency was launched at the start of the  
2 fiscal year. This has been the main focus of our  
3 efforts over the past year.

4 Our communication efforts encompass a  
5 full suite of blogs, articles, speaking events,  
6 federal register notice and everything. The  
7 launch of our dashboard is an excellent example of  
8 our commitment to become fully transparent and  
9 open. I'll let Peggy give you the details later  
10 during her presentation.

11 We have just announced a collaboration  
12 project to bring outside expertise to the PTO to  
13 help our examiners remain at the forefront of  
14 their fields. The Patent Examiner Technical  
15 Training Program, PETTP, was announced on  
16 September 15th. This new program to educate  
17 examiners on the latest technical developments by  
18 providing access to leading industry scientists  
19 and experts is fantastic. We are seeking public  
20 assistant in providing technical training to  
21 patent examiners within all technology sectors.  
22 We have renewed our agreement with the New York

1 Law School and we'll restart the Peer Review  
2 Program in the fall.

3           Throughout the year, we have made major  
4 improvements to our patent management policies and  
5 procedures. This includes the change to the  
6 patent count system, and we want to thank our  
7 unions for cooperating on this effort, the First  
8 Action Interview Program, which I believe has  
9 really compacted prosecution and allowed for early  
10 indication of allowable subject matter, and the  
11 launch of several significant training programs.

12           The Patent Training Academy changed the  
13 composition of its training program to utilize  
14 experienced SPE's as trainer. This was, in part,  
15 a response to feedback that we seek to fit our --  
16 training format. Our efforts to improve patent  
17 quality were focused within the Quality Task  
18 Force. For the past year, Marc Adler and Bob Bahr  
19 have been working together to poll our  
20 stakeholders and work through quality metrics.  
21 Bob Bahr will brief you about their report later  
22 this morning.



1           Our backlog reduction, commonly known as  
2   the 699 Campaign, has had tremendous success. We  
3   started well over 735,000 unexamined applications.  
4   Our examiners have really pulled out all the  
5   stops. And I must commend the examining core for  
6   their effort, dedication and talent. We are  
7   nearing our goal of meeting the challenge of  
8   dropping the backlog to 699,000 unexamined  
9   applications. The patents organization has  
10  performed with the highest standards, some of our  
11  challenges remain, but we are in a much better  
12  position to meet what lies ahead.

13           We are about to start the new fiscal  
14  year, 2011, in much better shape than last year.  
15  We will continue to improve our programs and  
16  policies by working with all of our stakeholders.  
17  The supplemental funding will allow us to move as  
18  planned on our patents end to end project. The  
19  supplement funding puts our hiring plan back on  
20  track. Our hiring plan is targeted at 1,600 new  
21  examiners over fiscal years '10 and '11 combined.  
22  We expect 500 to be on board by the end of the

1 current calendar year.

2           You'll hear more details regarding our  
3 funding from our new CFO, Tony Scardino, but let  
4 me say we face the possibility of a continuing  
5 resolution with our fiscal year 2011  
6 appropriations, and we are making preparations for  
7 this eventuality. We continue to build on our  
8 strong foundation by collaborating with our  
9 stakeholders. We value all input we've had and  
10 look forward to expanding collaborative  
11 environment. And thank you for your guidance and  
12 support over the past year. I look forward to  
13 working with you over the next year. Thank you  
14 very much.

15           MR. BORSON: Well, thank you very much,  
16 Bob. Does anyone have any questions or comments  
17 for Commissioner Stoll?

18           MR. STOLL: Good.

19           MR. BORSON: Well, thank you very much,  
20 Bob. Well, we are a bit ahead in our agenda,  
21 which is not a bad thing, so let's go ahead. Our  
22 next session will be Anthony Scardino, who will

1 give us an update on the current finance  
2 situation.

3 MR. SCARDINO: Good morning. Today is  
4 actually my one month anniversary here at the PTO,  
5 and I think I took a week vacation in the middle,  
6 so I think it's day 17. I'm actually going to ask  
7 Mark, the Deputy CFO, to kind of help me as we go  
8 along. But the way we like to brief, and I'm sure  
9 this has happened in the past, is, you know, in  
10 the fiscal world, we're living in three times all  
11 at the same time, fiscal 2010, '11 and '12. Of  
12 course, '10 is our current year, it ends in seven  
13 days; '11, as Bob mentioned, Congress has to do  
14 something over the next week to pass what's call a  
15 continued resolution, or pass 12 appropriations  
16 bills, which obviously won't happen. We don't  
17 know how long the continued resolution is going to  
18 be, some people are saying through the elections,  
19 some people are saying until Christmas Eve, some  
20 people say we could have a year long CR, which,  
21 you know, wouldn't be what they'd decide to do  
22 over the next week, but we could have one, and

1 there are very real implications for the PTO for  
2 that, of course.

3           You know, the 2010 levels, which we  
4 should start with, because of the supplemental, we  
5 have a higher starting point, thankfully, and  
6 we're going to go through that a little bit.

7           So if you look at the slides here, our  
8 estimated fee collections are a little over \$2  
9 billion, \$2.083 billion. But the appropriation,  
10 between what was enacted, 1887, and the \$129  
11 million supplemental, only totals \$2.016 billion.  
12 And today, or yesterday is actually the day where  
13 we passed that number. So anything we collect  
14 between now and the end of the fiscal year we do  
15 not have authority to spend.

16           So we're still working with Congress to  
17 get into the CR, what's called an anomaly, where  
18 they make an adjustment and say, okay, you can  
19 spend more or at a different rate than what you  
20 had last year. It's possible, but unlikely, that  
21 they'll give us authority to spend this extra  
22 money that we're collecting. And are you all

1 familiar with the concept of fee diversion? I've  
2 been told by folks on Capital Hill to never use  
3 the word diversion again, but I'm sure others may,  
4 you know, no one can force us to use whatever word  
5 we want, but we're trying to use the word  
6 unavailable fees collected.

7           Having said that, what we're trying to  
8 do is, in the CR, get a couple other anomalies.  
9 We're trying to get approval for the surcharge,  
10 the 15 percent. Since both the House and Senate  
11 marked up our 2011 budget, including authority to  
12 charge the surcharge or collect the surcharge, but  
13 it's not in the CR as they've written it right  
14 now, and that's a big implication for a PTO.

15           In other words, let's say the CR goes  
16 for three months, if we can't collect the  
17 surcharge, the 15 percent, that total is somewhere  
18 between \$60 to \$80 million that the USPTO could  
19 not utilize, could not charge and then collect,  
20 and we'd never have the ability to collect that  
21 money again -- every day that we don't collect  
22 that surcharge. It's not like other agencies that

1 are budget authority, once the appropriations bill  
2 is enacted, if you get authority, you kind of go  
3 back to October 1st and pretend that's when the  
4 year really started. For us, it's a little  
5 different. So we're working really hard to help  
6 folks understand that this has real dire  
7 implications for USPTO if we don't get that  
8 surcharge.

9 We're also trying to give, like I said,  
10 full access to the fees collected in 2010 as part  
11 of the continuing resolution. Not a lot of  
12 support there so far, but we're still working it.

13 Having said that, because of the  
14 supplemental and the timing that it came in, we're  
15 going to have carryover balances of over \$200  
16 million. And here's the split, patents versus  
17 trademarks. That's just because the money came in  
18 late, we can only spend so much, a lot of it's  
19 going towards, you know, laptop replacement,  
20 enhanced hiring for patent examiners, it just  
21 takes time to spend that money, so it's not an  
22 indication that we've not managed our funds

1 properly or anybody, we're just trying to spend  
2 it.

3           So the supplemental authority on the  
4 next page gives you a list of like eight things  
5 that we're actually doing with the \$129 million.  
6 And again, as Bob mentioned, this is why and how  
7 we're going to get to hire hopefully 500 examiners  
8 by the end of the calendar year. That's an  
9 ambitious goal, but we're working really hard, and  
10 every person in HR yesterday, and they're all  
11 rallied to meet this goal.

12           But it also helps our folks in CIO and  
13 others to, you know, improve the infrastructure,  
14 as well as do the laptop replacement for our  
15 examiners, as well as, you know, everyone at the  
16 USPTO.

17           Also, nation-wide work force, you  
18 probably heard about this, we're hoping to  
19 possibly either have another facility out in  
20 another part of the country or at least diversify  
21 so that we can do some recruitment in other parts  
22 of the country, and, you know, that always helps

1 with retention, as well as recruitment.

2 And overtime is always near and dear to  
3 everybody's heart. Overtime is, you know, direct  
4 correlation, number of hours people work, you  
5 know, backlog, that's how I went from 735 down to  
6 720. Is that the latest number I heard?

7 So kind of moving on to 11, which I  
8 already stole the thunder from this slide a little  
9 bit, but we're now giving Congress like ranges of  
10 what we think we're going to collect, kind of low  
11 working and high, and the latest range we gave  
12 them on September 1st, we have every September  
13 1st, we have to give the appropriations committees  
14 an update on what we think we're going to collect.  
15 And our latest update, had a broad range, between  
16 2.314 billion and 2.491 billion, but our working  
17 estimate was, do you know, Mark?

18 MR. OLECHOWSKI: It's right about in the  
19 middle, about 109 million, more than the --

20 MR. SCARDINO: President's request,  
21 yeah. So now the issue is, is Congress going to  
22 act on our revised estimate or are they going to



1 use what the President submitted as an estimate  
2 back in February?

3 MR. BORSON: Excuse me, this is Ben.  
4 Mark, would you make your comments on the live  
5 mic, please?

6 MR. OLECHOWSKI: I'm sorry. Yeah, what  
7 Tony was referring to, Director Kappos has  
8 endorsed, and what we've done all year is, you  
9 know, until we get closer to the end of the fiscal  
10 year, we've been providing ranges of estimates to  
11 our appropriators and to our stakeholders, and so  
12 that's what we've done on September 1st -- report  
13 language it says on September 1st, you have to  
14 update the President's budgets, collection, fee  
15 levels. And so we have -- and we believe we're  
16 going to actually collect more than we thought we  
17 would where we submitted the President's budget  
18 back in February. So back in February, our  
19 estimate was around \$2.32 billion; we think we're  
20 going to collect, at the low side, about \$100  
21 million more than that. And what Tony was  
22 referring to was, you know, Congress are, you

1 know, working with us in the Office of Management  
2 and Budget. They have to decide how much to  
3 appropriate as to what authority we have.

4 So we're working closely with them,  
5 providing them updates and estimates and rationale  
6 for why we think we're going to collect more. So  
7 it's an ongoing effort between us and the Hill as  
8 to what we think we're going to spend, collect, so  
9 just ongoing conversations.

10 MR. PINKOS: And, Mark, what was the  
11 difference last year between the original  
12 President's request and the September update to  
13 the appropriators?

14 MR. OLECHOWSKI: Well, I want to say  
15 last year for --

16 MR. SCARDINO: For ten?

17 MR. OLECHOWSKI: -- for ten. You mean,  
18 Steve, in terms of whether the major drivers for  
19 the different --

20 MR. PINKOS: No, I'm sorry, just if  
21 there was a difference, the amount. This year  
22 it's about 100 million.

1           MR. OLECHOWSKI: Well, you know, last  
2 year, Steve, was really kind of, you know, '09 was  
3 a tough year, '10 was a tough year for different  
4 reasons. So last year, when we provided the Hill  
5 the number of 1887 in September, if you remember,  
6 we were right, we call it the bottom of the bath  
7 tub, that's when our fees were at their very  
8 lowest level and the economy was in a terrible  
9 recession.

10           We didn't foresee, you know, the  
11 recovery that we've experienced, at least in the  
12 patent community. So we provided Congress last  
13 year with the 1887 number, and, of course, we  
14 continued to collect at a very strong pace through  
15 2010, and we're using that latest history to kind  
16 of bolster our estimates for 2011.

17           But I'll tell you, allowances are up,  
18 issues are up, maintenance fees are up. I mean  
19 all of those big categories of fees are continuing  
20 to show strong growth and recovery. So, you know,  
21 from the CFO standpoint, we're excited, you know,  
22 the more money, the better. And we'd rather tell

1 people yes than no, which is what we've been  
2 having to tell the commissioners for the past  
3 couple of years.

4 MR. PINKOS: Right; the economists will  
5 tell us technically the recession was over by that  
6 point. But the point -- so my follow-up question,  
7 though, is, so last year you estimated downward,  
8 and the appropriators used that downward number,  
9 correct?

10 MR. SCARDINO: Exactly, right.

11 MR. PINKOS: They were cognizant and  
12 took notice of your amended figure and used it in  
13 the appropriations, the ultimate appropriations  
14 bill?

15 MR. SCARDINO: Right; so one would  
16 think, with equal treatment this year, they would  
17 take a higher number, but anyone who's worked with  
18 Congress for longer than a half a minute know what  
19 makes sense isn't always what they do, so we're  
20 trying to work with them very closely.

21 Going back to the interim fee  
22 adjustment, because our fees estimated has

1 changed, so has our 15 percent surcharge estimates  
2 changed. So for the year, the President's budget  
3 had I think \$224 million, now we're estimating the  
4 surcharge that we have authority starting October  
5 1st or 10th, however it works, it could be as much  
6 as \$269 million instead of 224.

7           So you'll see, there's a lot of reasons  
8 why the percent means something, there's a lot of  
9 reasons why our new fee estimates mean something.  
10 If we have to live under just pro rata, 2010,  
11 \$2.016 billion, it's going to result in many, many  
12 tough decisions for Mr. Kappos versus if we get  
13 full access to our fees. So --

14           MR. PINKOS: One other question  
15 regarding the pro rata, is there history for  
16 Congress to let you operate pro rata on your  
17 combined appropriations for the previous year, or  
18 do they go off pro rata of just the actual say CJS  
19 bill that was passed? So will they combine the  
20 supplemental and say pro rata of that?

21           MR. SCARDINO: Actually, it's a good  
22 point, Steve. They had to -- Congress is

1 proposing a CR that includes the supplemental as  
2 our base, so that would be included. Again, if  
3 it's passed the way we're being told it's been  
4 written, we'll get full access.

5           So you probably recall that the --  
6 budget -- the President's request also had this  
7 buffer in there, the \$100 million, that is  
8 something that we believe, and we've talked to the  
9 House and the Senate, they both support at this  
10 point in time, but again, you never know until we  
11 get an act.

12           So if we have to hold the 2010 spending  
13 levels, it's going to effect our hiring, it's  
14 going to effect -- the supplemental is still  
15 available, of course, so everything that's planned  
16 for there, but we would have to start looking at,  
17 okay. You've got to live at your CR level,  
18 because we could have a year long CR. We can't  
19 kind of live at what we hope we're going to get.  
20 So, again, Mr. Kappos, we're working on many  
21 options that he'd have to consider as to what  
22 makes the most sense, what our highest priorities.

1           2012, this has been a busy month.  
2     September, we are -- we submitted our budget to  
3     OMB about a week and a half ago. We went over  
4     there last week, I'm sorry, just the other day,  
5     Tuesday, and presented our budget to OMB.

6           Now, they spend the next couple of  
7     months reviewing it, meeting with us more,  
8     follow-up questions, and then we'll get what's  
9     called a pass back or a number or some authority  
10    that will be included in the President's budget  
11    probably right after Thanksgiving. So there's not  
12    a lot of action on 2012 other than answering some  
13    questions. And where we're guessing they're going  
14    to want some more details on what we're doing in  
15    the patent world, as well as the IT world here,  
16    but we'll keep you posted on that.

17           The strategic plan, we're calling the  
18    2010/2015 plan, and if it's not rolled out and  
19    delivered by September 30th, we have to change the  
20    title to 2011/2016. So we're working with the  
21    Office of Management and Budget to get that  
22    approved. It's been a lot of work that everyone

1 has been involved with. And we're just getting a  
2 tiny bit frustrated it hasn't been approved yet  
3 and we can actually roll it out and stamp it.

4 But we're also getting more feedback  
5 these days from the Department of Commerce on  
6 things. They want to be more involved in  
7 developing things like our strategic plan, our  
8 budget. You know, we've got certain statutory  
9 rights, and we've got other things that say we are  
10 part of the Department of Commerce, so we're  
11 working with them to the extent possible.

12 We've been encouraged by the  
13 appropriators, as well as OMB to do so, but again,  
14 you know, we have some independents, so we're kind  
15 of straddling the fence there. And then  
16 eventually for 2012, you know, the first Monday of  
17 February, we will submit a budget as part of the  
18 President's budget to Congress.

19 But a lot of things will happen between  
20 now and then, because every budget is -- builds on  
21 each other, so we are -- 2012, I say the theme for  
22 the budget is to get a multi year budget plan so



1 that we can ride out some of these dips from when  
2 the economy drops, or for that matter, when the  
3 economy surges and we start to collect more fees,  
4 we would be able to basically eliminate fee  
5 diversion.

6 MR. BORSON: Well, thank you very much,  
7 Anthony. I wanted to ask you a question, what do  
8 you think the impacts will be on the applicant  
9 community and patentees and innovators that use  
10 the patent system, in the event that there is a  
11 continuing resolution, that's one question. And  
12 the second which is related to that is, what would  
13 be the impact on innovators and patent applicants  
14 in the event that there is no multi year budget?

15 MR. SCARDINO: Well, the first one, and  
16 again, I've been here a month, so I'm not sure how  
17 elastic. If I was trying to apply for a patent,  
18 I'm not sure of the amount of funding the PTO had  
19 would necessarily effect it, but again, I'm  
20 completely naïve on that score. I guess it would  
21 partially depend on how long the CR is, where we  
22 stand. Again, I think the first CR is only going

1 to be 45 days, or at the most, 85 days, up until  
2 Christmas.

3 The second question is a tougher  
4 question, a tougher question in terms of, you  
5 know, what is the impact on our ability to dig  
6 into that backlog, I mean that's what we're trying  
7 to get to. You know, Mark always makes the case,  
8 if we get rid of the backlog, or, you know, get  
9 the backlog down to an acceptable level, things  
10 are going to change tremendously for everyone, the  
11 business community, here at PTO, fighting with  
12 Congress about fees, you know, we'll have an  
13 operating stream that will be more manageable.

14 Right now it's, you know, the economy  
15 dips, so -- backlog -- is almost insurmountable,  
16 or let's say unacceptable levels for everyone, and  
17 now we're just trying to dig away at them. We've  
18 hired thousands of examiners and we're going to  
19 continue to do so.

20 MR. BORSON: Well, part of that question  
21 relates to what contingencies the office has in  
22 the event that things don't work out as you would

1 like them. I mean I don't think anybody in this  
2 room would question or disagree with the  
3 proposition that the Patent Office needs to have a  
4 sustainable funding pathway.

5 If that, you know, right now that seems  
6 to be up to Congress to the major degree. I mean  
7 there's some impact that we have through, you  
8 know, our reports and our public comments and our  
9 urging of Congress and representatives to pass  
10 sustainable budgeting for the U.S. Patent and  
11 Trademark Office, but, as always, there has to be  
12 plan B, C, and D. And so I'd like to explore it a  
13 little bit with you, what you think from the  
14 budget side and what the Commissioner and other  
15 folks in the Patent Office think might be things  
16 that would be plans B and C, if needed.

17 MR. OLECHOWSKI: If I could just add to  
18 a couple things to what Tony said. In terms of  
19 operations during the first quarter during the CR,  
20 we don't expect to have any change in operations.  
21 We're going to -- with the supplemental that we  
22 have, with the dollars you're carrying over, we

1 expect to continue hiring. The Commissioner  
2 talked about having 500 or 600 new folks on board  
3 by Christmas, we still will continue to do that.

4 We know we have enough money to get that  
5 done. We're continuing our IT projects. We're  
6 just operating I think as we had planned. And  
7 through that time period of the CR, we'll know  
8 more about how long the CR will be, what will be  
9 included in it, what the President's budget will  
10 be, what the negotiations and the discussions on  
11 the Hill will be. So I don't foresee any change  
12 in plan from today through Christmas time unless  
13 something drastically different happens that we  
14 really haven't foreseen. And in terms of the  
15 sustainable funding model, I think we have great  
16 support from all areas, including our  
17 stakeholders, Congress, the Office of Management  
18 and Budget, and DOC. How that's ultimately  
19 implemented and enacted I think remains to be  
20 seen, but I think we have great support for the  
21 PTO to have a model to sustain ourselves through  
22 these economic times. There's no discussion on

1 the need for it, I think the discussion is in the  
2 details about how that happens.

3 MR. STOLL: Thanks, Ben, for the  
4 question. Let me clarify. First of all, we're  
5 not certain what's going to be in the CR, we have  
6 some ideas, but we're not sure whether there will  
7 be things in there that help us through the year.

8 Second of all, we don't know how long  
9 the CR is going to run. We are already planning  
10 for the possibility of it running longer, I've  
11 heard actually could be to March. If it runs  
12 long, we will not be, A, hiring to the degree that  
13 we are planning to. There may be effects with  
14 respect to overtime. There will be effects with  
15 respect to our end to end processing. So it will  
16 have a significant impact on us if the CR does not  
17 provide us with the amount of money we need to  
18 operate through the year, and, in fact, runs  
19 through the year. Thank you.

20 MR. BORSON: Well, thank you, Bob.

21 MR. PINKOS: If I could piggyback on Bob  
22 to Ben's question, and all of that has the direct

1 impact on the users of the system, because  
2 ultimately, one of the concerns is the time it  
3 takes to get your patent application through. And  
4 all of these efforts that need to be funded are,  
5 you know, compounding through time to hopefully  
6 bring that down, and when they're delayed,  
7 ultimately the impact is born by the applicants to  
8 the office.

9 MR. MILLER: I think the other thing is  
10 that, you know, with the 15 percent surcharge,  
11 that the user community has been supportive of  
12 that, assuming the office would get full funding,  
13 and I think we're going to lose that support if  
14 Congress continues to I guess withhold funds, I  
15 won't use the D word, withhold your fee  
16 collections.

17 The user community is going to lose its  
18 confidence that that money will come for the  
19 purpose it is. And so the contingency may be --  
20 may not even be able to count on the 15 percent  
21 surcharge.

22 MR. BORSON: Yes, Robert.

1           MR. BUDENS: I think kind of tailing  
2 along from Steve, I'm a little concerned about  
3 something you said, Tony, about that 70 million,  
4 because I'm not totally familiar with this anomaly  
5 process in the CR. If we do not get the anomaly  
6 passed in the CR, is there potential that the 70  
7 million, you know, between now and October 1 would  
8 still be appropriated in the 2011, if and whenever  
9 a Congress, whatever Congress passes it, or is  
10 that \$70 million going to evaporate if we don't  
11 get the anomaly into the CR so that we have  
12 authority to spend it on October 1?

13           I'm a little concerned about this. I'm  
14 not really too hip on the, you know, Congress'  
15 semantics game with their diversion versus  
16 unavailable. I mean a cesspool smells the same,  
17 you know, no matter what you call it. And I'm a  
18 little concerned that we're looking at a serious  
19 chunk of money for the first time in a number of  
20 years not being available to the agency to spend  
21 at all.

22           MR. SCARDINO: Robert, can I pick option

1 C? You said basically can they appropriate as  
2 part of fiscal year '11 bill or do we lose it  
3 forever, it's actually neither. They will not  
4 appropriate as part of '11, but we don't -- we  
5 lose it, but it goes into a treasury account that  
6 has been reserved if they ever need to appropriate  
7 to us. So it's available, we would just need to  
8 make the argument that we need it. So right now  
9 that account has probably \$500 million in it.  
10 Anytime we've had excess fees we've collected, it  
11 goes into a separate treasury account. So it's  
12 bad in the sense of we're not going to get that  
13 money, it's good in the sense of if we ever  
14 really, really needed it, they could tack it onto  
15 a supplemental or something and give us that  
16 money.

17 MR. STOLL: Let me clarify that, though.  
18 They have never --

19 MR. SCARDINO: Yes.

20 MR. STOLL: -- they have never.

21 MR. PINKOS: I think that account is  
22 located in the office next to the Social Security



1 Trust Fund, correct?

2 MR. BUDENS: Right.

3 MR. SCARDINO: There's an underground  
4 tunnel, in fact, between the two of them.

5 MR. BUDENS: It's an unnumbered account  
6 in the Cayman Islands somewhere is what it is,  
7 because I -- I mean that may be a paper account,  
8 but, you know, I'd love to actually see the  
9 little, you know, place where that money is  
10 actually stored.

11 MR. SCARDINO: Yeah, I just -- I bring  
12 that up because I made that argument to the  
13 appropriators last week on the House side, and  
14 they -- the response they gave me is that that  
15 money is still available if we decided to  
16 appropriate it to you.

17 MR. BUDENS: -- another semantics game  
18 here.

19 MR. BORSON: All right. Well, thank you  
20 very much. It's a pleasure to meet you, and  
21 welcome aboard, and we wish you the best. It's a  
22 trying time here and everybody in the room and all

1 the listeners understand the need for sustainable  
2 funding, and if there's anything that we on the  
3 PPAC can do to assist you in this process, please  
4 let us know.

5 MR. SCARDINO: Well, thank you very  
6 much. I appreciate the opportunity to be here.  
7 And also, I'd love to learn more. I mean I met  
8 with Esther yesterday, I'm literally a blank  
9 slate. I know finances, but I don't know the  
10 patent world very well yet. Every day I'm  
11 learning more, so if you're ever around and want  
12 to visit or have me visit, I would love the  
13 opportunity.

14 MR. BORSON: Very good, thank you so  
15 much. Okay. At this point we're still a little  
16 bit ahead of schedule, and that's fine. I'd like  
17 to invite Peggy to make some comments. And I  
18 believe that, Bob, you're going to head out?

19 MR. STOLL: I have to; I can get back  
20 later, but because the Under Secretary and the  
21 Deputy Under Secretary are both at the World  
22 Intellectual Property Organization Assemblies

1 right now representing the United States, I need  
2 to go down to the Department of Commerce to  
3 represent the PTO. So I'm sure budgetary issues  
4 will be discussed, so I must leave.

5 MR. BORSON: The best of luck to you.

6 MR. STOLL: Thank you very much.

7 MS. FOCARINO: Okay. I just want to  
8 give you a very brief update on some of our  
9 initiatives and some of the new pendency measures  
10 that we have and a little bit about our dashboard  
11 that's on our internet now. For those of you that  
12 are car buffs, don't get too hung up on the  
13 positioning of the dials or things like that, I'm  
14 sure you can find some fault with this, but the  
15 intent is very noble, it's to get some data out  
16 there so people can see, you know, different looks  
17 in terms of where we are and looking at different  
18 types of pendency.

19 And if you look at the middle of the  
20 gauges, you'll see where we are as of, I think  
21 it's the end of August, 2010. So you're looking  
22 at basically the traditional first office action

1 pendency, the total pendency, where our backlog is  
2 just in terms of sheer number of applications.

3 And as many of you know, we have a campaign going  
4 on right now to try to get that number below  
5 700,000 by the end of the fiscal year, and that's  
6 a real stretch goal, but we've had an amazing  
7 amount of support from our examiners and certainly  
8 from all of our managers and executives in the  
9 patents organization for really making an effort  
10 to get this done.

11 We've got fiscal year production down  
12 there in the lower left, and actions per disposal,  
13 which we've been looking at very closely on the  
14 heels of some of the initiatives we put in place  
15 this past year. And then the far right lower  
16 gauge is basically the number of examiners we have  
17 at this point, and it's right around 6,000 right  
18 now.

19 Some of the good news this year is, our  
20 attrition rate is very low. I think we've  
21 attrited about 242 examiners, so it's very low,  
22 hovering just above four percent. Some of it's

1 the economy certainly, but I think some of it is,  
2 you know, changes that we've made, and hopefully  
3 people are making a career out of being an  
4 examiner. Some of the new measures that are on  
5 our dashboard are reflected here in this slide.  
6 So we have some -- a pendency measure that  
7 includes RCE's, that's the first one on the upper  
8 left. Inventory position is a new measure also.  
9 And I should mention that on the internet, if  
10 you're interested in the detailed definitions of  
11 all of these measures, we have those posted also,  
12 because some of these are very technical, and just  
13 to make sure everybody is clear on what they're  
14 looking at and how we are measuring, it's all  
15 there and explained.

16 But the inventory position measure is  
17 what would happen today if we didn't collect  
18 anymore applications, we didn't see anymore  
19 applications coming in the door. We would have  
20 basically a little over 26 months worth of work  
21 for our patent examiners.

22 We've got pendency to board decision,

1 which you can see on the upper right there. We've  
2 got pendency of RCE's in the lower left, and also  
3 continuations. If you're interested in how long  
4 it takes if you're just filing an original  
5 application and then filing continuations, you can  
6 expect present day, a pendency of that number.  
7 And then on the far lower right are pendency of  
8 our divisional applications. Some of the  
9 initiatives that we put in place that we're  
10 tracking very closely and trying to share as much  
11 information as we can with our stakeholders, the  
12 first one is the first action interview pilot. So  
13 we have just a little over 1,100 applicants that  
14 have entered into this program. We've conducted a  
15 lot of interviews, you can see that almost 600  
16 interviews have been conducted, 360 applications  
17 have been allowed. So the allowance rate for this  
18 program, you can see there is a little over 32  
19 percent compared to just under 11 percent for all  
20 other non- continuing applications in FY '10.

21           So, you know, that's pretty good news.  
22 It looks like a really successful program. The

1 examiners like the program. And it is about to  
2 end in terms of what we've agreed to with the  
3 union, so we've been working very closely with the  
4 union to try to extend it for a bit and then also  
5 continue discussions on some sort of expansion of  
6 the program, and do some measured expansion of the  
7 program. So that's where we are right now with  
8 that particular program.

9 MR. BORSON: Peggy, if I could just for  
10 a moment go back to the dashboard for a moment.

11 MS. FOCARINO: Sure.

12 MR. BORSON: These are all instantaneous  
13 sort of today is what we're seeing. Do you have  
14 any plans or ideas for having a trend number or  
15 something that reflects the current state with  
16 respect to what, you know, last quarter was like?

17 MS. FOCARINO: Right, yeah, okay, right.  
18 If y click on the gauge, if you get onto our  
19 internet and you click on it, you can drill deeper  
20 and you can see -- any particular measure that you  
21 click on, you can see the trend over the last  
22 several months and couple of years I think.

1 MR. BORSON: And one other question  
2 relating to this is, the office has come up with a  
3 new proposal for quality metrics for 2011. Does  
4 the current dashboard reflect those ideas or are  
5 those ideas going to come in as 2011 approaches  
6 and then there will be a different calculus under  
7 the dashboard?

8 MS. FOCARINO: Right, our current  
9 dashboard, you'll see, I'll show you, has -- let  
10 me go back, right there at the very bottom, I'm  
11 sorry, I skipped over that one. The two bar lines  
12 at the bottom show the current quality measures.  
13 The first one on the left is -- oh, no, that's the  
14 allowance rate. I thought I saw them somewhere,  
15 Bob. Let's see, they're on the dashboard  
16 somewhere, I know they are. Aren't they, Dave?

17 MR. WILEY: -- they're on the slide  
18 site.

19 MS. FOCARINO: Right; so you're going to  
20 see the two traditional measures, but I'm -- I'll  
21 let Bob Bahr answer, but I'm sure we will --

22 MR. BAHR: Yeah, we're going to put the



1 new one up, but right now we have the current  
2 measure.

3 MS. FOCARINO: Right; do you know, Bob,  
4 when we'll have the new measures up and running so  
5 that we have -- we're confident that what we're  
6 showing is accurate?

7 MR. BAHR: Well, one of the measures  
8 includes surveys that would not be done until  
9 January of 2011, so I don't know that you could  
10 put a complete one up until then.

11 MS. FOCARINO: Right, yeah. I'm looking  
12 at -- I've got all the dashboard in front of me.  
13 And there is one for examination quality, I just  
14 didn't show it up here.

15 MR. BORSON: Okay, thank you.

16 MR. PINKOS: And, Ben, can I ask a  
17 question, too? Is there any method to the colors?  
18 Because, you know, sometimes when people look at  
19 dashboards and industry, it's always red, yellow,  
20 green as to whether you're meeting your goals or  
21 you're off track on your goals. Was that just  
22 random and is there any thoughts as to make those

1 red, yellow, green, as to whether you're on or off  
2 track?

3 MS. FOCARINO: The honest answer is,  
4 it's random to me, but I know that we had people  
5 look at this who are, you know, have sort of an  
6 expertise in visual communications, and they  
7 helped refine it, but certainly this is our first  
8 foray into this type of thing, and we hope to  
9 display it better and more user friendly, so we'd  
10 love to get feedback on it if you have feedback on  
11 it.

12 MR. BORSON: Well, actually I do have a  
13 couple of comments, if I may. First of all, there  
14 is a color blindness, some people don't  
15 distinguish red from green.

16 MS. FOCARINO: Yes, right, we've heard  
17 that.

18 MR. BORSON: So that's true. It's more  
19 common in men than women, but it does occur. And  
20 the second thing is, I notice a number of these  
21 scales sort of stop at 70 or sort of, you know,  
22 many of these need to look like they're pegged, so

1 the public perception might be, well, things could  
2 not get any worse.

3 MS. FOCARINO: Right.

4 MR. BORSON: Was that an intentional  
5 decision to --

6 MS. FOCARINO: No, again, it was -- the  
7 people who took the data from patents and gave us  
8 advice on how it should be displayed kind of  
9 worked on that, but we have gotten some comments  
10 right along your line, Ben, the same couple of  
11 comments.

12 MR. BORSON: Okay. And just one other  
13 thing maybe a little bit less significant is that  
14 the concept of a circular dial is very 20th  
15 century, and if, you know, if you've seen modern  
16 displays of technology, sometimes there's a  
17 vertical bar, you know --

18 MS. FOCARINO: Right.

19 MR. BORSON: -- and I just wanted to  
20 present that, that if you want to give it a  
21 forward looking view, a forward looking image, you  
22 might consider some other style. And also maybe

1 more importantly is, if this is intended to be  
2 seen only by people on computer screens, then  
3 light on dark works, but higher contrast is always  
4 useful, especially for those of us who are  
5 developing Cadillac's.

6 MS. FOCARINO: Great.

7 MR. BORSON: Esther.

8 MS. KEPPLINGER: Just to clarify, the  
9 backlog number that you are using for unexamined  
10 cases does not include RCE's, correct?

11 MS. FOCARINO: That's right.

12 MS. KEPPLINGER: Right, so they are  
13 counted as a new case by the USPTO, but they're  
14 not counted in your backlog of unexamined cases?

15 MS. FOCARINO: That's right.

16 MS. KEPPLINGER: So the other thing  
17 that's happening, of course, is that the RCE's are  
18 sitting on the shelf and increasing very rapidly,  
19 they doubled from July of '09 to July of '10, and  
20 I think they're continuing to sit there. And, of  
21 course, this push, they won't be being done,  
22 because we're trying to do the -- you're trying to

1 do the unexamined applications. So the  
2 consequences for your dashboard are that the  
3 pendency for RCE's is going to sky rocket because  
4 they are sitting there, they're going to be  
5 looking like continuations I think, so that's one  
6 of the implications and trends that we're going to  
7 be seeing.

8 Of course, right now they're not  
9 counting because they're not being examined, so  
10 they don't show up in the pendency numbers until  
11 they're actually done and completed. So that is  
12 what the trend for some of those numbers, the  
13 total pendency --

14 MS. FOCARINO: Right.

15 MS. KEPPLINGER: -- and in particular,  
16 the ones with the RCE's are going to be going up.

17 MS. FOCARINO: Right; and I believe we  
18 are reflecting, though, the RCE backlog, right,  
19 Dave, somewhere in -- or no?

20 MR. WILEY: Not in this version.

21 MS. FOCARINO: Not in this version. But  
22 we do intend to do that, I don't know when we will

1 do it, but there's several measures that aren't in  
2 here that we've been working on refining.

3 MS. KEPPLINGER: And also just to  
4 clarify, I think that in the old days, there  
5 weren't that many RCE's, and they weren't counted  
6 in the total pendency, so pendency stopped when  
7 the first case abandoned, and then the actual  
8 pendency of the RCE was not captured. Now they're  
9 a significant number. In your total pendency,  
10 you're capturing it, but in your old numbers, I  
11 think they're not being --

12 MS. FOCARINO: That's right.

13 MS. KEPPLINGER: -- it's not being  
14 captured. So it's a significant number of cases  
15 that are sitting there and the traditional  
16 measures don't show in the pendency numbers.

17 MS. FOCARINO: Right.

18 MR. BORSON: Okay, thank you. So please  
19 go ahead.

20 MS. FOCARINO: Okay. So --

21 MR. PINKOS: Peggy, I'm sorry --

22 MS. FOCARINO: That's okay.

1 MR. PINKOS: -- before you go to the  
2 next slide, a question on the -- no, you're back  
3 to the first --

4 MS. FOCARINO: First action interview.

5 MR. PINKOS: Yeah; the question I had  
6 was, the allowance, I guess sort of in layman's  
7 terms, an allowance that the applicant is agreeing  
8 to, so, therefore, it's sort of case closed, so to  
9 speak, they're not then seeking, you know,  
10 additional protection, and there's going to be a  
11 second office, you know, additional office  
12 actions, et cetera? I mean it's almost like a  
13 negotiated settlement at that point?

14 MS. FOCARINO: Yes, I mean I think the  
15 early interaction, the interview, and, you know,  
16 the dialogue that's happening, definitely there's  
17 -- a resolution of the issue seems to be occurring  
18 very early on in these cases, so we're seeing the  
19 high rate of first action allowances, which is  
20 really good. Of course, it's in limited areas  
21 right now. We have pilots in every TC, but in  
22 very limited areas, so again, we're trying to work

1 with the union to expand it because we do see a  
2 lot of promise in this kind of program.

3 MR. PINKOS: And, of course, the up side  
4 for the office then would be more cases handled  
5 more quickly, thus more cases --

6 MS. FOCARINO: Sure.

7 MR. PINKOS: -- disposed of?

8 MS. FOCARINO: Right.

9 MR. PINKOS: The backlog comes down?

10 MS. KEPPLINGER: My guess, Steve, with  
11 that, and my own experience is that it's a good  
12 thing, it's an excellent thing, the way the  
13 examiners are working with the applicants to try  
14 to get patents. But in those negotiated  
15 settlements, in many cases you take a narrow  
16 claim, and then go back for a broader -- for  
17 broader claims and a continuation. So I would  
18 expect that that would be occurring in a number of  
19 the cases.

20 MS. FOCARINO: Right.

21 MR. BORSON: Yeah, I wanted to ask you,  
22 Robert, in particular, you've got your hand up and



1 I think you're presaging my question, how is the  
2 union looking at this and do you think that this  
3 pilot is going to be expanded into areas that are  
4 not so relatively straight forward for  
5 patentability? I think the original target for  
6 this pilot was to pick areas that were relatively  
7 clean. What about the areas that are not so  
8 relatively clean? And what do you think the union  
9 is likely to want to do with that? And, Peggy, of  
10 course, I'd like to hear you two talk about this.

11 MR. BUDENS: I don't know, I'm not quite  
12 sure, Ben, how you're defining relatively clean.  
13 I mean the initial rule out of this pilot was in  
14 some of the electrical areas, and I think  
15 predominantly it was in those areas because,  
16 number one, they need the fast turnaround, you  
17 know, on their inventions, you know, as opposed to  
18 some place like Biotech, which would prefer not to  
19 have a quick turnaround because they've still got  
20 ten years at the FDA to play with.

21 So I think we started it in the electric  
22 barrier, but nevertheless, we did expand to put,

1 you know, work groups in every tech center into  
2 the program. I think our views on this as we've  
3 been discussing it over the last couple of weeks  
4 with the agency are somewhat mixed, okay. We are  
5 agreeing to go ahead and extend the current pilot  
6 for another six months so that it doesn't, you  
7 know, doesn't end October 1 and just end, so we  
8 want to do that while we continue discussions on  
9 the expansion of the program.

10 I think there's a little bit of mixed  
11 feelings about expanding it, and that was going to  
12 lead to the question I was going to ask, because  
13 I'd be interested in feedback from everyone, is  
14 that, you know, as we've had these discussions,  
15 everybody has been talking about interviews and  
16 wanting to have it, and then we put this program  
17 in place, and I think it is a good program, and I  
18 think we're seeing, you know, some beneficial  
19 effects of it.

20 I think one of the things that's kind of  
21 intriguing us is why is the participation in the  
22 program no more than it is. Admittedly, we have a

1 high allowance rate, I suspect that the people who  
2 are participating, you know, are somewhat highly  
3 motivated, you know, are a more motivated group to  
4 get to allowance and stuff, but it, you know, I'm  
5 a little bit surprised that the participation in  
6 this program has not been higher on the part of  
7 applicants, and the question is, you know, are we  
8 just reaching, you know, small targeted, you know,  
9 audiences, and then even if we expand it out to  
10 the rest of the, you know, technology areas, that  
11 we wouldn't really see much of a difference in the  
12 usage of it, or are we just missing areas that  
13 would probably use it more if we expanded it?

14 MR. BORSON: Well, I had a question.  
15 It's my understanding that these pre-first office  
16 action interview pilots are at the initiation of  
17 the examiners; is this correct or am I  
18 misunderstanding the current state?

19 MR. BUDENS: No, I believe they're at  
20 the initial -- the applicant has to opt into the  
21 program initially, I believe, to say that they  
22 want to participate in the program, and then it

1 becomes -- because it establishes a set of time  
2 periods that the applicants have to meet in  
3 carrying out the interviews and submitting  
4 responses and stuff.

5 MR. BORSON: Well, I think one of the  
6 questions is, does everybody -- does the applicant  
7 community know that this is an option that they  
8 can select on their own initiative?

9 MR. FOREMAN: Peggy, I want to ask a  
10 quick question, going back to what Steve brought  
11 up. One of the metrics that's actually missing  
12 here is, how many applications actually are  
13 disposed of because of the pre-office interviews?  
14 So when expectations are managed, when the  
15 inventor sits down with an examiner and realizes  
16 that the subject matter he's seeking to protect  
17 isn't available, are they exiting the system  
18 quicker, and therefore, reducing backlog, so this  
19 way an application isn't sitting there for months  
20 and months and months, they realize very quickly  
21 that they're not going to be able to get the  
22 protection they're seeking and they exit the

1 system rather than tying it up?

2 MS. FOCARINO: Right; I know we have  
3 that data, I don't have it in front of me to show  
4 you, but definitely. I mean whether it's an  
5 allowance or whether it's, you know, agreed that  
6 we're not going to reach agreement or you have  
7 nothing allowable in the case and there's really  
8 an abandonment or a disposal of the case, it's  
9 definitely -- that's the purpose of the program.

10 MR. FOREMAN: I mean, obviously, the  
11 benefit to the system would be if they can reach  
12 some consensus, whether there's allowable subject  
13 matter or not, you could reduce pendency and not  
14 -- as well?

15 MS. FOCARINO: Exactly; so we are  
16 tracking the pendency, and you're right, the other  
17 side of that first action allowance rate is not  
18 shown there, but --

19 MR. FOREMAN: I mean it's not  
20 necessarily a bad thing to be rejected. I mean at  
21 least at that point they realize that they're not  
22 going to get a patent and they can either move

1 forward in some other area or not have to wait?

2 MS. FOCARINO: Right.

3 MR. BORSON: And I just had a question  
4 for clarification purposes. You mentioned that  
5 the overall first action allowance rate is 32.3  
6 percent, is that allowance of all claims that are  
7 pending in the case or is this an allowance of  
8 some of the claims in the case?

9 MS. FOCARINO: Well, it's an allowance  
10 of the case. Whether -- as Esther said, sometimes  
11 the applicant comes in and narrows the claims down  
12 or perhaps cancels some of the claims and they get  
13 to a resolution where the case is allowable.

14 And just to clarify, though, the  
15 expansion of the program currently that we  
16 expanded over the initial area that Robert  
17 mentioned is, work groups in each TC, and I  
18 believe the methodology was to look at the  
19 pendency -- areas of the highest pendency in a  
20 work group in each TC, and that's where these  
21 pilots are going on. So we tried to marry the  
22 pilot expansion with the areas in the greatest

1 need of reducing pendency.

2 MR. BORSON: Thank you very much.

3 MS. FOCARINO: I think I lost my slide  
4 set up there.

5 MR. BORSON: Is the slide -- can we get  
6 the slides back on?

7 MS. FOCARINO: Oh, they had to restart  
8 it, okay. So this is our -- okay -- make sure  
9 that was my next slide, right? Right, this is the  
10 next slide. So we've got our accelerated pilot  
11 program, and we haven't gotten a lot of takers on  
12 this one, but we have some, so we're going to  
13 continue to, you know, see the results of this  
14 particular program.

15 And, you know, we did extend this one  
16 also to try to get more people into the program  
17 itself. But you can see that there's a very short  
18 turnaround on these, and that's a good thing for  
19 people that choose to use this type of program.

20 MR. BORSON: I know that the data is  
21 still very preliminary, but do you have a sense of  
22 whether or not large filers are taking advantage

1 of this or are small and mid sized companies  
2 taking advantage of this?

3 MS. FOCARINO: I don't have that data,  
4 but I'm sure we're looking at that for the small  
5 number of applicants that have opted into this  
6 program. We can certainly -- and that will be one  
7 of the factors that we're looking at as we  
8 evaluate the pilot, is who participated, and if we  
9 want to continue with a similar program, how  
10 should it be modified or, you know, changed or  
11 redirected, but we will be looking at that kind of  
12 -- I just don't have that data right now.

13 MR. PINKOS: Peggy, under the program,  
14 how quickly is the application then picked up?

15 MS. FOCARINO: You mean in terms of  
16 examination?

17 MR. PINKOS: Yeah, how is it designed,  
18 you know, okay, I trade in one --

19 MS. FOCARINO: Right.

20 MR. PINKOS: -- I get to move my other  
21 one up, what does that really mean, you know,  
22 within two months?



1 MS. FOCARINO: I goes I think as the  
2 examiners -- it goes on their docket, right. Is  
3 there a special docket? It goes on a special case  
4 docket. So depending on their particular volume  
5 of cases and that special cue, it gets picked up  
6 sooner than it would otherwise. So it is slotted  
7 into that special case docket, which the examiner  
8 in their performance plan has to move at a certain  
9 rate so many of those cases every pay period.

10 MR. PINKOS: Not to belabor this, sorry,  
11 but obviously you make the point that it might be  
12 used more once the word gets out, so when the  
13 office is talking about this at AIPLA or  
14 elsewhere, are they being specific at all as to  
15 how much more quickly or are they just familiar  
16 with special case docket and different TC's and  
17 what the examiner, you know, requirements are  
18 there?

19 MS. FOCARINO: Right, I think we would,  
20 you know, certainly if we're reporting on this,  
21 I'm just giving you high levels, this is one of  
22 the initiatives, but there's a lot more data on

1 this, and I think people can see on average what  
2 the first action pendency is and total pendency  
3 from time the examiner does the first action to  
4 allowance, so all that data would be available.  
5 But there are several things on these special case  
6 docket now that I'm sure Robert will agree with  
7 me, and these are one of them.

8 MR. BUDENS: Yeah, I definitely would  
9 agree with Peggy, there are several different  
10 initiatives that -- and heaven only knows how many  
11 more will be, you know, popping out of the tenth  
12 floor west before it's all over with, with all due  
13 respects to Dave, you know. But I think, you  
14 know, to answer your question, Steve, from an  
15 examiner point of view, I think it would be hard  
16 to predict a set time. It's not like they're on  
17 the amended docket, where you know that two months  
18 from now they have to be moved. They're being put  
19 on essentially a special docket, but depending on  
20 whether, you know, how many of those special cases  
21 the examiner has on their docket at a given point,  
22 it would depend on how long your particular case

1 might be in the cue before it actually gets picked  
2 up.

3           It is getting accelerated, you know, I  
4 think significantly, but I can't say that it's  
5 going to be, you know, out, golly, if you abandon  
6 one, we'll do it in a month or something like  
7 that, I mean it just depends on the examiner's  
8 docket at the time.

9           MR. BORSON: Well, I think part of the  
10 question is, what can the applicant expect, and if  
11 it goes on a special docket that doesn't really  
12 mean it's being accelerated, it may not be, and so  
13 if it were to go on the amended docket with a  
14 fixed timeline, that would give an applicant a  
15 better sense of when they would expect it and what  
16 the potential trade-offs could be and make a  
17 decision.

18           MS. FOCARINO: That is true, it would  
19 move quicker if it was on the amended docket in  
20 some cases, right. I think the -- go ahead.

21           MR. PINKOS: Perhaps this is something  
22 that we can provide some feedback on with, you

1 know, Steve, between our group of obviously Louis  
2 and Maureen and others that are representing the  
3 small inventor, what they want to hear for it to  
4 be appealing.

5 I mean I think that the, again, the  
6 assumption on its face, if you're -- if you happen  
7 to be a smaller inventor, and Louis, you might  
8 want to, you know, chime in, if you have a couple  
9 applications, one of which you're not all that  
10 excited about, but you know that -- the impression  
11 may be that this one that I really care about will  
12 be considered in a month or two and then they  
13 might join the program, but if they're not given  
14 that, you know, some kind of certainty, then maybe  
15 they won't join, I don't know, and then, of  
16 course, a much different calculation for Procter  
17 and Gamble.

18 MS. FOCARINO: Right; I think if you  
19 look at this next initiative, the Green Tech, this  
20 is sort of along the lines of what you're saying,  
21 Steve, in terms of giving you some -- if you are  
22 the user of this program, some time frames on

1 average of when you can expect, you know, an  
2 examination, and then what's the total pendency.  
3 And we do have the data for the other program  
4 also, but I just didn't show it to you here. So  
5 the Green Tech program is also getting some  
6 interest, and it's got some, you know, good  
7 numbers up there if you're interested in trying to  
8 use the program. And again, this is another  
9 program that we worked with the union on to get  
10 this going, and probably will be going back and  
11 talking to them about what's the future of the  
12 program, would there be any modifications to it,  
13 any expansion to it.

14 MR. KIEFF: Just a minor question that  
15 might be useful here, but then could be explored  
16 in more depth later, so the goal here is not to  
17 derail the conversation from the conversation  
18 about the details of how this works. But I'm just  
19 curious whether the office collectively is  
20 experiencing in general responses to initiatives  
21 like Green Tech, and so that's the first question,  
22 and does the public say, you know, hey, we see

1 this, hey, we like this, hey, we don't like this,  
2 and then by the public, I mean the following part  
3 of the public?

4           There are all these swirling policy  
5 debates about our patent system is broken, it  
6 chokes off innovation, it creates an anti-commons,  
7 it kills people who need drugs, these are the  
8 things people say about the system, I happen to  
9 disagree with them, in writing, but I'm just  
10 curious how that audience responds to an  
11 initiative like this. Do they see this as more  
12 poison in their water or do they see this as  
13 helpful, and if they see it as helpful because  
14 it's helping an industry that is attractive, what  
15 about this industry do they think will enjoy  
16 patents as opposed to the industries they think  
17 will be poisoned by patents?

18           Those are broad policy -- they're  
19 imponderable, we can't answer them here, I'm just  
20 curious what the vibe is. Are we getting a vibe  
21 back, and is that vibe positive or negative, and  
22 why?

1 MS. FOCARINO: Right, I'm going to let  
2 the policy guy answer.

3 MR. BAHR: Scott, I'm going to give you  
4 a very disappointing answer in that we don't  
5 really get that type of feedback. Since the  
6 program is not really about patent eligibility or  
7 patent ability, it's just about your place in the  
8 line, those, you know, the higher level policy  
9 decisions like, you know, what should be patented  
10 and what should not be patented, we're not getting  
11 that type of feedback with respect to the Green  
12 Tech program, but we are getting feedback from  
13 people who, you know, want to use it to accelerate  
14 applications. So it would really be the feedback  
15 is from those who are seeking patents, you know,  
16 and they make suggestions on what would make it  
17 easier for them to get into the program, what  
18 things should be, you know, removed. And we have  
19 responded to some of that feedback to make it  
20 easier for people to get in.

21 MR. BORSON: All right, thank you. A  
22 quick comment, we're a little bit behind schedule

1 now by --

2 MS. KEPPLINGER: Just real quick, with  
3 respect to the Green program, I have a number of  
4 clients that are in this space and had  
5 applications in 1700, and it's been very  
6 successful from my perspective, my clients love  
7 it, and the examiners consider not only doing the  
8 case first special, they have been very responsive  
9 with interviews, and we've worked hard to get the  
10 cases allowed, and so they've kind of considered  
11 it special all the way along, so it's been very  
12 good.

13 MS. FOCARINO: Good, okay. I'm going to  
14 move quickly just because we're behind time. But  
15 I just wanted to show you the ombudsman program is  
16 doing well, we're getting more users of the  
17 system, and so we've got some data on that. But  
18 basically, you know, we've gotten some input on  
19 things that we can do to refine the program, so  
20 we'll be looking at that. But so far it seems to  
21 have gotten very positive response. Stakeholders  
22 like the ability to have some way to address



1 issues in a particular case, and so far I think  
2 it's viewed positively by our examiners also, so  
3 that's important.

4 The count system, again, we're  
5 continuing to look at the data that I've shared  
6 with you before at previous meetings in terms of,  
7 you know, the cases that are moving, our actions  
8 per disposal are going down, we're looking at our  
9 pendency numbers.

10 Obviously, the RCE growth rate and the  
11 pendency of those we are also looking at very  
12 closely. And the allowance rate is another  
13 indicator of some of the initiatives we put in  
14 place. So we're tracking those very closely, and  
15 you know, we'll make any modifications as we see  
16 the data come in.

17 The interview time, I know we've been  
18 focusing on compact prosecution and incentivizing  
19 interviews, examiners reaching out to applicants.  
20 And you can see at the far right, that bar is the  
21 amount of time so far this fiscal year, and it's  
22 increasing certainly above the two previous years,

1 so I think we've gotten a lot of good feedback  
2 also on examiners reaching out to applicants to  
3 try to resolve issues in cases early on, and we  
4 will continue to train the examiners and to  
5 incentivize them to do that. These are our  
6 quality initiatives or the allowance rate. And  
7 the performance appraisal plan, we revised the --  
8 plan, and also the examiner performance appraisal  
9 plan, hopefully we'll be revising that soon. But  
10 the two measures that we've had historically are  
11 in-process compliance rate, and our allowance  
12 compliance rate you can see there.

13 So we are, you know, doing fairly well,  
14 we know we can always do better, but this is one  
15 of the key indicators that we also look at, but  
16 you're going to be seeing a different -- besides  
17 these two measures, additional measures for the  
18 coming fiscal year in terms of, you know, the  
19 objective look on our quality.

20 MR. BORSON: Okay, thank you very much,  
21 Peggy. It's now time for a scheduled break, but  
22 we do have some flexibility later on in the

1 agenda. So at this point we'll take a break. If  
2 we can make to ten minutes, that would be great.  
3 It's now 9:15, let's reconvene at 9:25, if we can.  
4 Thank you very much.

5 (Recess)

6 MR. BORSON: Okay, thank you all. We're  
7 now reconvening the public session of PPAC.  
8 Before we move on on our agenda, I just wanted to  
9 relay a question from the outside that came in  
10 today. This was a question for the financial  
11 folks; what will the fee withholding do to the  
12 proposed three tracks patent application process?  
13 And so I'd like to ask Bob Bahr if he would  
14 respond to that?

15 MR. BAHR: Thanks, Ben. And just to  
16 allay any confusion, I'm not one of the financial  
17 folks, but none of them are here right now. But  
18 the bottom line is that for the three track  
19 proposal, we would still have to go through the  
20 process of implementing it by a notice of proposed  
21 rulemaking and a final rule. So most of fiscal  
22 year '11 would be spent, you know, in the

1 implementation phase. And so the continuing  
2 resolution situation would not have a big impact  
3 on that. But, obviously, if this went on year  
4 after year after year, there would be a problem  
5 with it.

6 MR. BORSON: Okay, thank you very much.  
7 Well, now at this point I'd like to have John  
8 Owens and Scott Williams, or actually Fred, Fred  
9 Schmidt is here, so John and Fred, please.

10 MR. OWENS: Good morning. So the first  
11 person I'd like to introduce you to is, to my  
12 left, Fred Schmidt. He is the team lead for the  
13 Patents End to End Project, and I'm going to ask  
14 him to speak for a few minutes on that program.

15 MR. SCHMIDT: Okay, thank you, John. I  
16 guess you've heard already from some of our  
17 members of the core team working on Patents End to  
18 End. At previous PPAC meetings we've heard from  
19 Marti Hearst. Marti, of course, is the Chief IT  
20 Strategist for the USPTO, a world renowned user  
21 interface expert, and has been working making sure  
22 that we have extensive stakeholder input.

1           We also have a focus in the Patents End  
2 to End Program on patent reengineering. And I  
3 just want to acknowledge Jim Dwyer is the lead of  
4 the Patent Reengineering Team, and Jim has an  
5 extensive team of members from all areas of the  
6 patent business area and are really looking at  
7 driving change in our business processes, both IT  
8 related and non-IT related changes.

9           And these changes that the reengineering  
10 team is coming up with will really be the drivers  
11 for the fundamental changes we're going to make in  
12 our automated systems in Patents End to End.

13           You also heard some previous meetings  
14 about our RFQ, our Request For Quotes for our new  
15 architecture and developing prototypes. Just to  
16 report that we have received multiple proposals.  
17 Those proposals are being evaluated by a team  
18 right now, and the expectation is to make an award  
19 on developing pilots and hearing proposed  
20 architectures by the end of October. We really  
21 can't talk much more about that process for a  
22 number of reasons. One reason is, I'm not on the

1 evaluation team, so I have limited knowledge of  
2 that, and, of course, that information is  
3 procurement sensitive.

4           And additionally and most important,  
5 John will be the deciding official on those awards  
6 ultimately, and, of course, we can't talk about  
7 that in front of John until the team doing the  
8 evaluation comes up with their recommendations and  
9 presents those to John for final decision, but  
10 that process is well underway.

11           But going back to the reengineering  
12 which I think is going to be the key driver for  
13 any automated changes we make here, we really want  
14 to focus on getting stakeholder input, and again,  
15 that's where Marti has been instrumental working  
16 with our examiners, with the surveys that she's  
17 gone out with, with the focus groups that she's  
18 conducted. And we plan to have extensive external  
19 stakeholder input, as well, but I think we're  
20 looking for PPAC support and guidance from -- in  
21 that regard. And I think, Ben, you have been  
22 working with Marti in that regard, if you want to

1 comment on that.

2 MR. BORSON: Yeah, I'd be happy to,  
3 thank you. The PPAC has been involved in this  
4 project for a couple of years now, and we are  
5 prepared to assist the office in reaching out to  
6 the user community, the external stakeholders,  
7 applicants, innovators. And I just wanted to make  
8 one comment, that all of the changes that occur in  
9 the reengineering process will effect the external  
10 stakeholders, so that even though the previous  
11 diagrams that have been presented publicly and at  
12 this meeting show the external stakeholders  
13 having, you know, some impact on what we would  
14 like to see.

15 I wanted to make sure that everybody  
16 understands that it's not simply about the user  
17 interface or the usability, it's about the  
18 internal processes, and anything that can be used  
19 to increase the efficiency of patent examination  
20 will help patent applicants.

21 And so we are prepared and ready to move  
22 ahead with the survey. Apparently the surveys are

1 a go, we will be implementing them, and we also  
2 would like to explore the possibilities of having  
3 roundtables, federal register notices, requests  
4 for comments, as well as other forms of  
5 interaction, including the new media web 2.0, 2.4,  
6 2.6 and so on. So thank you very much, and Fred,  
7 it's a pleasure to talk to you.

8 MR. SCHMIDT: Thank you very much. And  
9 just to emphasize, we are totally in sync with  
10 you, recognizing that any changes we make  
11 internally will definitely impact our external  
12 stakeholders, and we will be working closely with  
13 you discussing those proposed changes. So that  
14 will be part of a continuing dialogue that we will  
15 be having with you.

16 MR. BORSON: Thank you, I appreciate  
17 that comment very much. I think the distinction  
18 between internal and external is really one of  
19 where is the firewall, that's really all that it  
20 is, because the process is seamless. You can  
21 think of end to end or you can even think of it as  
22 a circular phenomenon in which there really is no



1 beginning and no end, the circle of life, if you  
2 will.

3 MR. SCHMIDT: There you go. Now I think  
4 John is going to pick up and talk about some of  
5 our near term initiatives that we're moving  
6 forward with. Thank you.

7 MR. OWENS: So as I have spoken to you  
8 before, not only fixing the software, but fixing  
9 our environment is also critical, not only to  
10 keeping examination going or improving examination  
11 today, but also stabilizing the environment for  
12 undue interruption due to hardware and system  
13 failures. One of the largest initiatives we had  
14 going on on the road map, which is coming to  
15 fruition this year, is the replacement of all the  
16 desktop hardware.

17 As you know, in the past I've talked  
18 about how we issue over 2., I think it's 1 pieces  
19 of equipment, computers, per individual here,  
20 we're moving to a 1 to 1 model with the universal  
21 laptop program.

22 It's a very powerful laptop. The laptop

1 has been acquired through the federal procurement  
2 process. It is a very powerful machine. It's an  
3 Intel Quad-Core, eight gigaram, that's supposed to  
4 be gigabyte of ram, not megabyte, and Windows 7  
5 and Office 2010. So we're migrating our platform  
6 from Windows XP on to the most modern environment.

7           We had to test quite a number of pieces  
8 of software. We have over 70 desktop applications  
9 that were mostly built under Windows XP, even a  
10 couple under Windows 3.1 that we had to port, so  
11 it's taken us a year to just do that. But we are  
12 on track to start the Beta NQ1, which is good, and  
13 certainly keeping Robert and POPA and the other  
14 unions involved. Some of these laptops have  
15 actually gone out with Windows XP on them to get  
16 people familiar with the hardware as part of the  
17 PELT Program. They have been greatly accepted in  
18 the performance of even the current software --  
19 the new hardware has improved. But the  
20 performance of the current system on better  
21 hardware after being put into Window 7 is even  
22 better. So this will help bridge the gap. This

1 platform will also be available for the new  
2 Patents End to End Program and be suitable to run  
3 those applications, as well.

4 We do have a stretch goal for Mr. Kappos  
5 to complete the distribution to all 10,000  
6 employees and 5,000 contractors approximately by  
7 the end of the fourth quarter of next fiscal year.  
8 The logistics say that it is going to take me a  
9 little bit longer than that, but it is a stretch  
10 goal that I have to accomplish.

11 The universal laptop purchases are  
12 complete. Moving the Windows products to Windows  
13 7 is in the test phase. We are selecting a  
14 business collaboration suite that involves not  
15 only a voiceover IP solution, but it also involves  
16 foul sharing, work sharing, instant messaging,  
17 teleconferencing, video conferencing capabilities.  
18 We are going to upgrade our PBX here, we're moving  
19 to a voiceover IP solution on campus, and we are  
20 looking at training needs that the examiner will  
21 have to move to the new environment. So by the  
22 end of the year, the goal is that every examiner

1 will have a new telephone based on voiceover IP on  
2 their desk, the same product at home, everything  
3 from a new router at home to the new laptop to the  
4 new monitors, et cetera, et cetera, so full suite  
5 upgrade from the seven plus year old equipment  
6 that they have today.

7           Some of you may have heard that the  
8 agency was given a little bit of money. I want to  
9 explain where that money went and what's it going  
10 to be used for. First, a lot of people assume  
11 that the agency received 129 million of funds or  
12 availability to use the money that we've  
13 collected. That came with a list of things that  
14 we're to do with it. It wasn't just a bucket of  
15 money that we could disperse as we'd like.

16           If you remember last year, some \$60  
17 million was pulled out of my budget, and the road  
18 map went from a five year road map to a seven year  
19 road map. Mr. Kappos would like the road map  
20 pulled back in to five years. To offset that 60  
21 million that was lost, I received 48 of the 129  
22 million. That 48 was divided up into projects of

1 which I had the money allocated to do. So just to  
2 go over it, the first one was the replacement of  
3 the PBX with the voiceover IP system I talked  
4 about earlier. The broadband upgrade is taking it  
5 to 300 kilobytes per second connection with the  
6 internet that we have here today and move to three  
7 gigabytes per second, a significant increase.

8           The teleconferencing software that I  
9 talked about earlier, replacing that product, the  
10 company, Nortel, that built the last product we  
11 use, of course, that also provided us our PBX and  
12 our original PTO Net 2 went out of business, it  
13 was acquired by another company. We have replaced  
14 the LAN with a CISCO LAN, as I've reported before.

15           And the teleconferencing suite we're  
16 currently talking about internally and demoing  
17 products and trying to finalize our requirements,  
18 that will be replaced this year. We're moving the  
19 hardware to an initial investment and a virtual  
20 infrastructure.

21           As much of the hardware we can get on  
22 virtual environment as opposed to the aging

1 hardware we have in the inventory that manages the  
2 system today in the data center as we can, not  
3 only to go green, but just a month or so ago we  
4 lost a piece of hardware that hasn't been produced  
5 since 2005 and had difficulty acquiring parts.  
6 That actually impacted patents examination. We  
7 worked with reduced performance for almost 48  
8 hours, which was not optimal. So getting off of  
9 that aging infrastructure, where parts are very  
10 difficult to acquire quickly and on to a  
11 virtualized managed infrastructure is very  
12 important to continuing the work that we do. And  
13 that same hardware can be repurposed later for  
14 Patents End to End without any issue. And lastly,  
15 the 20 million additional increase to make up for  
16 the lost time to purchase hardware for the laptop  
17 program, and that makes the total of 48.

18 MR. BORSON: Thank you very much. I  
19 wanted to ask you, given the fact that hardware  
20 does fail, what is the expected lifetime of the  
21 new laptop? And the second question related to  
22 that is, what do you anticipate, if any, problems

1 in moving into the agile format and backwards  
2 compatibility of new products that you would like  
3 to integrate into the system?

4 MR. OWENS: Okay, I'll handle those one  
5 at a time. The laptop, we're putting -- major  
6 change for the organization is, we introduce the  
7 concept with the help of the CFO for a capital  
8 improvement fund or a capital replacement fund.  
9 It's common in industry, at least where I came  
10 from, that you depreciate an electronic device,  
11 call it a laptop, over a period of three to five  
12 years. Because of the work that we do here, I've  
13 set it at three years. It doesn't mean it won't  
14 be adjusted. I definitely recommend it never go  
15 beyond five. But we want to -- I put together a  
16 plan that calls over the last couple of years in  
17 the presidential budget to replace the hardware  
18 that this agency uses every three years on the  
19 desktop, every five years in the data center,  
20 slight different schedules.

21 This is pretty much akin to industry  
22 standard. And I never wanted us to get into a

1 position like we did before, where people just  
2 ignored replacing laptops. We've taken control of  
3 that for the entire agency, we've started this  
4 capital improvement fund after this initial  
5 release, the funds are already in the budget, and  
6 they will come on a regular basis to replace the  
7 equipment, just like it would for any other  
8 business.

9           Let's see, the compatibility with the  
10 products, we did have to replace some of the minor  
11 software products that we use with newer versions,  
12 some of which we had to replace all together with  
13 similar products, none of which had major impact  
14 so far on the desktop. The rest of the products  
15 we own the software to, had the software  
16 ourselves, and we ported into Window 7 over this  
17 past year. It was quite an effort actually,  
18 porting very old products onto a Window 7  
19 platform. And those of you are probably not  
20 familiar with Windows software development, what  
21 was allowed once upon a time on Windows NT and 95  
22 is no longer allowed to be done on Windows 7. So



1 to even have an application run takes a  
2 significant amount of rework.

3 But we have ported all those  
4 applications, which was critical because the  
5 systems that we had today, the operating system is  
6 dead, Microsoft is no longer going to support XP,  
7 we won't be in compliance for security patches,  
8 we'd have vulnerabilities, and that is something  
9 that we cannot live with.

10 So we went through that effort even  
11 knowing we were going to replace it with Patents  
12 End to End in the next few years because of that  
13 and because of the need to replace hardware that's  
14 not even manufactured. The manufacturer of the  
15 desktop hardware we have today went bankrupt a  
16 year or so ago, so it's not even supported  
17 anymore.

18 As far as the agile development  
19 methodology we're going to be using for Patents  
20 End to End, my last seven years at AOL, that's all  
21 we used was agile. We went through several  
22 iterations of several different types of agile,

1 but we settled on one called Scrum, it's a rugby  
2 term, it encourages close collaboration between  
3 teams on a daily basis. And the customer, in this  
4 case, patents, would sit on each and every Scrum  
5 team and provide daily input on the direction that  
6 the team takes. And they would work against  
7 what's known as a, don't confuse it with the  
8 patent backlog, but a feature backlog, it's  
9 actually the term used, of requirements that would  
10 get filled when each and every what's known as a  
11 Sprint or a cycle of iteration.

12           It's going to be interesting managing  
13 something like that in the federal government.  
14 The federal government in general is run in a very  
15 waterfall like model, you do all your planning and  
16 then all your design and then all your  
17 implementation and all your tests and your  
18 deployment and you realize you didn't quite do it  
19 or make it and then you get written up by GAO and  
20 then you go back.

21           That cycle is what Mr. Kundra, Vivek  
22 Kundra of the federal CIO would like to break.

1 Industry has gone to agile years ago in order to  
2 break similar problems of spending a lot of money  
3 getting to the end and not getting what you  
4 desired or thought you were going to have. And he  
5 is working very hard to change OMB, the  
6 requirements, the reporting and so on to accept  
7 this new, more agile philosophy.

8 MR. BORSON: Well, thank you very much,  
9 John and Fred. I appreciate your time and your  
10 input. And at this point I'd like to move on with  
11 our agenda to Bob Bahr, who will give us an update  
12 on the equality initiative.

13 MR. BAHR: Thank you, Ben. Hi, I'm Bob  
14 Bahr and I'm giving you a progress update on the  
15 joint USPTO PPAC quality task force. Okay, back  
16 in 2009, the PTO, in conjunction with the PPAC, we  
17 formed a joint task force on quality. Marc Adler,  
18 Ben Borson and Steve Miller are the PPAC members  
19 on that task force.

20 We started -- the first step in this is  
21 preparing and publishing a notice in the Federal  
22 Register in December of 2009, requesting comments

1 on methods to improve patent quality and metrics  
2 to measure it.

3 We also -- we got many comments on this  
4 notice, and from that we analyzed the comments and  
5 we drafted proposed quality metrics. These  
6 quality metrics were posted on our web site in  
7 April of 2010, and also in April of 2010, we  
8 published a second notice in the Federal Register.  
9 We announced that we would be having two public  
10 roundtables on patent quality measures and we  
11 sought public comment on the proposed quality  
12 metrics. We conducted two roundtables in May of  
13 2010, the first was in Los Angeles, and the second  
14 one was held here at the PTO, and we, of course,  
15 have a web cast of these available on our web  
16 site. From that we've developed fiscal year 2011  
17 patent quality metrics, and they're a composite of  
18 seven individual metrics.

19 First is the final disposition  
20 compliance rate, which is our current review of  
21 the final rejections and allowances. The second  
22 is the in-process review compliance rate, which is

1 the same as our current in-process review  
2 compliance rate.

3 The next one is a new metric, it's the  
4 first action search review. Basically we review  
5 the search that was done before a first office  
6 action on the merits, was it prepared. The second  
7 is our review of the first office actions on the  
8 merits. And what that is and how it differs from  
9 in-process review is that in in-process review, we  
10 basically review for clear error, so it's sort of  
11 a binary, it's okay, or there's a clear error in  
12 the action, where the complete first office action  
13 on the merits review is more a qualitative thing  
14 where we look and we say, you know, did we do  
15 everything, you know, more ideally, are there  
16 things that we did that were okay, they weren't  
17 clear errors, but they were things that we wish we  
18 had done better, and are there things that the  
19 examiner did in the first office action that went  
20 above and beyond what, you know, is expected of  
21 examiners.

22 The next is the quality index report,

1 and that is a review of -- from all application  
2 information in PALM. We look at how many times  
3 was there a second or subsequent second action  
4 non-final, how many times are we reopening after  
5 final, how many times are we issuing restriction  
6 requirements after the first office action.

7 We look at these sorts of things which  
8 go to, for lack of a better word, churning of  
9 applications. So it's not just getting the job  
10 done right eventually, it's getting it done right  
11 the first time.

12 Then there are two surveys that take  
13 part of this. The first is an external survey.  
14 You know, we just got the stakeholders, well,  
15 patent applicants and see, you know, get their  
16 feedback, and also an internal survey, where we  
17 survey examiners to see how they feel about the  
18 tools and the training they have that go into  
19 doing a quality job.

20 Now, where does this differ from the six  
21 proposals we published in April? First is that we  
22 had proposed doing a complete application and

1 review, and what we discovered is, when we started  
2 to look at that, we decided that, boy, you're  
3 looking at everything that happened in an  
4 application, you're reviewing office actions that  
5 occurred years in the past, you're really  
6 measuring possibly things that were done years ago  
7 and training that was given years ago, you're not  
8 measuring what was done today.

9           So to make it a more, for lack of a  
10 better, real time, a more current review, we  
11 decided to not review everything that happened in  
12 the application, but to focus on the first office  
13 action and merits.

14           And the second thing we changed is that  
15 we basically divided this review into a review of  
16 the search and a review of the office action  
17 itself. The reason we did that is, we got a lot  
18 of stakeholder input that is very important to  
19 review the search, so we felt that we would make  
20 that a separate category of review.

21           And the last change we made in the QIR  
22 is, we did not originally propose to include

1 restrictions done after first office action in the  
2 metrics as proposed in April, but we got a lot of  
3 input that restrictions done late in prosecution  
4 are of great concern to applicants, so we decided  
5 to include that in our QIR analysis.

6 MR. BORSON: If I may, Bob --

7 MR. BAHR: Sure.

8 MR. BORSON: -- just a question here.

9 You mentioned that one of the reasons why you  
10 focused on the first office action on the merits  
11 and the search is because many of the activities  
12 occurred in an application years before; don't  
13 those also occur years before, so are you looking  
14 only at current cases or are you looking at older  
15 cases, as well?

16 MR. BAHR: No, we would be looking at  
17 current cases. We would be pulling cases in which  
18 a first office action was done with, I don't know,  
19 the last month or two. And, of course, the search  
20 was probably done right before the action is  
21 drafted. So we're not looking at cases where a  
22 first office action was done, you know, years in



1 the past.

2 MR. BORSON: Thank you for clarifying.

3 MR. BAHR: Okay. The next steps in this  
4 process, I was going to say to brief POPA and  
5 PPAC, and here you can see these slides were  
6 prepared way in advance, because we have briefed  
7 POPA on this and we're briefing PPAC now on the FY  
8 '11 patent quality metrics. The next thing we  
9 plan to do is to publish the quality metrics on  
10 our web site. And we're going to publish a  
11 companion notice on our web site that, you know,  
12 notifies the public that these metrics have been  
13 adopted. But we also want to make the point that  
14 this isn't really the end of the process, it's  
15 really just a step in the process, and that we got  
16 a lot of comments on things we can do to improve  
17 patent quality, and we're going to go through  
18 those to see which ones will give us the biggest  
19 bump in quality or the biggest anticipated bump in  
20 quality for, you know, for the resources it  
21 requires. And we will, you know, sort of call  
22 through those and pick ones that we think give us,

1 you know, the biggest bang for the buck, and we  
2 will implement those.

3 And the next thing is that we will  
4 continue to evaluate these metrics over the years,  
5 because they are FY '11 metrics, and, you know,  
6 we'll refine them for the outer fiscal years.

7 MR. BORSON: Thank you, Bob. I had a  
8 question about the overall scope and purpose of  
9 the quality metrics. We've had some conversations  
10 at the PPAC and between us relating to the use of  
11 the quality metrics and that the idea is to, among  
12 other things, to develop best practices. And I  
13 wanted to ask you about how things, you know, what  
14 your baseline would be. I know that the quality  
15 metric, the combined quality metric that you  
16 proposed relates to a stretch goal which is an  
17 aspirational goal, and you will present  
18 information about how you are achieving or moving  
19 towards that stretch goal.

20 I guess the question that I'd like to  
21 have clarified is whether or not you also will  
22 present baseline data, and the, you know, the

1 seven quality metrics individually or your report  
2 says that you will make that data individually  
3 available. But I also wanted to ask whether or  
4 not you have methods for validating the accuracy  
5 of that data.

6 MR. BAHR: Well, first of all, on the  
7 baseline data, we currently do the first two  
8 metrics, so we will have baseline data for that.  
9 The next two, the search and the first office  
10 action on the merits, we don't really have  
11 baseline data as such because we haven't looked at  
12 those in the past. We could artificially create  
13 that baseline information because we have done a  
14 small sampling of cases that we've reviewed in  
15 past years to see how they would do for the first  
16 office action on the merits and the search review  
17 and we can make that available. QIR, we have  
18 going back many years, so we can make that  
19 available. And the surveys we've done in the  
20 past, maybe with not the exact same survey  
21 questions, but they give us -- they do have the  
22 impression of, you know, the ratios of satisfied

1 to dissatisfied applicants.

2 And I'm not sure, I'd have to get some  
3 help on the examiner surveys, I don't know if we  
4 -- we haven't exactly asked those questions, so I  
5 don't really have a baseline for the examiner  
6 survey.

7 MR. BORSON: Is the examiner survey  
8 something you're doing in conjunction with POPA?

9 MR. BAHR: I don't know if it's "in  
10 conjunction with POPA", we briefed POPA on it.

11 MR. BORSON: In collaboration with or in  
12 consultation with?

13 MR. BUDENS: I certainly hope it'll be  
14 in conjunction with POPA.

15 MR. BORSON: Yes, Esther.

16 MS. KEPPLINGER: I had a question. The  
17 in- process review number, I think I heard you to  
18 say that that's -- the analysis has been done and  
19 you will continue to do that. I wonder what  
20 qualifies as a clear error in that survey, because  
21 the numbers that you report in terms of compliance  
22 don't seem to be in alignment at all with

1 reopenings at pre-appealed brief conferences,  
2 things like that. And at least from the public's  
3 perception, that's been -- the number that's  
4 reported doesn't seem to be in alignment with some  
5 of the work that's received. So I just wondered  
6 if that's, you know, what is a clear error and  
7 you're continuing exactly the same.

8 MR. BAHR: Right; a clear error is a --  
9 if you go in an office action that makes a  
10 rejection -- making of an unreasonable rejection  
11 requirement or objection. Now, as you know, this  
12 is a legal question, so you can have a rejection  
13 that an examiner thinks is reasonable, you know,  
14 or not unreasonable, and the board may decide not  
15 to affirm that rejection. Just because a  
16 rejection gets reversed doesn't mean it was  
17 unreasonable.

18 I mean no one -- we really can't predict  
19 what an appellate body is going to do, and that's  
20 -- I don't think anyone could do that. For  
21 example, in patent litigation, district court  
22 judges get reversed almost 50 percent of the time,

1 it doesn't mean they need to be replaced, so --

2 MS. KEPPLINGER: Of course, yeah.

3 MR. BAHR: Okay. So a lot of times  
4 cases go to appeal conferences and a decision is  
5 made, was the rejection reasonable, well, maybe it  
6 is reasonable, is it the best rejection that could  
7 have been made, maybe it's not, maybe there's a  
8 better rejection that could have been made, and so  
9 the case gets reopened. You know, it's an  
10 unfortunate result, but that wouldn't show up as a  
11 clear error in -- because the rejection was  
12 reasonable.

13 MR. BORSON: Yeah, Steve.

14 MR. MILLER: I think Esther makes a good  
15 point. And, Esther, in the PPAC quality group,  
16 we've continued to give input as to what kind of  
17 data that the office can look at. Certainly  
18 appeals, I think federal circuit appeal reversals  
19 and all kinds of district court issues are  
20 certainly data that we can look at.

21 I think from the standpoint of the  
22 office, and I heard Bob say it wasn't on a slide,

1 I think there's going to be a lot of work and  
2 feedback from us hopefully on the quality task  
3 force over the next year, plus to see how this  
4 data really works out at the end of the day,  
5 because if we don't get the right inputs, we're  
6 not going to get the right output.

7           And I think Ben and Mark and I have been  
8 working with Bob and his team to try to sort some  
9 of that out and to increase the data that's going  
10 in to look at quality. So I took your point, I've  
11 got it, and certainly we'll continue to feed some  
12 of those things into the system and into the  
13 office so we can refine some of these metrics over  
14 time.

15           MR. BAHR: Yeah, also, Esther, I just  
16 want to make another point, is that one of the  
17 reasons we went from one or two measures to seven  
18 measures is that the situation you describe should  
19 be captured somewhere. Maybe it's not captured in  
20 the in-process review, but it will be captured in  
21 the QIR, because there will be a reopening, and it  
22 will, you know, be a percentage too high, and that

1 is somewhat the philosophy of the new system, is  
2 that maybe a problem won't be caught in one  
3 metric, but it will be caught somewhere else.

4 MS. KEPPLINGER: Just to clarify, I  
5 would never suggest using the board reversal rate  
6 as a measure of quality, because if you have 100  
7 percent affirmant, then you're not taking close  
8 cases to the board, so I would never suggest that.

9 And I appreciate your point, I just --  
10 it's partially one of public perception, and it is  
11 their comments that are made quite often, and also  
12 my past history inside the office. But anyway, so  
13 it just -- we just need to be cognizant that the  
14 measures that we're doing are reasonable and that  
15 the office -- that what the office is doing is  
16 perceived by the applicant as reflecting actually  
17 the work that's being done.

18 MR. BORSON: Yeah, I'd like to make a  
19 comment. First of all, following on Steve's  
20 point, I think that viewing quality as an office  
21 issue is somewhat -- it's not the full scope, the  
22 full scope of quality is reflected in almost



1 anything that can be imagined, including -- and I  
2 will say that I think that board reversals are  
3 some indicator, we don't know how much weight to  
4 put on them, of course, depending on how close the  
5 cases are, court decisions are relevant, and maybe  
6 very importantly, the role of educating the  
7 applicants in what is considered to be good and  
8 not good quality.

9           And so I'd just offer that the quality  
10 initiative should be reflected in the development  
11 of best practices. We may not want to call them  
12 best practices, but at least good practices or  
13 better than worse practices and should be  
14 reflected accurately in the MPEP.

15           MR. BAHR: Thanks, Ben. And I'd just  
16 like to make another point, is that we have now,  
17 you know, we, for fiscal year '11, selected these  
18 seven metrics, but that doesn't mean it's the only  
19 thing we look at. The reason we chose not to make  
20 board and court decisions part of the metrics is  
21 because there's such a time lag between the time  
22 the work is done by the examiner and a decision is

1 rendered. If, you know, for just that reason  
2 alone, it's not terribly helpful.

3 But, obviously, we look at reopenings  
4 after appeal, we look at board decisions, and if  
5 that needle goes, you know, in the wrong direction  
6 too much, you know, we realize there's something  
7 that needs to be addressed, and that's, if you  
8 will, a couple years ago, why you have a  
9 pre-appeal brief conference.

10 MR. BORSON: Very good, thank you. Are  
11 there any other comments here from the table? How  
12 about members of the audience? You've been  
13 particularly quiet today. Okay, well, very good.  
14 At this point then -- oh yeah, Scott, please.

15 MR. KIEFF: I guess I'm just trying to  
16 make sure that I'm fully hearing kind of the  
17 concerns that were expressed and the responses to  
18 them. This is something I've watched evolve since  
19 Mark started it, so it's become very, very clear  
20 to me throughout this process that there is lots  
21 of really good hearts, good heads, sleeves rolled  
22 up, people in the room trying to engage in problem

1 solving, so that's awesome, I mean that's great on  
2 all sides. But what I haven't gotten an  
3 understanding of is what it's all about. So, for  
4 example, what's the benefit of getting it right on  
5 quality? And how is our thinking about this data  
6 going to shape our thinking about all sorts of  
7 other things we're doing?

8           And, you know, there's humble, honest  
9 recognition by the proponents of the metrics that  
10 they're not perfect, so no one is over claiming,  
11 and there's, you know, humble, you know, honest,  
12 you know, concerns by those worried about the  
13 metrics that they're somehow not capturing  
14 something.

15           But what I still don't get is like -- so  
16 let's assume one side is wrong, life is never one  
17 side versus the other, but let's assume wrong,  
18 let's assume wrong on the other way, how are these  
19 things going to play out?

20           I don't know that we need to answer  
21 those questions now, but I just offer that up as  
22 we continue to work through the process together

1 so that we're really -- as we're all sitting in  
2 the room, sleeves rolled up, with good hearts,  
3 good heads, we're kind of thinking to ourselves,  
4 how might this end up impacting things. There's  
5 no simple answer, I certainly don't have the  
6 answer, I don't demand that you have it today, I'm  
7 just asking those questions so that we keep them  
8 in our mind.

9 MR. BAHR: Well, I don't know if this  
10 answers your question, and it probably doesn't,  
11 but part of the objective or the point of the  
12 metrics we've selected is, we kind of assume that  
13 we are wrong and that our in-process review  
14 doesn't capture everything, and that's why we have  
15 the QIR, that's why we have the external surveys.

16 If our in-process reviews show that,  
17 yes, we're making a lot of rejections that are not  
18 unreasonable, but are not great in extending  
19 prosecution, that's going to show up with the  
20 external surveys, and it's going to show up in the  
21 QIR. So to a degree that's how I address things,  
22 I sort of assume that no one thing is perfect and

1 try and look at it from multiple angles.

2 MR. KIEFF: So I think that's awesome,  
3 and I guess then the only other follow-up I just  
4 -- in my -- this is a totally simple stylized  
5 model that I'm working with right now, but just  
6 that we remember that a patent that makes its way  
7 out of the office that is in some, you know,  
8 perfectly informed universe invalid is a patent  
9 that society can deal with by -- that litigation  
10 and the conversations leading up to the  
11 litigation, that those will have costs and  
12 benefits. A patent that never issues, it's not  
13 clear what happens with that. Now, you know,  
14 there's the chance at appeal, but depending on how  
15 the record is made and depending on how we think  
16 about the relationship between the patent office  
17 and the appellate courts, that never issued patent  
18 may not get the same kind of shot that an invalid  
19 patent gets.

20 Now, maybe society wants that, maybe  
21 society thinks that invalid patents are so  
22 pernicious, that we should be so worried about

1 having so many of them, and that is kind of the  
2 direction we want to bias this spring compared to  
3 improperly rejected patents, but just keep all of  
4 that stuff in the back of our minds as we play  
5 this through.

6 MR. BAHR: I mean I take your point, I'm  
7 not an economist and I'm not going to weigh the,  
8 you know, risk of, you know, improperly issuing a  
9 patent versus the risk of improperly denying what  
10 would be a valid patent. And I agree with you  
11 that if you tilt the needle in one direction, it  
12 probably is not good. So that's why, again, the  
13 metrics treat improper decisions to allow, and  
14 they also treat improper decisions to finally  
15 reject, and many of the metrics look at cases  
16 where we are making rejections, you know, and not  
17 allowances. So I think that what we try to do is  
18 take a balanced approach, rather than trying to  
19 figure out what's worse than the other, look at  
20 everything and try and, you know, do the best job  
21 we can with the resources we have to, you know, do  
22 the examination.

1                   MR. BORSON: Thank you, Scott. And,  
2     Bob, I wanted to thank you, as well. I think that  
3     what I've seen over the last couple of years is a  
4     move to including in the analysis these improperly  
5     denied patents. I think this is a very difficult  
6     area to measure, as Scott was pointing out.

7                   We don't know what the impacts are, but  
8     we can imagine a failure to develop a brand new  
9     industry, for example. It could be an effect of  
10    having a patent ultimately denied that may, in  
11    fact, for 101 type reasons, patentable subject  
12    matter reasons, may end up being an extremely  
13    valuable technology that does not see the light of  
14    day for some reasons related to substantive patent  
15    law, and we'll leave that conversation for another  
16    day. But I did want to thank you for  
17    acknowledging and including in the QIR and other  
18    such metrics the concept of invalidly denied  
19    claims.

20                  MR. BAHR: Thank you, Ben.

21                  MR. BORSON: Well, are there any further  
22    comments from the group here? We do have a couple

1 of questions then from the audience, that is, the  
2 call in audience. One of them we may not get a  
3 proper answer to, this relates to the IT  
4 sensitivity to electromagnetic pulses. I don't  
5 know if anyone is here that is familiar with the  
6 shielding and the robustness of the proposed new  
7 IT system. Bob, you're smiling, do you have any  
8 sense of that?

9 MR. BAHR: No, I'm just thinking about  
10 the impacts on us.

11 MR. BORSON: You mean the neutron bomb,  
12 is that what you're thinking about? Yeah, okay.  
13 Actually, the question came in with respect to  
14 solar flares and solar radiation. Peggy, do you  
15 have any thoughts or comments about it?

16 MS. FOCARINO: I have no idea.

17 MR. BORSON: Well, I do remember at one  
18 point John Owens did mention to me that the system  
19 would be secure and robust in the form of not only  
20 hacking and piracy, but also electronically  
21 isolated, so there is at least something about  
22 that. And I apologize to the person who called



1 in, we didn't get your question while John or Fred  
2 were still in the house, maybe next time we'll get  
3 that one. There's a second question, and this I  
4 think relates, Peggy, to your point about the  
5 docketing. The question relates to, is there a  
6 high level official explanation of the different  
7 dockets and how these dockets relate to or  
8 interact with the bi-week productivity of an  
9 examiner.

10 MS. FOCARINO: Well, the answer is, yes,  
11 there's a work flow element in the performance  
12 appraisal plan that dictates how examiners examine  
13 cases in terms of their regular new case docket,  
14 and then they have a special new case docket, and  
15 the rate of movement of those cases is dictated in  
16 the performance appraisal plan.

17 And hopefully we'll have a new  
18 performance appraisal plan in place in the next  
19 fiscal year. It has to be ratified by the dues  
20 paying members of our examiner's bargaining unit.  
21 But this system I think will help us incentivize  
22 examiners to move cases at a faster rate by

1 attaching an award to that. That will also help  
2 examiners pick up cases even in the special new  
3 case docket at a faster rate, because we have an  
4 award attached to it. So we're trying to focus on  
5 incentivizing movement at one and a half to two  
6 times the rate that an examiner would normally  
7 have to move their work out of those cues by  
8 developing an award that goes along with it.

9 MR. BORSON: Well, if I may follow up on  
10 that, I think there's an underlying question,  
11 which is, how many dockets are there, how are  
12 things decided where the impacts of a case being  
13 on one docket or another. This usually isn't  
14 talked about very much, but it certainly came up  
15 with the change in the count system and the change  
16 in the RCE docket.

17 And so I wanted to ask whether or not  
18 you have a plan to, or if you don't, maybe you  
19 could address what these different dockets are for  
20 the public so that there might be, you know, a  
21 link to a web page that describes the different  
22 dockets, describes how they're handled, how

1 decisions are made to put things on one docket or  
2 another, and a related question is, how things are  
3 changed from one docket to another, if that  
4 occurs.

5 MS. FOCARINO: Okay. That is a really  
6 good question, and I think with the new  
7 performance appraisal plan, we have a very -- we  
8 will share that with the public as soon as we know  
9 that it's going to be implemented. There's a very  
10 nice chart that shows the different dockets, the  
11 different cues of work and the rate of movement  
12 that they're expected to move at so that it will  
13 help people see all of the different cues that  
14 exist.

15 MR. BORSON: Okay. And sort of just to  
16 follow up to expand that into other aspects of how  
17 cases are handled, do we know how many times a  
18 case is transferred from one production or one  
19 segment of the patent office to other segments,  
20 and is there some process efficiency that can be  
21 obtained by reducing the number of individuals  
22 that look at a case, that have anything to do with

1 it, all the way from input through -- to a final  
2 disposition?

3 MS. FOCARINO: Right, yes. We have a  
4 transfer process, so we certainly know how many  
5 applications are moving from one area to another  
6 from examiner to examiner, but we've also been  
7 focusing on making that more efficient. And then  
8 Jim Dwyer, who's in charge of our Patent Section  
9 of the End to End for reengineering and processes  
10 also focused on that transfer issue, that's one of  
11 his main points of focus, because certainly  
12 there's some efficiency to gain in that aspect.

13 MR. BORSON: Okay, thank you. Yes,  
14 Catherine.

15 MS. FAINT: I just wanted to go back to  
16 quality for a moment. From the examiner point of  
17 view, very often what we want is feedback,  
18 information, collaboration, training, and what we  
19 often feel we get is based on form over substance,  
20 so that we get what seem like dings based on  
21 things that people want to measure that are not  
22 overall helpful in helping us to improve our own

1 quality, or that even recognize the quality of the  
2 majority of the work that we may be doing and how  
3 we could expand that.

4           So in measuring things, I always think  
5 it's important to realize somewhat as Scott was  
6 pointing out, but from a different point of view,  
7 what you want to get to is an improvement in  
8 quality. And you have to be careful in doing  
9 that, in looking at what you're measuring, so the  
10 people who are the receivers of all this effort at  
11 quality are actually being able to change their  
12 quality of work.

13           MR. BORSON: Thank you. Are there any  
14 further questions from the external audience,  
15 members of you that are away from Alexandria? If  
16 not, I'd like to invite the members of the public  
17 to consider what you would like to see as part of  
18 the annual report from this committee, from the  
19 PPAC. We will take a brief break, 15 minutes is  
20 allocated for that, after which we would like to  
21 receive as many comments and ideas and have some  
22 interactive conversation with either members of

1 the committee or members of the USPTO that will  
2 remain. So I'd very much like you to invite your  
3 comments, either through the email to the PPAC  
4 email account, as many of you have already done,  
5 and if you would like to, you know, send carrier  
6 pigeons or smoke signals, please feel free to do  
7 that, as well. So thank you, we'll take a 15  
8 minute break and reconvene at 10:30.

9 (Recess)

10 MR. BORSON: Let's get everyone to come  
11 back into the PPAC public session. We're about to  
12 start our last session of the morning. And as a  
13 preamble, I'd like to thank everyone for being  
14 here again and for contributing to this meeting.  
15 We do have one question from the -- yes, this came  
16 in as an email in the PPAC email system.

17 This is actually an interesting  
18 question, and if I might just read it. "I would  
19 like to see some discussion of the participation  
20 of independent inventors in the patent process. I  
21 see in the USPTO statistics that the percentage of  
22 applications filed by independent inventors is

1 declining. If that percentage goes down to single  
2 digits, there will be a question about the future  
3 legitimacy of the Patent Office as a resource for  
4 the general public. Will the USPTO become a  
5 resource for just the large companies?" So  
6 anybody, Peggy, for example, do you have a comment  
7 about that?

8 MS. FOCARINO: I think I came in on the  
9 end of that question, but I think the concern is  
10 the decrease or over the total percentage of the  
11 number of applications that are coming from the  
12 independent community?

13 MR. BORSON: Yes, that's correct.

14 MS. FOCARINO: Right; it's something  
15 that I don't think internally we've talked about  
16 in depth. I know we're looking at fee structures  
17 and things that certainly would help the segment  
18 of our stakeholders in filing applications, and  
19 there are certain programs that are directed to  
20 small entities, but I haven't heard a lot of  
21 internal discussion of concern for this, but  
22 certainly we're -- if, you know, we're open to

1 ideas and suggestions if there's programs that we  
2 could put in place that would help the independent  
3 inventor community or if there's things that we're  
4 doing that work against it, certainly we're open  
5 to that dialogue.

6 MR. BAHR: Yeah, I mean we have  
7 independent inventor programs and outreach  
8 programs to try and help independent inventors,  
9 because, you know, dealing with the patent system  
10 is fairly daunting for anyone, but it's something  
11 we're, you know, we would be concerned about if  
12 independent inventors dropped out of the patent  
13 system.

14 MR. FOREMAN: That number might actually  
15 be deceptive, and the reason why I say it's  
16 deceptive is, we should look at how many  
17 applications are actually issuing versus being  
18 filed, because I think the system for many years  
19 has been filled with maybe applications that  
20 weren't good applications.

21 There wasn't as much awareness or  
22 knowledge in the independent inventor community of



1 the process. And let's face it, there were a lot  
2 of scam companies out there that encouraged  
3 inventors to file applications on subject matter  
4 that they shouldn't have patented or tried to file  
5 a patent on to begin with.

6           So while I think we should all be  
7 concerned if there is a decrease in the number of  
8 independent inventors who are filing applications,  
9 next we should look at what's the number of  
10 patents that are being issued to independent  
11 inventors, because what we may find is that the  
12 number is the same, it's just better quality  
13 applications are being filed and less people are  
14 being exploited or filing applications that they  
15 shouldn't have filed to begin with.

16           MR. BORSON: That's a very good point,  
17 thank you, Louis. I had a comment about what the  
18 office can do, and I think one is the fee  
19 structure, Peggy mentioned a fee structure. The  
20 U.S. has historically had a -- what would be  
21 called a back loaded fee structure in which it  
22 does not cost very much to get in the door.

1           And this is true for the official filing  
2 fees, and I'd like to the office to maintain a low  
3 barrier to entry upon filing, so I like the idea  
4 of having the filing fees be nominal. And once a  
5 patent is granted and found to be useful, the  
6 person will basically pay for the cost and the  
7 maintenance fees.

8           There are a couple of twists to that,  
9 one of them is that there is -- many countries in  
10 the world have an annuity based grant system or  
11 annuity based patent system whereby you file your  
12 application, and then at some point in the  
13 process, you begin to pay annuity fees, and in  
14 some countries the annuity fee structure is so  
15 onerous that unless you have a truly blockbuster  
16 patent, the patents will not survive until the end  
17 of their term because the annuity fees are too  
18 expensive. I would, of course, like to not see  
19 that happen in the United States, and I would like  
20 to see the U.S. maintain this back loaded system.  
21 It, of course, puts a big time disconnect between  
22 the time that's put into the application by the

1 examining core, which is all up front time,  
2 whereas the applicant is paying for that  
3 downstream, which is I think one of the big  
4 advantages of the U.S. system.

5           Now, on the other hand, I think that the  
6 quality of the applications is another matter. In  
7 order for an independent inventor to file a high  
8 quality application, it probably costs a  
9 significant amount of money to hire a competent  
10 patent attorney to write a proper case with proper  
11 disclosure to support the claim scope that the  
12 applicant wishes.

13           In some other countries, one can file  
14 and obtain a patent grant based on a relatively  
15 thin or a weakly supported disclosure at least  
16 under United States standards.

17           The United States has a very rigid,  
18 strong standard for patentability which I think  
19 has done well world-wide to support business.  
20 However, the largest cost for an independent  
21 inventor is likely to be at the very, very  
22 beginning, at a time when they really don't have

1 very much money. I wish that there were a better  
2 way to do this. I think finding patent attorneys  
3 that are willing to work for reduced fees or pro  
4 bono is one way to approach it. But,  
5 unfortunately, the patent system is really a  
6 business based tool, the patent is a business  
7 tool, it's not a social tool in the same sense  
8 that a true social program would be.

9           So I would like to invite any comments  
10 from others about this issue, and certainly the  
11 independent inventor community is well represented  
12 on PPAC. Not only Louis, but myself and Maureen,  
13 we all work with small independent inventors,  
14 small companies and the like. So thank you for  
15 that question, I think it opens a good  
16 conversation.

17           MR. PINKOS: Bob or Peggy, maybe use  
18 this public opportunity to reiterate -- I think  
19 you mentioned there's a help line or a help -- I  
20 mean there's a -- especially for process related  
21 questions, right, how to get into the system, what  
22 to do, et cetera, that's specifically geared

1 towards the independent inventor?

2 MR. BAHR: Yes, we have independent  
3 inventors in our assistance center, yes.

4 MR. PINKOS: It can be done online, it  
5 can be done via the phone? Does anybody happen to  
6 know the web site or the phone number?

7 MR. BAHR: I know you can do it by  
8 phone, I don't know the details beyond that.

9 MR. BORSON: Yeah, I just suggest that  
10 maybe the office could revisit how it's presenting  
11 this information. And if you think that  
12 improvements would help independent inventors,  
13 that would be useful. I don't know whether the  
14 office also still has a referral service whereby  
15 an independent inventor can be directed to  
16 competent patent counsel locally, is that  
17 something that's still being done?

18 MR. BAHR: We do it, we don't do  
19 particular patent attorneys, we would just tell  
20 them, you know, this is the list of the attorneys  
21 in your area, you know. We can't really recommend  
22 anyone.

1           MR. BORSON: I understand that, but I'm  
2 just thinking that if an independent inventor  
3 really doesn't know where to begin, the USPTO web  
4 site might be a good place to start. Okay, well,  
5 thank you for that. I'd like to open the floor to  
6 the members of the audience here in person. We  
7 have a couple of microphones, one on each side of  
8 the screen, and we have a comment from somebody.  
9 If you'd please identify yourself unless you'd  
10 like to remain anonymous.

11           MR. BEFFEL: Good morning. My name is  
12 Ernie Beffel, and thanks to Ben for inviting me to  
13 attend. I'm out here on an interview trip. And I  
14 wanted to make a suggestion for something that the  
15 panel might consider adding to its annual report,  
16 a mention of a collaboration tool that's proven  
17 quite effective for me over the last five years,  
18 that has gained approval, kind of sort of  
19 official, there's no objection to it approval  
20 within the Patent Office over the last six months.

21           The collaboration tool is the use of  
22 Adobe Connect in telephonic interviews with

1 examiners. Adobe Connect isn't quite as well  
2 known as WebEx, it's basically the same thing as  
3 WebEx or Go to My Meeting or Net Meeting or a  
4 variety of other products.

5 Adobe Connect in particular has been  
6 approved by the Patent Office after security  
7 evaluations. It's a product that the Patent  
8 Office licensed. But in my use, I'm using a  
9 license that I have obtained myself, I'm not using  
10 any of the Patent Office's resources, but  
11 resources that I bring to it.

12 What happens is, you set up everything  
13 on your computer that you're going to need to talk  
14 to the examiner before the interview starts,  
15 including an editable copy of your claims, with  
16 changed tracking turned on. You can go through  
17 the drawings, and the examiner sees the same thing  
18 that's on your desktop. The examiner sees the  
19 illustrations that are important for explaining  
20 your technology, sees the passages of either your  
21 application or the references that are being  
22 discussed.

1           It helps keep the attention focused and  
2 helps illustrate what you're talking about. When  
3 you get around to looking at the wording of the  
4 patent claims, instead of talking about how the  
5 claims might change, you actually change, and the  
6 examiner says, that's not quite right, why don't  
7 you do this, and you type a little bit more, and  
8 within five minutes, you settle out the wording of  
9 a claim in a way that might have taken two or  
10 three iterations, trips back and forth,  
11 amendments, draft amendments by fax and the like.

12           All the examiners that I've worked with  
13 using this tool, and I've actually used it over  
14 the last four years, since Commissioner Doll said  
15 it would be fine to go ahead and give a try with  
16 WebEx. All of the examiners that I've used this  
17 with have found it to be a fantastic tool, a great  
18 way to -- a huge improvement in a telephonic  
19 interview. And at least for the examiners that  
20 I've met on different trips out here, I think it's  
21 actually more productive than sitting in the  
22 examiner's office. It's more productive because



1 if you're working on something that's extremely  
2 technical, you really want to have your eyes  
3 focused either on the figures or on the wording,  
4 you want to have your head into that rather than  
5 trying to put the laptop at the end of the table  
6 and maintain your social distances and your nice  
7 eye contact and everything.

8           You actually get more done in a  
9 telephone interview with Adobe Connect and  
10 everybody looking at what they're trying to kind  
11 of geek out on than you do if you're sitting  
12 across the desk. There's no replacement for  
13 meeting the examiners face to face and  
14 understanding who you're working with, but once  
15 you've gotten over that hurdle, just as in  
16 business, you can do things with these kinds of  
17 collaboration tools perhaps even more effectively  
18 than you can in person.

19           So I wanted to encourage you to mention  
20 that in your report. I wanted to thank Peggy  
21 Focarino and Dave Wiley for having given the  
22 approval for me to start talking about this, and

1 thank you.

2 MR. BORSON: Well, thank you, Ernie. I  
3 wanted to ask sort of to broaden it out, you've  
4 been using a particular type of tool, maybe,  
5 Peggy, you could comment on other types of tools  
6 that the office has considered and are useful that  
7 might help the inventor community.

8 MS. FOCARINO: Unfortunately, John Owens  
9 has left, but I know that he has the task of  
10 testing out different collaboration tools, and I  
11 know we will begin testing different tools, I  
12 believe it's during the first quarter of the next  
13 fiscal year, to see how they work.

14 But what Ernie's mentioning is really  
15 great for -- especially as we expand our work  
16 force to a more virtual environment. We have a  
17 lot more people that hotel or telework some  
18 portion of the week, and having this kind of  
19 interaction for interviews is great, because we do  
20 have people that still want a personal interview,  
21 they want that face to face, and I think this  
22 sounds like it works fairly well, sometimes

1 better, so --

2 MR. BEFFEL: It gives you a very high  
3 quality interview without the hoteling examiner  
4 having to show up in D.C., without the west coast  
5 attorney having to fly out --

6 MS. FOCARINO: Exactly.

7 MR. BEFFEL: -- to D.C. for the  
8 interview.

9 MS. FOCARINO: Exactly; so we'll be  
10 trying different collaboration tools based on what  
11 John Owens can, you know, get out there and  
12 deploy. I know trademarks is going to be also  
13 trying out some new tools. And it'll be up to the  
14 individual business units, is my understanding,  
15 which tool they choose to go with. But it's good  
16 to hear your feedback on this one.

17 MR. BEFFEL: At the present time, any  
18 patent attorney can elect to use Adobe Connect and  
19 it's even a free subscription. If you go to  
20 Acrobat.com, you can sign up for a free account on  
21 Adobe Connect, and that's all you need to conduct  
22 this kind of session with an examiner. So it

1 doesn't drain the Patent Office's resources at  
2 all.

3           It requires a little bit of  
4 familiarization of yourself as to how the tool  
5 works so that you don't waste your time and the  
6 examiner's time during the interview. But if you  
7 figure out how to use one or two key strokes to  
8 switch from one screen to the other so you're  
9 really looking at exactly the right thing, if you  
10 do some bookmarks and hyper linking in advance,  
11 there's a few tricks that you learn, but it really  
12 is efficient and great for the examiners I think.  
13 Thank you.

14           MR. BORSON: Well, thank you very much.  
15 I'd like to invite others in the audience, if they  
16 have any comments that's, you know, not only about  
17 what Ernie had to offer, but also general comments  
18 or suggestions for the PPAC annual report, we  
19 would love to hear from you.

20           Also, if there's anyone that would like  
21 to come in via the web broadcast, we have a portal  
22 whereby we can receive comments that way, and also

1 through the PPAC email address. So just to give  
2 the folks out in ether land an opportunity to make  
3 comments, we'll maybe give it another five or ten  
4 minutes or so, and if there are further comments,  
5 we'll take them, and if not, we'll move on.

6 So in the final few minutes, Peggy, do  
7 you have any general comments that you'd like to  
8 offer about what you would like to see in the  
9 report? And I will, of course, be willing to take  
10 it under advisement and give it all the  
11 consideration that it is due.

12 MS. FOCARINO: Right, I think, you know,  
13 we would like to see, you know, some guidance,  
14 some ideas on what we can do. Certainly I think  
15 we have a good, you know, quality metric approach,  
16 an expansion, a more balanced approach, so we're  
17 interested in seeing, you know, some support for  
18 that and maybe some ideas of how we can, you know,  
19 which direction we can think about going in in the  
20 future. You've seen some significant changes that  
21 have been implemented this past year in terms of  
22 how we give examiners credit for their work and

1 some other initiatives, so thoughts on how you see  
2 that working, should we redirect some of those  
3 changes, are we going along the right path, are we  
4 looking at the right data points to try to see how  
5 all those are working together.

6           You know we're going into a new fiscal  
7 year with hopefully a new performance appraisal  
8 plan, and some -- yet other changes to the way  
9 examiners do their day to day jobs, we think that  
10 will also move us in a positive direction, so  
11 we're looking for feedback on that.

12           And, you know, we're definitely trying a  
13 lot of different things. And, you know, I have to  
14 give Robert and his bargaining unit kudos because  
15 a lot of these things that I briefed you on today,  
16 all the special programs, the accelerated  
17 programs, the Green Tech, the Project Exchange,  
18 you'll see more and more of these, these are  
19 because normally we would have to negotiate these  
20 things, and, you know, we've been fortunate to  
21 have a good relationship where we can collaborate  
22 with the examiner and union on a lot of these

1 things and try them. If they work, great, we can  
2 talk about expanding them, and if they don't work,  
3 then we can talk about what other direction we  
4 should go in. But I think we've had a year at  
5 least under our belt where we can try a lot of  
6 things that otherwise, in a different environment,  
7 we wouldn't have the opportunity to try or we  
8 would be negotiating being able to implement  
9 certain things literally for years. So, you know,  
10 I'm just interested in what you see happening from  
11 an outside viewpoint.

12 MR. BORSON: Okay, thank you very much,  
13 Peggy. There are a couple of comments that have  
14 come in. One of them is relating to the USPTO web  
15 site for independent inventors,  
16 <http://www.uspto.gov/inventors/independent/index.lst>  
17 or [jsp](http://www.uspto.gov/inventors/independent/index.jsp). That I believe is the correct web site,  
18 if I'm not mistaken. I may not have read this  
19 correctly. Okay. In any event, there is an  
20 independent inventor's web site, and I don't know  
21 whether there is a message implicit in this. It's  
22 a reasonably long URL, and I don't know how easy

1 it is to get to the independent inventors portion  
2 of the web site. Maybe you might consider  
3 readjusting the buttons, where the buttons are on  
4 the web site itself.

5 MS. FOCARINO: Right.

6 MR. BORSON: Okay. And there's one  
7 other comment that came in, "What about the Fog  
8 Index of the writing used in the patent itself?  
9 Much of the language is user hostile." Now, I'm  
10 not quite sure what is being referred to there.  
11 "What about the Fog Index", that's Fog Index, "of  
12 the writing used in the patent itself." A new  
13 metric, a new Fog --

14 MR. PINKOS: Maybe they were suggesting  
15 a new measure of the Fog Index.

16 MR. BORSON: This must be from San  
17 Francisco. Yeah, I'm not quite sure how to  
18 interpret that. If the author of this question  
19 would be so kind as to perhaps amplify on what  
20 you'd actually like know, it would be useful.  
21 Yes, Esther.

22 MS. KEPPLINGER: I can't necessarily



1 interpret it, but I suspect they mean the legalese  
2 that's used in the office actions that come back  
3 to them. But the office did have and the MPEP  
4 provides for help for independent inventors, and  
5 the examiners will typically be much more helpful  
6 if they request it in explaining the procedures  
7 and explaining some of it, so that -- assuming  
8 that that's what the person means, there are  
9 available ways. Plus, they can call in to the  
10 help desk and things like that to get assistance.

11 MR. BORSON: Yeah, that's very good.  
12 Actually I do have an experience that I'll relay  
13 briefly. I had -- I worked on a case after it had  
14 granted for an independent inventor, and looking  
15 through the file history, there was a rejection  
16 under 112, second paragraph, because the claim  
17 language was indefinite, and the response of this  
18 pro se applicant was, how dare you say that it was  
19 indefinite, I am definitely claiming this.

20 MR. PINKOS: I think there have been --  
21 there could be some legitimate feedback in there  
22 that, you know, clarity and conciseness of the

1 rejections by examiners could be looked at. I  
2 don't know how you would exactly measure that, but  
3 it's something that the office could always look  
4 at, because if you've got, you know, a very long  
5 rejection or something that's not understandable,  
6 that effects the user community, and maybe that  
7 was the fogginess that they had, that clear and  
8 concise writing is important.

9 MR. BORSON: That's actually a very good  
10 point, Steve, thank you. One thing that occurs to  
11 me is that it may relate to formed paragraphs, as  
12 well. We've noted -- many of us have noted that a  
13 formed paragraph will be pulled down from a prior  
14 office action, they will have the same typos as  
15 was in the prior office action. And I do  
16 understand the pressures on examiners to work  
17 quickly and effectively, but I think that there  
18 might be an opportunity to revisit some of the  
19 formed paragraphs to make sure that they are  
20 really crisp and clean and can be understood by  
21 everybody.

22 Certainly we can't have a direct impact

1 globally on how examiners use the language that we  
2 prosecute patents in, but anything that would be  
3 helpful. In fact, possibly an idea for improving  
4 quality would be improving the quality of language  
5 use, so I'm going to make a note about that.

6 MR. FOREMAN: Ben, let me add that I  
7 think that the resources that are available to the  
8 independent inventor community are very well  
9 represented on the USPTO's web site. There are  
10 links right on the home page that take individuals  
11 to those resources, which are both very wide and  
12 very deep. So to answer that question that came  
13 in, those resources are there, you just have to do  
14 a little navigating on the web site to find them.

15 MR. BORSON: Good, thank you, Louis. Do  
16 we have another comment? Robert, do you want to  
17 --

18 MR. BUDENS: Yeah, just two things, one,  
19 I would like to reaffirm I think what Esther was  
20 saying, in saying, you know, for independent  
21 inventors, if they have questions, you know,  
22 examiners know if they're dealing with a pro se

1 applicant that they need to try and, you know,  
2 walk them through the process as best they can  
3 and, you know, are willing to give them as much  
4 help and advice as, you know, they can without,  
5 you know, I mean there's some things we can't do  
6 other than advise you that you might want to get a  
7 lawyer.

8 But I know examiners certainly, you  
9 know, try and do their best with the small  
10 inventors and the pro se inventor community.

11 Secondly, as far as Fog Index is  
12 concerned, I would say that perhaps the Fog Index  
13 actually works in both directions, too, and there  
14 may be a level of fogginess in the applications  
15 that are in front of the examiner, you know, so  
16 just a point there.

17 MR. BORSON: Yes, I think that's a fair  
18 comment. Okay, we have a member of the audience  
19 here.

20 MR. MYERS: Yes, I'm Randy Myers from  
21 the Patent Office Professional Association, and I  
22 wanted to address a comment that Steve Pinkos made

1 a little while ago regarding specifically the  
2 Green Technology Program and asking, you know,  
3 what are the advantages to the applicants and so  
4 on and so forth.

5           And I wanted to point out that really  
6 the data that we have here where it says that the  
7 time from filing date of the application to the  
8 time of allowance is an average of 15.9 months. I  
9 think this is very should I say misdescriptive  
10 because, and probably not too accurate, because  
11 when we initiated the program, we were taking  
12 basically back inventory also of applications and  
13 averaging that in.

14           You know, from this point forward,  
15 people that are applying and that also put their  
16 petition in for the Green Technology are going to  
17 get an action rather quickly. And as an example  
18 of that, we had an attorney come in and speak to  
19 our organization and to I think some of the other  
20 members of management here relating his story of  
21 how he had filed a patent application, and within  
22 two months, he had a patent, and within that two

1 month period, he was out getting manufacturing  
2 quotes and raising capital and everything on an  
3 invention that probably would have taken him, you  
4 know, five years just to run through the normal  
5 process and get his patent. So I'm thinking that  
6 this number is going to go way down as the number  
7 of cases in the program increases. Thanks.

8 MR. BORSON: Okay, thank you very much.

9 MR. PINKOS: Thanks, Randy and Peggy. I  
10 think there are some additional numbers attached  
11 to the Green Tech presentation which are very  
12 helpful. And I guess the suggestion that I was  
13 making was that if there are some numbers that  
14 could be developed around the exchange program,  
15 they would be, likewise, just as helpful.

16 MR. BORSON: Yes, we've received a  
17 clarification from the person who sent in the Fog  
18 Index question, and the new comment is, "Many of  
19 the actions are not understandable", and I think  
20 this is a point that we've already touched upon,  
21 that "It would be valuable to have there be simple  
22 plain language, explanations of rejections, not

1    overly technical, I think that's a good place to  
2    start.  For those of us that write applications,  
3    we usually start with a very general plain  
4    language type of explanation of the invention up  
5    front in the summary and then follow through with  
6    increasingly level of detail as needed.  I think  
7    that's, in general, a writing style that is  
8    amenable to all sorts of folks and I would  
9    encourage everybody to use it."  Okay, we'll keep  
10   the lines open for another five minutes or so.  
11   And, Bob, do you have any comments as to what you  
12   would like to see in the report?  Peggy had some  
13   comments, do you have any?

14           MR. BAHR:  Well, Peggy mentioned the  
15   quality metrics, obviously I'd like those  
16   discussed in the report.

17           MR. BORSON:  You will have your way.

18           MR. BAHR:  Thank you.

19           MR. MILLER:  Maybe for the audience you  
20   could explain some of the areas that we're  
21   thinking about for the report.

22           MR. BORSON:  Sure, that's a good idea.

1           MR. MILLER:   And that may focus their  
2    comments.

3           MR. BORSON:   Sure; the current version  
4    of the report is still in a preliminary draft  
5    stage.  We spent most of yesterday going through  
6    it and we almost made it through.  But there are  
7    sort of two aspects to the report, one aspect at  
8    the front end is sort of a description of some of  
9    the overarching ideas or themes that we have  
10   believed are prominent during the last year, one  
11   of them being, you know, a thanks to the U.S.  
12   Patent and Trademark Office and the Administration  
13   for increasing the focus on customer service,  
14   we've seen that in many areas.  We also have noted  
15   an increase in collaboration and cooperation with  
16   the patent applicant community.  And we would like  
17   to encourage that there be overall cooperation and  
18   collaboration between all elements of the  
19   innovation community, including folks in the  
20   legislature and the judiciary and the Patent and  
21   Trademark Office and other administrative  
22   agencies.



1           The innovators community, the business  
2     community that supports innovation, the investor  
3     community, I think that, you know, collaboration  
4     is a very good thing and it will move ahead very  
5     quickly.

6           We also noted the increased  
7     transparency, the use of the dashboard and other  
8     easily recognizable and easily accessible forms of  
9     communication. Also, these sorts of meetings are  
10    very valuable. We also encourage other forms of  
11    communication to occur through either the  
12    internet, other sorts of web tools, in person  
13    meetings and the like to increase transparency.

14           We also will focus on the clarity of  
15    explanations of things. We've touched upon  
16    clarity of procedure, including the MPEP. Yeah,  
17    Bob, you have a comment?

18           MR. BAHR: I was just going to add to  
19    that that it would be helpful to emphasize the  
20    importance of, you know, adequate resources, you  
21    know, funding, and also that it be a more stable  
22    funding stream and not so much, you know, year to

1 year, you know --

2 MR. BORSON: Well, I apologize for  
3 missing that point, that's point number one.

4 MR. BAHR: Okay, thank you, because  
5 really it's the, you know, nothing works without  
6 it.

7 MR. BORSON: Absolutely, and then of the  
8 initiatives that have been proposed by the office  
9 that are under discussion would work without  
10 funding. So having gone through those sort of  
11 basic sort of interwoven themes that appear in  
12 many of the topical areas, we do have separate  
13 sections on topic one, finance and budget, in  
14 which we go through some detail about our  
15 recommendations and suggestions and analysis of  
16 what has happened.

17 We also have a section on the outreach  
18 proposal, the outreach group that Louis Foreman  
19 had been heading up. And that's an interwoven  
20 area, as well, that appears -- that is the concept  
21 of outreach and collaboration appears throughout  
22 many of the other sections. We also have a

1 section on legislation in which we have addressed  
2 some of the current proposals that are in the  
3 examiner's amendment in the Senate bill and some  
4 other legislative proposals that will effect the  
5 innovator community.

6 We also have touched upon the  
7 international cooperation through the Patent  
8 Prosecution Highway and the Share Program. And I  
9 hope I'm not missing anything. We have a whole  
10 section on human capital that Maureen Toohey has  
11 been spearheading, discussing issues of  
12 examination, performance appraisal, how many  
13 people are being hired, the hiring and retention  
14 and attrition issues we're dealing with.

15 And we have a section on patent  
16 examination quality. We've chosen to refocus on  
17 examination quality instead of patent quality,  
18 which represents the quality of allowed patents.  
19 The emphasis here is to reinforce the offices,  
20 understanding that improper denials of  
21 patentability are highly significant to the  
22 innovation community.

1           We also have a section on pendency, a  
2   brief section dealing with appeals and proposed  
3   changes to the appeals process. And that is what  
4   we have so far. And then, of course, there will  
5   be a summary, there will be an appendix with the  
6   statute authorizing PPAC, and there will also be  
7   some brief introduction to the members of the  
8   committee. What did I miss, did I miss anything,  
9   any of the major sections? Well, I didn't miss  
10  any or we've all missed something?

11           Okay, well, with that, I'd like to bring  
12  this session to a close, if we could. We're out a  
13  little bit early, so I thank you very much for  
14  moving through the material quickly. We did have  
15  enough opportunity to go through everything.

16           And again, I'd like to thank the wider  
17  community on the web and via email. The PPAC  
18  email address is live and it will remain live for  
19  the indefinite future. Even though the web  
20  broadcast will come to a close shortly, I would  
21  like to encourage everybody in the wide, wide  
22  world to mention or to use, communicate anything

1 via the PPAC email address.

2           And if there are no further comments,  
3 I'd like to bring this public session of the  
4 Patent Public Advisory Committee to a close with  
5 thanks to all.

6                       (Whereupon, the PROCEEDINGS were  
7 adjourned.)

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## 1 CERTIFICATE OF NOTARY PUBLIC

2 I, Carleton J. Anderson, III do hereby  
3 certify that the witness whose testimony appears  
4 in the foregoing hearing was duly sworn by me;  
5 that the testimony of said witness was taken by me  
6 and thereafter reduced to print under my  
7 direction; that said deposition is a true record  
8 of the testimony given by said witness; that I am  
9 neither counsel for, related to, nor employed by  
10 any of the parties to the action in which these  
11 proceedings were taken; and, furthermore, that I  
12 am neither a relative or employee of any attorney  
13 or counsel employed by the parties hereto, nor  
14 financially or otherwise interested in the outcome  
15 of this action.

16 /s/Carleton J. Anderson, III

17

18

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