

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

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Thursday, April 14, 2011

1 PARTICIPANTS:
2 PPAC Members:
3 DAMON MATTEO, Chair
4 MARC ADLER
5 D. BENJAMIN BORSON
6 LOUIS J. FOREMAN
7 ESTHER KEPPLINGER
8 F. SCOTT KIEFF
9 STEVEN MILLER
10 STEPHEN M. PINKOS
11 MAUREEN K. TOOHEY
12 Union Members:
13 ROBERT D. BUDENS
14 CATHERINE FAINT
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P R O C E E D I N G S

(9:05 a.m.)

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3 MR. MATTEO: Okay, we've got the light.
4 Do we have the voice? Okay, if everybody could
5 make their way to their seats we'll get started in
6 a minute here.

7 Good morning. Welcome everybody. I'd
8 like to formally open this public session of the
9 Patent Public Advisory Committee. Welcome to
10 everybody here.

11 What I'd like to do is, if I may,
12 introduce myself first -- David Matteo, the
13 chairman -- and by way introductions go around the
14 table and we'll start, if you don't mind, on my
15 right and you can introduce yourself.

16 By way of just a quick housekeeping
17 note. If you would, I'm told that you need to be
18 very close to the microphones. It's the far
19 button on the right that says "mic," and please
20 turn off your mic when you're finished speaking.
21 Thank you.

22 MS. STANEK REA: Good morning. I'm Terry Rea.

1 I'm the Deputy Director of the USPTO, and I'm
2 pleased to be here today. Thank you.

3 MR. ADLER: Marc Adler, PPAC.

4 MR. BORSON: Ben Borson, PPAC.

5 MR. FOREMAN: Louis Foreman, PPAC.

6 MR. BUDENS: Robert Budens, PPAC.

7 MS. FAINT: Catherine Faint, NTEU 245
8 and PPAC.

9 MR. BAHR: Bob Bahr. I'm Acting
10 Associate Commissioner for Patent Examination
11 Policy.

12 MR. OLECHOWSKI: Mark Olechowski. I'm
13 the Deputy Chief Financial Officer.

14 MS. TOOHEY: Maurine Toohey, PPAC.

15 MR. SOBON: Wayne Sobon, PPAC.

16 MS. LEE: Michelle Lee, PPAC.

17 MS. KEPPLINGER: Ester Kepplinger, PPAC.

18 MS. FOCARINO: Peggy Focarino, USPTO.

19 MR. MATTEO: Thank you, everybody. Just
20 to continue the housekeeping notes, as always --
21 I'm sure you've heard me say this before and
22 you'll hear me say it again -- as members of PPAC,

1 we've been invited to participate here by virtue
2 of our private sector perspectives and
3 affiliations. But while we're here, we leave
4 those hats at the door and we speak solely for the
5 benefit of the U.S. economy, innovation eco
6 system, and the Patent Office.

7 A few other housekeeping notes. We're
8 going to try to get questions or comments from the
9 public. It's not possible to do so in real time,
10 but during breaks we'll make an effort to see if
11 we can field some of those questions and get them
12 answered. We have a little time reserved in the
13 agenda for making that happen.

14 I do want to take a moment to recognize
15 two new additions to PPAC. We have Michelle Lee
16 joining us from Google, Wayne Sobon joining us
17 from Rambus, and I'd like, if I may to give them a
18 moment or two to introduce themselves, their
19 background affiliation, and their inspiration for
20 wanting to join PPAC.

21 Michelle, if you want to lead off?

22 MS. LEE: Sure. I'm glad to be here

1 today. Thank you. And I'm Deputy General
2 Counsel, head of Patents and Patent Strategy at
3 Google. I've been involved in patent work my
4 whole career, which is now inching up to 20 years,
5 and we are a frequent user of the services of the
6 USPTO, including in our filings, reexaminations,
7 appeals to the board, and so forth. So, I'm
8 delighted to be here to help out in whatever way I
9 can. Thank you.

10 MR. SOBON: I'm Wayne Sobon. I'm
11 currently Vice President and Chief IP Council out
12 of Rambus. For the past 10 or so years I was
13 Chief IP Council at Accenture. I have a deep
14 interest in the intellectual system, going back to
15 when I first became a patent agent in the '80s and
16 am involved in a number of other organizations
17 seeking to improve the system and how it works for
18 everybody and all users. So, I'm thrilled to be a part
19 of this organization and excited to be here.
20 Thanks.

21 MR. MATTEO: And thank you both. Just
22 another check, if you don't mind. We have another

1 member who appears to have dropped off the line.
2 Steve Miller -- is he with us?

3 MR. MILLER: Miller from PPAC. Thank
4 you.

5 MR. MATTEO: Good. Thank you very much,
6 Steve. All right. So, without further ado, what
7 I'd like to do is introduce the Deputy Under Secretary
8 and Deputy Director of the USPTO, Terry Rea, who
9 will lead us off with some opening remarks before
10 the PTO.

11 MS. STANEK REA: Thank you so much, Damon. I
12 do appreciate the opportunity to be here to
13 address each one of you today. I think that what
14 you do, you show a great deal of leadership, and
15 everybody appreciates what you do. This is true
16 public service at its finest. And to bring this
17 much talent into this room I think is appreciated
18 by everyone.

19 I would also like to thank some people
20 from the PTO who were really instrumental in
21 putting this together. At the high level, Bob
22 Stoll and Peggy Focarino really support this

1 effort and want to make your jobs as efficient as
2 possible, to pull as much talent from you as
3 possible. And, of course, Dave Kappos views the
4 contribution of PPAC to be extremely important.
5 So each one of you should be honored and pleased
6 to be here today just because Dave views each one
7 of your talents and assets to be vital to the
8 operations of the PTO.

9 As you know, we have a lot of
10 initiatives going on. We have the Green Tech
11 pilot, which we'd like to work with. We have the
12 Peer-to-Patent initiative, where we're going to
13 ideally bring in, through the use of the Web, the
14 talents of people outside the PTO so that we can
15 do the best and finest searches possible.

16 Eventually we will implement our Three
17 Track system. Track One we would be close to
18 implementing. We don't know exactly when that's
19 going to roll out at the present time.

20 We're doing a great deal on the IT side.
21 In terms of IT architecture, there are a lot of
22 changes being made, and we'd like to make many

1 more changes in the future.

2 In the petitions area, we're trying to
3 make for our user community things as simple as
4 possible, and through the use of the computers and
5 the Web we're able to do, in particular, one-third
6 of the petitions that are filed in the USPTO
7 rather straight forward. So, we have Electronic
8 Petitions. It's now on the USPTO Website. I
9 think we implemented that about two weeks ago.
10 We're trying to get the word out about that right
11 now where you can file an electronic petition, get
12 an immediate response, an immediate grant for the
13 petition, from the PTO, right then and there and
14 there's no delay.

15 The Patent Dashboard was a wonderful
16 idea from Dave Kappos, and it's constantly being
17 updated as you know. So, it's up to you to help
18 us make each one of these features bigger and
19 better and to come up with more and more ideas.

20 The MPEP eventually will be this great
21 user- friendly document online. A great deal of
22 work is going on behind the scenes right now to

1 try and bring a more vital, vibrant MPEP online
2 not just to our examiners but to our user
3 community.

4 Also what's going on right now -- just a
5 little side note -- is the America Invents Act
6 where there will be a markup going on today in the
7 House. That's very, very important to us, as well
8 as to the entire IP community. It's going to
9 ideally simplify the process of acquiring our
10 inventive rights, and it will also allow us to tap
11 into the global market with more ease.

12 Now, communication and collaboration are
13 essential at every level, not just here within
14 PPAC but within the user community and within the
15 PTO, and for us to get our ideas out there. We
16 are very open. Dave Kappos wants us to listen to
17 the user community, to listen to ideas that people
18 have so we can choose the best to implement here
19 to make our systems as efficient as possible.

20 And last but not least, I wanted to take
21 the opportunity to thank Michelle Lee and Wayne
22 Sobon for joining the PPAC team. Both of your

1 contributions will be very, very valuable, and we
2 expect great participation from both of you, so
3 I'd like to thank both Michelle and Wayne for
4 being here today. Thank you so much.

5 MR. MATTEO: Thank you, Terry. What I'd
6 like to do now is turn the microphone over to
7 Peggy Focarino, Deputy Commissioner for Patents,
8 who will provide us with a patent operational
9 update.

10 Peggy, if you would.

11 MS. FOCARINO: Thanks. Thanks, Damon.
12 Good morning, everyone. It's a pleasure to be
13 here with you today. Commissioner Bob Stoll is in
14 Florida speaking, again, to applicants and
15 practitioners, and he wishes to express his
16 gratitude to this committee for all the work
17 they've completed and the projects that have been
18 participated in this year.

19 Before I begin, I'd like to introduce
20 Richard Maulsby, and Richard may not actually be
21 here yet. But let me tell you about Richard
22 Maulsby. He's joined our staff as Associate

1 Commissioner for Innovation Development, and this
2 is a new function within Patents that will help us
3 maximize our outreach to important stakeholders,
4 such as independent inventors and small
5 businesses, and strengthen our alliances with
6 important educational and innovation partners.
7 So, Richard will discuss his ideas and plans with
8 you later in the agenda.

9 Just to give you a brief update on our
10 progress in our programs at a very high level,
11 we've made continuous strides towards our pendency
12 and backlog goals. Our backlog volume has been
13 reduced by a concentrated effort through our 699
14 program, which we started during the fourth
15 quarter of last fiscal year, and from very
16 conscience work on the part of our examiners.
17 Currently, the backlog stands at 708,912 new
18 applications waiting examination. We've placed an
19 emphasis on working with applicants through the
20 first action interview program. And changing our
21 culture to be more collaborative has resulted in a
22 significant increase in time spent by our

1 examiners in conducting interviews.

2 We're also expanding our Patent Examiner
3 technical training program, which brings leading
4 experts to the USPTO so our examiners can keep in
5 touch with the very latest in their areas of
6 technology.

7 We recently launched our COPA
8 initiative, and COPA stands for Clearing the
9 Oldest Patent Applications, and this initiative
10 targets applications that are older than 16 months
11 old. The program does more than focus resources
12 on older cases. It also facilitates the
13 distribution of examiner resources to where the
14 volume of older cases resides. The program
15 represents a distinct shift in our thinking from
16 viewing examiner expertise within narrow technical
17 specialties to looking for compatible competencies
18 that fully utilize examiner resources and skills.

19 We all know that inventions are not
20 limited to narrow subspecialties in all cases, and
21 we need to develop a workforce that has broader
22 areas of expertise, which will allow us to be more

1 flexible in shifting workload and resources. And
2 Andy Faile will discuss in more detail patent
3 operations in our programs, including our
4 successful Green Tech, Ombudsman, and Project
5 Exchange programs.

6 As you probably know, and Terry
7 mentioned this, we issued our Public Notice on
8 Track One of the Three Track initiative. We had
9 expected this program to be implemented on May
10 4th. We have hoped that it had significant
11 benefits to our applicants in terms of flexibility
12 of examination and timing of that process. And it
13 represents a way to applicants with solutions that
14 meet their needs in terms of timing of
15 examination. But we'll discuss later the
16 implementation aspects of this, and, really, it
17 depends on budget.

18 Bob Bahr will discuss the details of the
19 program, the Track One in particular, and also our
20 112 guidance that just came out. These guidelines
21 are very important to our examiners so that
22 there's no guesswork but also to applicants as a

1 way to assist them in submitting high-quality
2 applications.

3 As you know, Patents is undertaking a
4 major system and process redesign. Today you'll
5 hear about our progress in more detail from Jim
6 Dwyer. And these efforts have already started to
7 take shape, and we are hopeful that we'll have a
8 new IT infrastructure in our horizon in the very,
9 very near future.

10 Looking ahead, for the remainder of the
11 year we'll focus on bringing improvement and
12 innovation to the patent system through changes,
13 as I mentioned, to our system and processes, and
14 we will continue to focus on that. We value all
15 of your input, and we look forward to expanding
16 our collaborative environment. We appreciate all
17 of your guidance and support.

18 And now I will turn it over to Mark
19 Olechowski, who will give you a financial update.

20 MR. OLECHOWSKI: Thanks, Peggy. We're
21 also trying to get -- as I mentioned, I'm Mark
22 Olechowski, the Deputy CFO. Tony Scardino, our

1 CFO, is on travel today, but he's trying to call
2 in so he can participate. There's a lot going on,
3 as you know, in Congress and with our stakeholders
4 and everything else with the budget. So, we'll
5 see if Tony can call in and --

6 MR. SCARDINO: I'm here.

7 MR. OLECHOWSKI: Very good. That's the
8 technology we're talking about.

9 MR. SCARDINO: I'm on, Mark.

10 MR. OLECHOWSKI: Okay. Can we have the
11 slides up? Does everybody have one?

12 MR. SCARDINO: Can you hear me?

13 MR. OLECHOWSKI: Yes, we can.

14 MR. SCARDINO: Good morning. Sorry I'm
15 not there folks. I'm traveling today. I wanted
16 to come give you a status of 2011 and 2012.

17 MR. OLECHOWSKI: We're waiting for the
18 slides to come up now. Here they come.

19 MR. SCARDINO: Okay. Well,
20 unfortunately, the slides are not the most helpful
21 things, because they were prepared a couple of
22 days ago and a lot has happened since then. As

1 you'll see on slide 1, you know, where it gives
2 you the usual range of what we are actually going
3 to collect, and it's a much greater number than
4 what Congress is actually considering funding us
5 at for this year. So, going backwards, we are
6 funded until Friday at last year's level of \$2.016
7 billion.

8 Now, on this slide -- this slide really
9 isn't that relevant anymore. But if you go
10 to slide No. 4, we are now at, like I said, 2.016,
11 but the new full-year funding bill -- the sum is
12 at \$2.09 billion. However, we will most likely
13 collect upwards of \$2.2 billion, and this is
14 without the surcharge. Congress is not going to
15 authorize the USPTO to collect the 15 percent
16 surcharge. Most likely the Bill that will be
17 enacted, bill that you probably all read, and
18 about -- the House is going to vote on the bill
19 today, stay home and take it up immediately
20 thereafter, and then the President should sign the
21 Bill by tomorrow. None of these are definites, of
22 course, but that is most likely what's going to

1 happen.

2 I'm getting static. I can't really hear
3 anything online.

4 MR. MATTEO: We're fine on this end. I
5 think everybody's just trying to absorb what
6 you're saying.

7 Did anyone on the floor have any
8 questions?

9 MR. OLECHOWSKI: Yeah, let me amplify
10 what Tony said. The current continued resolution
11 expires at midnight tonight and through this time
12 frame from the beginning of the year we've been
13 limited to our 2010 enacted level, which has been
14 \$2.016 billion. The bill that's currently in
15 front of our Congress funds the PTO to 2.090,
16 which is an increase of about \$74 million.
17 However, we believe we're going to collect upwards
18 of \$2.2 billion, which means we would have roughly
19 \$100 million unavailable to us. And I think
20 that's what Tony's --

21 MR. SCARDINO: Assuming Track One
22 implementation.

1 MR. OLECHOWSKI: Correct, which is
2 scheduled to start on May 4th, as Peggy mentioned.
3 So, that presents some challenges for the USPTO
4 for our Under Secretary and our Deputy
5 Under Secretary to decide over these coming weeks
6 how we're going to manage the agency with a little
7 bit more funding but not the full amount of
8 funding of the fees that we think we're going to
9 collect this year.

10 MR. SCARDINO: Now, just to give a
11 little bit of background, you know, 2.090 --
12 Congress didn't just pull that out of the air.
13 That actually did -- the President's budget
14 request minus the surcharge for fiscal year 2011.
15 Mind you, there was a budget proposal put together
16 14 months ago, February 2010, and since that time
17 applications have risen as have fees collected.
18 So, we are estimating now that we're going to
19 collect \$2.2 billion, roughly.

20 MR. MATTEO: What if any is the prospect
21 of the PTO obtaining authority to retain some or
22 all of that additional money?

1 MR. SCARDINO: It's challenging,
2 because, you know, everybody wants to change the
3 Bill that's pending on the Hill right now. So,
4 we're being told, you know, no changes are really
5 being considered. So, we hooked all the angles
6 that we can. We've just identified for folks that
7 the facts are what they are. We're going to
8 collect more money than the bill is going
9 authorize us to spend. So, in terms of
10 information, they're providing it, but I think the
11 chances are pretty slim that there are going to be
12 any changes.

13 MS. FAINT: Do you know if the trademark
14 fence remains in place?

15 MR. SCARDINO: Yes, Trademark Fence
16 absolutely remains in place. That's the law. It
17 will always remain in place.

18 MS. KEPPLINGER: This is Ester
19 Kepplinger. I wondered about any prospects -- you
20 know, we may not have any chance to change the
21 appropriation right now, but last year you were
22 successful in getting a supplementary

1 appropriation later in the summer. Is there any
2 chance that you might try for that again, and
3 maybe under the radar when we're not
4 looking at this bigger budget we might be
5 successful then?

6 MR. SCARDINO: Yeah, I don't want to be
7 too glib here, but we had the same kind of
8 (inaudible) and lightning doesn't twice
9 necessarily. That was a huge, huge effort last
10 year to get this up. And, frankly, yeah, I don't
11 know if there is something that will come around
12 this year. The budget bill has been so intense,
13 and it's so challenging to get the deficit down.
14 I'm not optimistic they will have another
15 supplemental to provide more access to our fees.
16 It could happen. Anything could happen. But we
17 can't plan for that.

18 MR. OLECHOWSKI: Esther, I think, you
19 know, to amplify again what Tony said, we'll
20 certainly be working toward that. Everybody in
21 the PTO, its stakeholders, and everyone else
22 desire the PTO to have full access to our fees. I

1 think the challenge is that if Congress passes the
2 law that's in front of them today, how do we
3 manage the Agency with the authority we have. We
4 can't hope that we're going to receive the other
5 hundred million. We have to operate the agency.
6 Should we hire the patent examiner? Should we do
7 overtime? Should we outsource PCT? I think all
8 of those decisions become much more difficult
9 under the current conditions than if we knew we
10 were going to get a supplemental, if we knew we
11 were going to have access to our fees, if we knew
12 what the bottom line number was for the entire
13 year.

14 MR. MATTEO: Yeah, including Mark.
15 Everybody has to anticipate that the 2.09 billion
16 is going to be the budget for the year. I don't
17 think we're suggesting that he should plan on the
18 incremental money, just simply our hope or
19 otherwise that we'd be able to retain or have
20 access to some of it. I think the question that
21 comes to mind now is of the 2.09 billion, how does
22 that match up against at least your anticipated

1 operational plan? Do you have an operational or
2 strategic plan in place that suggests your burn
3 rate is going to be 2.09 billion? Is it going to
4 be 2.1? So, I'm trying to get a sense of on the
5 margin, how does the actual appropriated funding
6 map to what your anticipated operational plan
7 would be?

8 MR. SCARDINO: Operational plan calls
9 for having over \$2.3 billion available, which
10 would have allowed for a much greater amount of
11 hiring of patent examiners and IT development,
12 full over time, PCT, and this funding level 2090.
13 I can't tell you definitively what it's going to
14 do since we are still working with Director Kappos
15 and Deputy Director Rea. But it's not going to
16 allow for the vast majority of that, which is I'm
17 going to show all our abilities to meet all of our
18 performance goals this year, which then feeds into
19 2012 and further years. Our backlog and pendency
20 will not be coming down as we'd envisioned.

21 MR. MATTEO: Other questions from the
22 floor?

1 MR. BUDENS: Yeah, this is Robert, Tony,
2 and a question for Terry and Peggy, too.
3 Something Mark just said triggers a concern to me
4 about the stuff like Track One being implemented
5 May the 4th. Is that still planning on being
6 implemented if this bill passes in its current
7 form this afternoon? Because that just -- in my
8 mind, that just means we're going to be charging a
9 whole lot more fees to donate to the Treasury
10 rather than having it be spent to hire more
11 examiners like it was intended to do.

12 MR. SCARDINO: Yup. You're absolutely
13 right, Robert. And, like I said, you know,
14 Director Kappos hasn't made any final decisions
15 yet. He's traveling right now. Once the bill
16 passes -- you know, we were working seriously to
17 provide options for him, and that's something that
18 will be on the table should we continue to
19 implement Track One as we had envisioned. For the
20 very reason that you mention.

21 MS. FAINT: This is Catherine Faint
22 again. We're in the midst of beginning IT system

1 rollouts. Do you foresee those to continue at the
2 scheduled pace?

3 MR. SCARDINO: For bend and end?

4 MR. BORSON: No, just the laptop rollout
5 I think she's talking about.

6 MR. SCARDINO: Oh, the laptop rollout.
7 Most likely, because a lot of those costs are
8 already sunk. We had supplemental money from last
9 summer, so we actually purchased all of the
10 laptops. So, it would kind of be very
11 inefficient, I guess, to just have those laptops
12 just sit on a shelf somewhere. So, we are
13 continuing with that rollout unless somehow Dave
14 decides, you know, to back off on that. But I
15 really doubt it. It doesn't cost us that much
16 more money to implement the rollout.

17 MR. OLECHOWSKI: Right. We funded
18 obviously the purchase of the laptops we have, all
19 the laptops for this year, and we funded the
20 installation and rollout of that for the remainder
21 of the year. So, I think what Director Kappos and
22 Deputy Director Rea have to decide is which

1 developmental programs may have to slow or be
2 curtailed if we have to limit 2090.

3 MR. MATTEO: Okay, Tony, did you have
4 any more?

5 MR. OLECHOWSKI: No, unless there are
6 any more questions.

7 MR. BORSON: Oh, yeah, this is Ben
8 Borson. I just wanted to ask what you think the
9 key differences might be between the House bill
10 and the previously passed Senate bill and whether
11 there is a likelihood that something will be
12 resolved in conference. That may be a topic that
13 we'll wait on for the legislation section.

14 MR. ADLER: In terms of budget in terms
15 --

16 MR. BORSON: Yeah, in terms of the
17 budget and the other provisions that Patent Office
18 has been promoting.

19 MR. SCARDINO: I'm sorry, Mark, maybe
20 you can cover that, because I couldn't hear some
21 of it.

22 MR. OLECHOWSKI: I'm sorry, I want to

1 make sure I understand. Is it on the Patent
2 Reform Bill or on the budget side?

3 MR. BORSON: Well, both actually. I
4 think, you know, you're talking about the budget
5 bill. The question is whether or not patent
6 reform legislation will have any impact on that.

7 MR. ADLER: Well, I'll answer part of
8 the question, and Dana's going to be here in a few
9 minutes. I believe he speaks after me, and he can
10 talk much more extensively on the Patent Reform
11 Bill, or Bob.

12 But on the budget side, I think Tony had
13 mentioned, and maybe we didn't catch it, the bill
14 that was introduced -- and the reason that I think
15 it's difficult for us to add any language to it is
16 because it takes care of the entire U.S.
17 government, and so Congress is reluctant to add
18 amendments or anything to it, because then they
19 would have to go into conference. They'd have to
20 have the House and Senate be exactly the same
21 thing. So, the bill that exists in front of the
22 House today we believe is the same thing that's

1 going to go in front of the Senate today. So,
2 getting any changes, as Robert knows has been very
3 difficult to talk to people to do. So, do we
4 believe that that's set stone? No. Things could
5 happen, because there's a lot of people up on the
6 Hill trying to help us out, but from the patent
7 reform side, you're right. There are two bills,
8 both House and Senate, and Dana I think can talk
9 more extensively about that in a few minutes.

10 MR. BORSON: Thank you.

11 MR. OLECHOWSKI: I think you need to
12 consider, Ben, really the answer to your question
13 is the bill that's sitting up there to be voted on
14 today is, in essence, a conference report bill. I
15 mean, it's intended to be the final budget bill,
16 you know, to be voted on by both houses and get
17 over here and signed.

18 The flip side of that is -- a nightmare
19 scenario is that it doesn't get passed tonight or
20 tomorrow and we all find ourselves back in
21 shutdown mode, you know, by Friday. So --

22 MR. SCARDINO: That's right. That's

1 quite a possibility.

2 MR. MATTEO: Okay, if there are no other
3 question from the floor, I'll use that as a segue
4 into a topic of discussion from last year, one
5 that PPAC had kicked off and would like to resume
6 with the PTO, the notion of the -- basically, the
7 intersection of the budget and funding with the
8 strategic plan, how one supports and informs the
9 other. So, as these discussions happen, I hope
10 that we can participate and provide whatever
11 assistance and guidance possible to the PTO in
12 terms of our constituencies and our own personal
13 experience, so that again is something I'd very
14 much like to kick off again for this year. Why
15 don't we return to that discussion in the
16 Executive Session, since I understand effectively
17 all of this is predecisional? But I did want to
18 make sure that we revisit that topic, because I

19 think the intersection of the two is even more so
20 now critical.

21 Okay, so I believe we're, startlingly,
22 ahead of schedule. So, is Dana here? I don't see

1 him. He's not here. So, I'll tell you what. Why
2 don't we take a quick break. It's now 8:30. Why
3 don't we return at 8:45, and we'll pick up with
4 the update on the legislative.

5 Thank you very much. We'll see
6 everybody at 8:45.

7 (Recess)

8 MR. MATTEO: Welcome back, everybody.
9 What I'd like to do now is introduce Dana
10 Colarulli, who will give us a hot-off-the-presses
11 update on legislative affairs for the PTO.

12 If you would, please, Dana?

13 MR. COLARULLI: Happy to. Thanks so
14 much, Damon. Good morning, everyone. So, I
15 thought the best use of your time for me today was
16 to give you the hot-off-the-presses update. After

17 our presentation here, a group of PTO folks are
18 going up to the markup of the Patent Reform Bill
19 in the House, the America Invents Act. So, this
20 is the House version. The Senate had passed the
21 bill early March, and this is the House's attempt.
22 We've had a number of discussions on the technical

1 side with House staff as they've tried to put
2 their own mark in the bill. I'm going to give
3 quickly a highlight of the major issues that
4 they're addressing, how it differs, and what's the
5 process for moving forward here.

6 So, in early March, the Senate passed
7 their version of patent reform by an overwhelming
8 vote of 95 to 5. That bill included a number of
9 things that have been in discussion for the last
10 eight years, some even longer than that post-grant
11 review. The framework of that procedure had been
12 discussed as far back as 2000. It also included
13 fee setting authority for the USPTO. It also
14 included significantly a proposal to ensure that
15 all the fees that are collected at the Office stay
16 with the Office by function of a revolving fund.
17 So, in act, Mark may have talked briefly about
18 funding this morning.

19 Essentially what the bill sets up is a
20 fund that all fees would be deposited into --
21 accessible to the PTO. The PTO would continue to
22 develop its budget, defend its budget as it had

1 done previously, but this is one mechanism that
2 appears to be effective to keep the fees that are
3 collected by PTO at the office.

4 So, we've now moved to the House bill.
5 There have been three hearings on patent reform,
6 PTO operations, leading up to the markup. Today
7 we had an oversight hearing where the director
8 testified earlier this year, a panel of industry
9 about a week or two later commenting on various
10 parts of the bill, really reacting to the Senate
11 process and reacting to what they thought was good
12 in the Senate process and what was not. That
13 resulted in introduction of the bill, which they
14 had a third hearing on, and the director again
15 testified on that.

16 So, today is the markup of that bill.
17 It includes many of the same provisions as the
18 Senate bill. It changes the Senate bill or
19 addresses things in a slightly different way on
20 two major issues. The first is the prior user
21 defense. So, under current law, there's a limited
22 prior user defense that can be raised in

1 litigation just for the area of business methods,
2 just limited in technology. The House bill would
3 extend the defense to all areas of technology but
4 significantly address the concerns of universities
5 by providing an exemption for universities. So,
6 patents that were fully funded by and acquired by
7 universities -- if they were the patent at issue,
8 the litigant could not raise that as -- could not
9 raise a prior use as a defense in litigation.

10 That didn't fully satisfy the
11 universities. The Manager's Amendment has a
12 slightly modified take at attempting to expand the
13 defense. The most important part is moving the
14 line back to require both reduction to practice
15 and commercialization a year before the effective
16 date of the patent.

17 Still unclear whether the university
18 community will think that's a good deal or not.
19 That's going to be certainly one of the major
20 discussion points this morning. But the expansion
21 is very much supported by others that support the
22 bill, mostly in the high-tech area. That's the

1 first area.

2 The second area is an area where there's
3 a lot of attention on the Senate side, and that's
4 the features of the enhanced inter parte
5 reexaminations. So, both the House and the Senate
6 moved the proceeding over to the Board, had the
7 proceeding conducted in front of a three- judge
8 panel.

9 The question that had been focused on in
10 the Senate and then here in the House was what's
11 the appropriate threshold to start these
12 proceedings. Now, the Senate landed on a
13 so-called higher threshold, a reasonable
14 likelihood standard, reasonable likelihood of
15 prevailing on the merits in at least one claim.
16 The House said we like the current standard, we
17 like the substantial new question of
18 patentability. So, the discussion between the
19 House and the Senate has been what's the right
20 balance here? What's the significant difference
21 between those two thresholds? And which threshold
22 best allows the Office to implement and prevent

1 undue abuse of the system?

2 We've weighed in. The director
3 testified on this in the House based on our own
4 data and essentially expressed that both
5 thresholds have merit the way the PTO would
6 implement it. We could implement either. And we
7 get right into a little bit more detail about what
8 we're seeing in terms of statistics -- how many
9 patents are coming through the system with no
10 change at all versus those that actually have some
11 change or there was some discussion.

12 So, that's been one of the most
13 contentious points. It will continue to be one of
14 the contentious points. The House-introduced bill
15 proposed a substantially new question of
16 patentability, the current standard. The
17 Manager's Amendment now would move the standard up
18 to the reasonable likelihood that the compromise
19 will be one of the two of those. It may come down
20 to other features that are changing inter partes
21 at the end of the day for folks to decide what
22 threshold the House thinks is the most

1 appropriate.

2 So, let me talk a little bit about
3 process. The Manager's Amendment was circulated a
4 few days ago. Yesterday by 11 o'clock all members
5 of the committee needed to submit amendments to
6 the bill, so this morning they'll do a few things.
7 They'll first consider the Manager's Amendment.
8 The manager is the chairman of the committee.
9 That's Chairman Smith -- Lamar Smith from Texas.
10 They'll then entertain amendments to that
11 Manager's Amendment, and then they'll entertain
12 other amendments to the bill as a whole, so two
13 phases for procedural purposes.

14 There are over 30 amendments combined,
15 those to the managers and the underlying bill,
16 that were circulated. Not all of them will come
17 up. Members will put in various options of
18 different amendments that they might want to
19 entertain to try to make the deadline, to get some
20 discussion before the markup. So, that process
21 has moved forward.

22 Some of the amendments we think moved

1 the bill in not the good direction the
2 administration has supported --
3 first-inventor-to-file. We've supported a number
4 of other things for the operational efficiency of
5 the office. But this is part of, I think, both
6 the education and understanding of the true effect
7 of the bill. By floating these various
8 amendments, folks are trying to get to the right
9 balance and trying to evoke that discussion of
10 where they want the bill to go to.

11 So, there are over 30 amendments. Some
12 are very much directed to the two differences in
13 the Senate bill that I mentioned -- the prior user
14 defense and the threshold for inter partes.
15 Others are somewhat completely unrelated, so
16 they'll entertain the whole bunch of them today.

17 That's patent reform. And these slides
18 -- I apologize. They weren't in your packets
19 beforehand; the team will get them up on the
20 Website at some point in the future. They don't
21 have them posted just yet.

22 Let me say one word on funding, and I'll

1 make this short, because I know that the CFO's
2 office already reported to you all. Today the
3 Congress will be voting on the budget deal that
4 was agreed to last week, the so-called \$38.5
5 billion cut budget. USPTO was not addressed in
6 that bill except for raising our ceiling slightly
7 on spending. So, our previous FY10 funding was at
8 2.016. CBO rescored the budget that the
9 administration had submitted some 14 months ago,
10 and as a result it increased our ceiling slightly.
11 I think, based on our current estimates, that
12 improves our plight a little bit. We now estimate
13 projected collections to be about a hundred
14 million over what our adjusted ceiling is in the
15 budget deal that will be agreed on today.

16 So, with that, that's my big overview.
17 We're certainly looking at the fee-setting
18 authority. We're certainly looking at the
19 revolving fund, how that will be implemented.
20 Looking at a number of other issues as this bill
21 moves forward. I think this isn't the last step.
22 The bill will be considered today clearly in the

1 full committee. The chairman is eager to move the
2 bill to the floor pretty quickly, and I would
3 imagine there will be another Manager's Amendment
4 targeted at additional technical changes that need
5 to be made to the bill when it gets to the floor
6 of the House, 435 members also. It will be an
7 additional educational process for folks who
8 hadn't really been in the process, hadn't really
9 been involved in the development of this
10 legislation throughout. So, there are some
11 challenges left, but it appears as if it's moving
12 in the right direction towards final passage in
13 the House. And it appears as if the bill is
14 pretty close to what the Senate came out with.
15 Those differences they'll need to reconcile before
16 the end of this process.

17 MR. MATTEO: Thank you, Dana. I'd like
18 to turn it over to questions from the floor.

19 Interesting. No questions.

20 MR. BORSON: Yeah, I have one. This is

21 Ben Borson. I wanted to ask, do you have any
22 sense of the likelihood that the President would

1 sign a bill that sort of blends the two?

2 MR. COLARULLI: Well, the House is going
3 to come out with their -- I expect it will be
4 different in a few aspects. So, generally when
5 the House passes a bill and the Senate passes a
6 bill, sometimes you can go to a conference. I've
7 never seen a conference on a judiciary bill, so it
8 seems that might be unlikely. But there are a
9 couple of scenarios where one or two of the bills
10 are amended to mirror the other. It might require
11 additional procedural hurdle where either the
12 House bill or the Senate bill would need to be
13 amended by agreement by both Houses of Congress
14 and then passed again by the other House. But
15 that's certainly one option to go forward. The
16 other option is some other type of conference, but
17 we haven't see that yet. Who knows what could
18 happen. So, that is certainly a possibility, but
19 we haven't seen it.

20 MR. BORSON: Well, the question is
21 whether or not you have any sense that the
22 President likes this.

1 MR. COLARULLI: Oh, the President does.
2 The administration has been consistently on the
3 record of supporting the bill that came out of the
4 Senate and the elements that are included in that
5 budget. So, first-inventor-to-file elements, the
6 post-grant opposition -- at some point, I think,
7 you hear the White House and the administration
8 stop and want the Congressional process to move
9 forward on some of the details and where they
10 think the balance is appropriate. But I think the
11 administration is throughout the Senate debate and
12 I think we're considering right now, based on what
13 comes out of the markup today, you know, what our
14 views are and how we are going to support the
15 process moving forward.

16 So, we're in basically the views letter
17 process right now.

18 MR. BORSON: I see. Well, if the bill
19 does pass in some form, there are some
20 implications for the Patent Office, and I wonder
21 if either Peggy or Terry would like to provide
22 some comment about how the Office might think

1 about implementing some of these newer initiatives
2 in the bill.

3 MS. STANEK REA: We have actually started
4 talking about possible things to implement and
5 possible changes to make. But, frankly, until
6 it's a fait accompli, until we actually have a
7 bill it will be difficult for us to formalize any
8 kind of procedure, and I think it would be
9 premature for us to speculate on that right now.
10 But I think that we need to hire more examiners.
11 We would certainly need more APJs or
12 Administrative Patent Judges. It looks like the
13 other form of the bill should pass right now. But
14 I think that we really haven't gotten down into
15 the specifics quite yet. We're just starting to
16 label the ground work for change.

17 MR. BORSON: One further comment is that
18 if it would be helpful to have PPAC or members of
19 PPAC assist in sorting out some of the questions
20 that will ultimately arise during your process of
21 thinking about it, there will be perhaps some
22 issues of, you know, where do you draw the line;

1 what is a first inventor, et cetera? I mean,
2 there are a number of things that will come up
3 that will have both policy and practical
4 implications, and we're available if we can be of
5 help.

6 MS. STANEK REA: That would be excellent. We
7 do appreciate the talents of all of our PPAC
8 members in the room and the ability to rely on
9 you, and to have you assist us with the task that
10 we will likely have ahead of us is truly
11 appreciated. Thank you.

12 MR. COLARULLI: Dana -- if I could add
13 one additional thing. I'd be remiss if I didn't
14 highlight that the bill actually includes enhanced
15 roles for the PPAC, especially on the fee-setting
16 authority. So, certainly we're going to need to
17 rely on your expertise there.

18 I will say, reflecting Terry's comment,
19 additionally the bill in a number of key areas
20 includes significant rulemaking, a promulgation of
21 rules, to implement a number of the procedures.
22 So, that's going to include us certainly engaging

1 the PPAC, engaging the public in all of those
2 different processes before we implement. So,
3 there will be a lot of discussion.

4 MR. ADLER: Dana, does either bill have
5 a time when, like, post-grant review would be
6 started?

7 MR. COLARULLI: It does. So, the timing
8 for post-grant review for the changes to inter
9 partes to move it to the board is one year after
10 enactment. So, there is some time there. There
11 are also provisions in the bill that allow for
12 essentially a ramp up of petitions as well.
13 That's language that we worked with the Hill on to
14 ensure that we could implement the new procedure,
15 ensure that we could address the petitions coming
16 in the door.

17 MR. ADLER: So, assuming the bill passes
18 and it gets reconciled, the PTO would have a year
19 to promulgate the rules and figure out the costs
20 for applicants to go through that process.

21 MR. COLARULLI: Well, for
22 first-to-invent, that's the rule. The effective

1 date is one year after enactment. For the new
2 procedures it's one year after enactment as well.
3 So, we have that year to get our act together,
4 which is not -- I'm looking at Bob -- which is not
5 different from the 99 Act as well. We had about a
6 year as well, is that right?

7 MR. BAHR: Yes, that was six months to a
8 year for many of the provisions.

9 MR. ADLER: Thanks.

10 MR. COLARULLI: Thank you.

11 MR. MATTEO: Any other questions from
12 the floor? So, just one parting shot. Dana, can
13 you give us a sense of trajectory or color
14 commentary around what you think or perhaps the
15 most key or the most difficult fights among these?

16 MR. COLARULLI: So, the most difficult
17 fights really are -- really is that the threshold
18 and inter partes, so where the Senate looked at a
19 number of different issues, as we move to the
20 House, they've really targeted on those issues
21 where some of our stakeholder community feel as if
22 their voices weren't heard as much in the Senate,

1 and that's around the inter partes reexamination
2 proceeding, the enhanced procedure, that they feel
3 they'll use. So, the threshold coordinating that
4 proceeding with district court litigation -- all
5 those issues have been discussed quite a bit. So,
6 that really has been the focus. The prior user
7 rights, because it was new, raised a lot of
8 attention and will continue to.

9 First-inventor-to-file -- interestingly
10 enough, I think the members of the committee --
11 this bill started with the House 2004. There was
12 a bill in the House that proposed to move the
13 first-inventor-to-file system. In 2007, the House
14 as a whole passed a bill that would have done the
15 same thing. So, at least for the committee,
16 they're familiar with those issues. I think
17 outside the committee -- and that's why I say it
18 will be an interesting discussion. There's been a
19 lot of chatter in members' offices outside the
20 committee about what the real impact of the
21 first-inventor-to-file is on independent inventors
22 and small businesses. I think that will continue

1 to be a discussion. It seems as if the judiciary
2 committee might be in a place where it will be the
3 advocates for this bill, including that provision
4 given their past history. I think those are the
5 three issues that have gotten the most attention.
6 Our fee-setting authority people generally have
7 been very supportive of it.

8 MR. MATTEO: So, any particulars around
9 fee- setting authority or the revolving fund that
10 should be aware of?

11 MR. COLARULLI: One in particular that
12 may come up today. In the managers, we saw a
13 provision to sunset the fee-setting authority at
14 four years. We've talked to congressional staff.
15 We've heard from Democratic members of their
16 concern that that might be too short of a time to
17 truly test this new authority to set fees at the
18 Agency. There's some discussion of moving that to
19 ten years. Perhaps it will be a compromise
20 somewhere in between.

21 MR. MATTEO: We have one more question
22 from the floor.

1 MR. ADLER: You probably don't have to
2 answer this, but have you been trying to get a
3 count of whether this bill will actually pass the
4 House today? I mean the 95-5 in the Senate
5 doesn't necessary reflect how the House -- the new
6 House will actually view this Bill.

7 MR. COLARULLI: The House members are
8 the first to tell you that same thing. You know,
9 Marc, it's tough to do that type of count yet
10 until it gets through the markup today. I think
11 the process, as we've seen it leading up to today
12 -- you have Republican members on the bill; to
13 date, you don't have Democratic members of the
14 bill as official sponsors of the bill, but you
15 have a lot of Democratic members that have voiced
16 both support and concern about issues. So, they
17 haven't been ready to sign on with their majority
18 colleagues. I think that's the dynamic that's
19 going to play out today, and once we get a sense
20 of that, we'll have a better sense of the rest of
21 the body.

22 You know, I say it in jest, but I think

1 it's true. The bill is going to come out of the
2 committee. Those members do become the advocate
3 for the rest of the body. This is a small group
4 of individuals that are essentially going to sell
5 the bill to their colleagues, so we'll have a
6 better sense. I think that's where the discussion
7 about first-inventor-to-file does become really
8 important. There are a number of folks that have
9 been hitting offices on the Hill talking about the
10 list of horrors that might occur with this
11 structural efficiency, what we see is a structural
12 efficiency and improved system.

13 MR. MATTEO: Thank you. And we have one
14 more question.

15 Wayne?

16 MR. SOBON: Yes, I have, Damon. One
17 thing also. It struck me -- it may not affect the
18 Patent Office directly, but in the Manager's
19 Amendment they have a number of significant
20 provisions around mandatory joinder and stay for
21 manufacturer-customer litigation. Did you have
22 any thoughts on that or where that's coming from?

1 Patent Examination Policy, will give us an update
2 on Three Track.

3 MR. BAHR: Thank you. I think it's been
4 mentioned a few times earlier, with respect to the
5 Track One proposal, we published a final rule on
6 April 4th and the changes of schedule to go into
7 effect on May 4th. Obviously, the idea behind
8 this proposal was that applicants would pay a fee
9 to get prioritized examination of their
10 application, and we would use the revenue
11 generated by those fees to hire examiners so that
12 we could take those applications up quickly
13 without affecting the other applications in the
14 cue. Obviously, we've talked a lot about our
15 budget and its novel we had hoped for when we had
16 come up with this plan. So, obviously some
17 thoughts are going to have to be given about
18 whether or not we actually turn the switch on May
19 4th. But the proposal was that there is a
20 prioritized examination fee of \$4,000. The
21 applicant also has to file the application through
22 the electronic filing system. There is a limit on

1 the number of claims. I believe it's independent
2 claims and 30 total claims. But there aren't the
3 other attributes of, for example, the accelerated
4 examination program. There's no requirement for a
5 preexamination search, no requirement for an
6 examination support document, and no requirement

7 that the applicant respond within shorter time
8 periods than are the customary time periods during
9 the application process. But that's the Track One
10 proposal in a nutshell.

11 Also in the Three Track proposal, there
12 was, for Track Three, the more PCT-like
13 examination process. We are in the process of
14 coming out with a Notice of Proposed Rulemaking to
15 implement that.

16 With respect to Track Two, that's
17 basically the default examination process, so we
18 don't need anything to implement that. That, in
19 effect, is already the examination track.

20 Moving on to Section 112 guidelines. We
21 published Section 112 guidelines on February 9th.
22 We had a comment period that ended, I think,

1 Monday. We got four comments in. We're in the
2 process of evaluating those comments to see if we
3 need to make adjustments. I mean, we certainly
4 will. When you're issuing examination guidelines
5 based upon case law, you can always count on
6 having to do updated guidelines because the case
7 law changes from time to time -- sometimes
8 dramatic changes, sometimes subtle changes. But
9 we also train the Patent Examining Corps. I
10 believe we've done most of the training. We're
11 basically into where I think all we have left are
12 the makeup sessions for it.

13 We're also looking at RCE practice.
14 We're not thinking about changing the existing RCE
15 practice, but the thought is that there has to be
16 something between the after-final practice, the
17 Row 116 practice, that we have and the RCE
18 practice where we basically do almost the
19 examination that we would do for our continuation
20 application, that the thought is if we could see
21 if there's something that's in between that range
22 that would satisfy the needs of some applicants,

1 maybe we could avoid having them file the RCEs and
2 going through the full examination process to be
3 able to resolve the issues in an application. But
4 we are still meeting and working on that to see if
5 there's something we can come up with.

6 Finally, we published last week a Patent
7 Term Adjustment Notice of Proposed Rulemaking. I
8 think I sent it to the PPAC earlier. It basically
9 has two changes based upon things that have
10 happened over the last ten years since we
11 initially implemented the patent term adjustment
12 rules.

13 The first is that we've implemented
14 pre-appeal brief and pre-appeal conferences, which
15 have resulted in a lot of reopening, and it was
16 felt that maybe those reopenings, if the Office
17 does it on its own, should be treated as a
18 decision in the review reversing and adverse
19 patentability determination for purposes of the
20 patent term adjustment because it, you know, feels
21 that way.

22 Back in 2000 when an appeal was filed,

1 it usually went to the Board. Now that doesn't
2 always happen. So, the thought was maybe we
3 should revise the patent term adjustment rules and
4 take that into account.

5 Also back in 2000, most of the prior art
6 that was submitted by applicants where they got it
7 from the other source was where they got prior art
8 submitted by a foreign patent office or during a
9 PCT search. Now a lot of times there's prior art
10 or office actions in related applications where
11 applicants have decided the so-called McKesson
12 issue. We felt that we would treat prior art
13 and/or office actions that you get from a related
14 U.S. application the same as we treat prior art
15 received from a foreign patent office for purposes
16 of letting applicant submit it promptly and not
17 get a patent term adjustment reduction.

18 That's basically the update on these.
19 Are there any questions?

20 MS. KEPPLINGER: Yes, with regard to the
21 RCEs. That would be excellent if you could come
22 up with something in between, because I think a

1 significant number of the RCEs are being filed for
2 a variety of issues, among them McKesson.

3 MR. BAHR: Um-hmm.

4 MS. KEPPLINGER: Where you have a
5 portfolio of cases, one examiner or another still
6 working on it, and at some point you have to pay
7 the issue fee but additional things come in, you
8 have no choice but to file an RCE for that reason.

9 And additionally, the after-final
10 practice that currently exists, in the Office
11 anyway, some of the more senior examiners will
12 consider things after final, but the vast majority
13 of the examiners being younger examiners won't
14 consider much of anything, sometimes even a claim
15 that was already presented, and so you're forced
16 to file an RCE. So, something that is in between
17 -- and we'd be happy to work with you in any way
18 in developing that, but hopefully you have
19 something that's in the works real soon.

20 MR. BAHR: Okay, we are working on
21 something, but if you have any suggestions feel
22 free to send them to me.

1 MS. KEPPLINGER: And a follow-up is how
2 many RCEs are sitting on the shelf?

3 MR. BAHR: Do you know, Peggy?

4 SPEAKER: Somewhere between 50- and
5 60,000.

6 MR. BAHR: It's somewhere between 50-
7 and 60,000.

8 MS. KEPPLINGER: So, in July of '09 you
9 had 17,000 on the shelf. You changed and took the
10 RCEs off the amended docket, and now you have 50
11 to 60,000 RCEs sitting un-acted on, on the shelf,
12 and I guess -- it's my understanding that those
13 cases don't count in the backlog number.

14 MR. BAHR: They don't count as
15 unexamined applications, because they're examined
16 applications.

17 MS. KEPPLINGER: Right. Well, I guess
18 I'll spare Andy. (Laughter) So, the
19 inconsistency that I see here is that you count an
20 RCE as a new case when it's filed. It's a part of
21 your intake in the number that you report. You
22 used to put the RCEs on the amended docket so that

1 they were picked up quickly, but now you've
2 changed that so they're put on new case docket and
3 treated as though it were a new case. But then
4 when you get to actually picking it up for action,
5 you're now kind of treating it like well, no, it's
6 not a new case; it's an amended case. So, your
7 backlog number does not include the RCEs. In my
8 view, that's a tremendous inconsistency, and you
9 need to count it in the same way consistently
10 across the numbers that you're generating. It's
11 either a new case or it's an amended case, but it
12 can't be either as it suits you.

13 The other problem that I see right now
14 with your statistics is that the RCEs -- now, in
15 my time they weren't being counted in pendency
16 either, so I understand that. But we only had
17 10,000 back when I was still in the Office. Right
18 now you have 30,000. Once the first case
19 abandons, it is no longer counted in the pendency
20 numbers. It's true you've added on your Dashboard
21 an RCE clock that shows the pendency of RCEs, but
22 remember, all those cases sitting on the shelf

1 aren't being counted in any pendency numbers, so
2 you have an iceberg where the vast majority of
3 dependency is underwater because those cases are
4 sitting. And until they're actually picked up
5 they won't even show on that clock. But they'll
6 never show on your regular pendency number that is
7 provided to the Congress. So, I think that's
8 another thing that really needs to be addressed.
9 And the sooner you get them done the better for

10 any pendency number.

11 MR. BAHR: Okay, but that's true for
12 every case.

13 MS. KEPPLINGER: But to keep one set of
14 cases sort of off the books and sitting on the
15 shelf is hiding the true facts.

16 MR. BAHR: Okay, anybody -- are there
17 any other questions?

18 MR. MATTEO: Okay, Robert, thank you
19 very much. Oh, unless you had something further.

20 MR. BAHR: No, that was all for me.

21 MR. MATTEO: Okay. So, next on the
22 agenda we have Peggy Focarino, who will be giving

1 us an operations update. Oh, I'm sorry, actually
2 Andy Faile will be doing the update. Just to
3 correct the agenda that's been published, it says
4 Peggy but it will in fact be Andy Faile.

5 MR. FAILE: Okay, no problem. One
6 second while the slides come up. Okay, so by very
7 ambitious slide set here with a lot of numbers,
8 I'm going to kind of take you guys through a tour
9 of the material. I hope we have some time for
10 questions at the very end, because it's a good bit
11 of material here.

12 The first few slides are actually
13 highlights. Let me hit those real quick. For our
14 filings, we look to have a projection of about 5
15 percent over our FY10 levels.

16 Backlog reduction numbers. As Peggy
17 mentioned earlier, we're currently sitting
18 somewhere around 708. Our low point this fiscal
19 year was, right at the end of mid- year, a little
20 bit over 705,000. We have about 721,000 cases
21 pending during the first quarter of 2011.

22 Under Production, you see at the bottom

1 there, the allowance rate has gone up slightly
2 over FY10 levels. In both first action pendency
3 and total pendency, it's gone down slightly.

4 On quality, there will be a little bit
5 more detail on the quality the way we're gauging
6 quality in some later slides, but for the
7 highlights we have two measures, two traditional
8 measures that we use. One is the final
9 disposition compliance rate currently at 95.3
10 percent in our in-process review cases that are in
11 prosecution and being reviewed. Compliance rate
12 there is 94.7 percent.

13 Returns from the Board. Cases coming
14 back from the Board -- if you add up the affirmed
15 and affirmed-in-part responses, that's about a 66
16 percent slice of that.

17 All right, technical support staff.
18 Good strides in our technical support staff
19 processing. Our amendment entry times are down to
20 5.1 days for amendments. Very good progress
21 there. Our quality error rate of about 2 percent
22 is pretty steady. It's been that way for some

1 time now. Tech support had a really good year
2 last year. It exceeded basically all their goals
3 for amendment entry, production, and quality error
4 rate.

5 Our Green Tech program. Here's a
6 summary of the petition activity in that
7 particular program. To date we have a little bit
8 over 3,000 petitions received, almost 1600
9 granted, about a thousand dismissed. If you look
10 at the dismissals, a couple of quick highlights
11 there. The original number of dismissals was
12 where the particular applications didn't conform
13 to the class schedule that was published. We had
14 changed that, and the dismissals went down
15 dramatically after that. Now the balance of the
16 dismissals is the materiality of the application
17 being green or not. Applicants get one chance to
18 correct that. If they don't, then it goes into
19 the denied category of which we have about 200.

20 On the Ombudsman program. Another
21 pretty popular program, this gives you the stats
22 of the different counts of inquiries per TC. As

1 you notice on the back in 36 and 37, there's a
2 pretty dramatic jump in the number of increase for
3 those two TCs. The team is currently looking at
4 that and trying to figure out why they are
5 different than the other TCs. They do have the
6 lowest average per BD. There are a lot more cases
7 coming through there, a lot more potential for
8 calls to come in just because of the volume. That
9 may be a reason. But we're actually active in
10 looking in to that to see what is going on there.
11 But a pretty popular program. We've had a pretty
12 good response from the outside on this one.

13 Our interviews. Another program that
14 seems to be doing well. We had a big interview
15 training for all examiners within the last couple
16 of years. Every examiner went through an
17 interview training class. We also provided time
18 for examiner-initiated interviews, which has also
19 been very popular.

20 So, here are the stats on that. So far
21 we have about 65,000 interview hour logged so far
22 this fiscal year, a projected increase of about 16

1 percent of what we did in 2010. The First Action
2 Interview Pilot -- the big note there is the
3 allowance rate is about twice what it is for the
4 non-First Action Interview Pilot applications,
5 about a 30 percent versus about a 15 percent or
6 so. We're currently talking with POPA about that
7 particular program, seeing if an expansion there
8 is going to happen.

9 MR. MATTEO: Andy, just two quick
10 questions if I may. On the interview training,
11 you said it's well received. Well received by the
12 Examiner Corps and/or by the public, both sides?

13 MR. FAILE: I would say it's well
14 received by both. We've had a good jump in
15 interviews held. A lot of good anecdotal feedback
16 from the outside that the interviews -- the
17 examiners have been accessible, been able to move
18 cases more rapidly than maybe we have in the past.

19 MR. MATTEO: Okay, so you got the part
20 of -- what would be a follow-on question, so it's
21 mostly anecdotal? Are there any metrics you've
22 established to try and get feedback and reinforce

1 it?

2 MR. FAILE: It's basically the logging
3 of the -- the jump in the hours --

4 MR. MATTEO: Okay.

5 MR. FAILE: -- as opposed to anything
6 beyond that. But if you guys had some suggestions
7 of ways we could capture different metrics in
8 that, that would be very helpful.

9 MR. MATTEO: Ester, did you have
10 something?

11 MS. KEPPLINGER: I was just going to say
12 that certainly the interview policy is very well
13 received. I don't know that the outside has much
14 to say about the training, and so you might be
15 able to gather some statistics. I think
16 overwhelmingly the public is enthusiastic about
17 the change in interview practice.

18 MR. MATTEO: Yeah, I was speaking more
19 to the training, because I know interaction hasn't
20 always been as smooth as it could be, so I'm
21 wondering if you've gotten any feedback along
22 those lines, other than anecdotal. But that's

1 fine, because we can circle back to that.

2 I did actually have one other question
3 about the First Action Interview Pilot Program.
4 Clearly significant jump up in the allowance rate,
5 but how statistically significant is that sample?
6 What are the numbers we're talking about?

7 MR. FAILE: It's a pretty low volume of
8 cases compared to regular cases, obviously. But
9 just within the confines of that small number,
10 that process does seem to result in the
11 termination of liable subject matter much quicker.
12 So, hopefully if we can replicate that on a larger
13 scale, that would even be --

14 MR. MATTEO: That actually is the
15 question. What is the number?

16 MR. FAILE: For --

17 MR. MATTEO: For the pilot program. How
18 many applications have you processed?

19 MR. FAILE: Oh, how many applications?

20 MR. MATTEO: You can ballpark it.

21 MR. FAILE: I'm not sure. Rob, do you
22 remember what was the original --

1 MR. BUDENS: I'm actually trying to
2 remember right now, because actually this is being
3 taken up by our Executive Committee actually today
4 to see about approving to go forward and the
5 expansion of the pilot to the entire corps. And I
6 can't remember the exact data. From my point of
7 view, the fact that we're putting it in front of
8 the Executive Committee for expansion -- you know,
9 we thought the numbers were good enough to justify
10 considering allowing the Agency to not have to
11 fight with the Agency over expanding it, that it
12 looked like it was actually a good program.

13 And on your previous question about how
14 well interviews are -- I would just note that I've
15 run into Ester a lot more times coming into the
16 Rumson, you know, than in prior days. (Laughter)

17 MR. BORSON: Andy, I had a question.
18 This is Ben. I had a question about the
19 affirmance rate. You mentioned the affirmed and
20 affirmed-in-part 66 percent. What about the
21 reversed or reversed-in-part. I can't calculate
22 those based on this data.

1 MR. FAILE: It's not a (inaudible)?

2 MR. BORSON: No, it can't be, because a
3 rejected or a reversed case plus a partial
4 reversal -- I mean, partial reversals overlap --

5 MR. FAILE: Right.

6 MR. BORSON: -- with the partial
7 affirmatives --

8 MR. FAILE: All right.

9 MR. BORSON: -- but the absolute numbers
10 of decisions that were rejected firmly or affirmed
11 firmly are unclear from this data set.

12 MR. FAILE: Right, because
13 affirmed-in-part could go either way. So, are you
14 asking how would you slice and dice between the
15 two?

16 MR. BORSON: No, I'm asking how many
17 rejected reverse decisions are there from the
18 Board? What's the percentage of complete
19 reversals?

20 MR. FAILE: I don't have that cut.

21 MR. BORSON: There's dead air here.

22 MR. FAILE: Yeah, I don't know whether

1 the OPQA sample, right?

2 MR. BAHR: Well, no, not really. Sorry
3 to cut in. This is Bob Bahr. 33 percent of cases
4 getting reversed is sort of a historical norm.
5 You say you want to make that number smaller, but
6 it does -- we really don't want to drive that
7 number down too much, because we probably are
8 making wrong decisions to allow it if that number
9 gets too low. When that number got very high up
10 to 50 percent? That's when we started
11 implementing our Appeal Brief Conference and
12 Pre-Appeal Brief Conference Programs. So, yes, we
13 do take that information into account and try --
14 in our processes. But I don't think -- looking at
15 it now, we're sort of saying that the process will
16 work -- the things we're doing are working, but I
17 don't think there is -- you know, this number --
18 it drives us to enhance those to a greater degree.

19 MS. LEE: This is Michelle Lee. A
20 question for you on slides 3 and 4 with regard to
21 the Coletti metrics. Actually, let's show slide
22 4. For my benefit, what is the quality error rate

1 on the technical support staff accomplishments?
2 You indicate that it's 2.0 percent, but what is
3 that actually measuring?

4 MR. FAILE: Okay --

5 MS. LEE: And then, secondarily, on the
6 previous slide what about final disposition
7 compliance and in- process compliance?

8 MR. FAILE: Okay, just kind of go over
9 with you what those are?

10 MS. LEE: Yes.

11 MR. FAILE: Okay, sure. Let's start
12 with slide 3, Final Disposition Compliances,
13 Looking at Final Rejections and Allowances. I'd
14 say look at those. The in- process compliance
15 rate is looking at other cases, in- process other
16 than finals and allowances -- first action,
17 non-final rejections; second action non-final
18 rejections, et cetera.

19 For the Tech Support, what we look at,
20 at Tech Support, is all the different processes
21 that they do when they're entering amendments,
22 entering RCEs, preparing the case for allowance,

1 doing that checklist for that, looking at all
2 that, and then calculating if those processes are
3 done correctly or not. So, for Tech Support --
4 Tech Support is the group of employees that enter
5 amendments in the case and process all the cases
6 for the examiners to work on or as examiners are
7 working on them. So, there are a number of touch
8 points in there that we measure for their
9 particular expertise in making sure those cases
10 get to examiners, get to examiners correctly, and
11 all the input from the applicant has been checked.
12 So, there's a criteria there that we measure
13 against that.

14 MS. LEE: So, is that a random selection
15 or -- that you check? Okay.

16 MR. FAILE: Um-hmm, yeah. Statistically
17 relevant random selection throughout the fiscal
18 year per Tech Support employee.

19 MS. LEE: Got it. Thank you.

20 MR. FAILE: Um-hmm.

21 MR. ADLER: I'm going to go back to
22 where I was, based on your answer to my question

1 around the -- you said that that's been the
2 historical level of rejections, as if that's
3 acceptable? I would propose that it's not
4 acceptable, that it should be improved. I would
5 like to -- I mean, the whole point, I think, of a
6 quality improvement effort is to use the data to
7 move the target, not to look at it and say it's
8 okay. I mean, I still think if 20 percent of the
9 cases are improperly -- you know, are rejected --

10 MR. FAILE: Well, let me ask you --

11 MR. ADLER: -- I think that means that
12 there's a percent of improvement that could be
13 backed in the Office.

14 MR. BAHR: Are you saying theoretically
15 100 percent of appeal decisions from examiners
16 should be affirmed?

17 MR. ADLER: No. I don't know what that
18 number should be, but I don't know that --

19 MR. BAHR: Do you think a number exists?

20 MR. ADLER: I don't know.

21 MR. BAHR: I mean, do you think there is
22 some sort of ideal number?

1 MR. ADLER: No, but I'd like to see, if
2 you're analyzing the data, whether or not a third
3 of the cases are being improperly -- your analysis
4 of the data that you just presented doesn't sit
5 with me right is what I'm saying. It's not the
6 way I would look at quality data. I don't know if
7 it's a hundred percent or --

8 MS. KEPPLINGER: I'd like to follow up
9 on that. I think what Marc is -- both of you have
10 very good points. Certainly I think you don't
11 want the number to be too low, because that means
12 you're not sending any of the grey cases.
13 However, I think Marc's point is when you look at
14 those cases, were any of them slam dunks by the
15 Board, or were there reasonable rejections? If
16 there were slam dunks, then there's definitely
17 some feedback training to be done.

18 MR. BAHR: Okay, I mean, you're right,
19 and I really should amend my earlier answer. It's
20 not like we ignore -- we see 33 percent and say
21 fine, you know, move on. We are actually looking
22 to see if there are any of these cases where the

1 rejection never really should have gone up. There
2 are some where the Board's decision is a reversal.
3 Maybe we say okay, this is a reasonable decision
4 but maybe we should have sent the case up anyway
5 because it was close enough. But we are also
6 looking to see if there are cases where something
7 happened in our pre-appeal process that should not
8 have happened because the case shouldn't have gone
9 to the Board. We do look for that.

10 MR. ADLER: Thanks.

11 MR. FAILE: So, Marc, to follow up, just
12 one idea would be looking at the cases in some
13 statistically relevant manner, seeing how many
14 rejections were clearly to the left or right,
15 however you want to characterize it, and then
16 feeding that back into the process to see if we
17 can avoid that, and also maybe linking up with
18 activities in the pre-appeal brief conference and
19 the appeal brief conference to see if those match
20 some version of that I think is what you're --

21 MR. ADLER: That's what I was asking.

22 Thank you.

1 MR. FAILE: Um-hmm. Okay, jumping back
2 to interviews, I think we're covering kind of a
3 last point, which is basically that the interview
4 process or the loosening up of interviews and the
5 giving of time for examiner-initiated interviews
6 seems to be a pretty positive thing. It's well
7 received.

8 Okay, here we have a breakdown of the
9 filings, kind of historical from '95 to currently
10 this year. This goes back to basically the first
11 bullet where we're looking at a projection of
12 close to 5 percent for this fiscal year on
13 application filings. This just gives you kind of
14 a quick visual of the steady increase of filings
15 from '95 to present, which is not surprising I'm
16 sure.

17 This is a chart here showing filings in
18 the blue line there. You see the filings from '03
19 to '11. Little bit of a steady increase. This is
20 mapped against the first actions in green.

21 This is a backlog projection. See, it's
22 centered somewhere around 2008. There's kind of a

1 crest there. It started to come down a little bit
2 in that time frame. Compare and contrast the
3 filings, the first actions have been done and the
4 actual effects of that went down and back.

5 Turning to the backlog a little more
6 specifically, here we have from basically October
7 of '08 to present kind of showing you the backlog
8 of cases and say kind of come down at a dip there
9 in September of '10, a little bit of a rise, and
10 come back up. You see a little bit of a pattern
11 there of the backlog coming down, raising a little
12 bit, and coming down.

13 Again, currently we're about 708,000.
14 Our low point this year was 705 right at the end
15 of mid-year.

16 MR. BORSON: Andy, to what do you
17 contribute that cycle -- business cycle not unlike
18 at the end of the year --

19 MR. FAILE: Um-hmm, yeah, you'll see the
20 end-of- the-year dips when a lot more work is
21 going on. During the first quarter of the new
22 year it'll rise up a little bit, so.

1 MR. BORSON: I just wanted to make sure
2 I wasn't pursuing something insignificant, so.

3 MR. FAILE: Yeah. Okay, next slide. Is
4 there a question? Go ahead.

5 MR. BORSON: You know, Andy, it looks
6 kind of like these dips in the pattern are
7 quarterly, and the question is whether those match
8 the quarterly production targets.

9 MR. FAILE: Um-hmm, right. At the end
10 of the year you'll see a bigger dip quarterly.
11 You do see dips. We get a lot of work at those
12 points in time cranking out actions that are
13 consistent with what we see production-wise at
14 the end of quarters and particularly in the fiscal
15 year.

16 MS. FOCARINO: And of course the RCEs
17 it's really about 700 to 50,000.

18 MR. FAILE: Right. (Laughter)

19 MR. BORSON: I think that slide you're
20 seeing, too, being in 7, 8, and 9 is -- that's
21 when the Office -- you know, Mr. Kappos tried to
22 put in a 699 and all the while you're pushing at

1 the speed level the arguments to move the backlog
2 cases as much as they could. So, that slide there
3 on the backlog looks to me to be a little more
4 steeper than we might normally expect. We'd be
5 seeing a lot of cases going out the door -- don't
6 know that we've necessarily seen it that steep or
7 new cases going out the door. But I can tell it
8 was, you know, somewhat of a reflection of the
9 pushing the Agency to get backlog reduction.

10 MR. BUDENS: Okay, fair enough, and
11 actually I couldn't read the dates on the bottom,
12 but I can actually see now from the paper copy
13 that it doesn't correlate to an annual cycle.
14 It's close to a --

15 MR. ADLER: So, if you look at the data
16 and the account system that was put into place, it
17 doesn't seem to have made much of a difference
18 other than where, Esther, you were saying on the
19 use of RCEs. Is that a fair statement? Since the
20 new account system has gone into place, the
21 pendency and the first actions and really -- and
22 the backlog really hasn't changed -- the way that

1 account correlated to the backlog really hasn't
2 changed much. True? False? I don't know.

3 MS. FOCARINO: Marc, what do you mean by
4 "hasn't changed much"? Kind of just the volume of
5 it?

6 MR. ADLER: The first action happens on
7 down --

8 MS. FOCARINO: I think Andy had one
9 slide in there that showed the -- what was at the
10 end of blue line file versus the green line first
11 action.

12 MR. ADLER: Yeah, that's what I'm
13 looking at.

14 MS. FOCARINO: You can see that there is
15 an up- tic in first actions certainly. So, I
16 think you can attribute some of that to the
17 shifting credits under the new account system.
18 The other thing that is not in place yet with the
19 new Examiner Performance Appraisal Plan is the
20 Docket Management element, which will also have
21 some effect then on how you see pendency change,
22 because there are incentives built in for

1 examiners to move their cases quicker rather than
2 on a biweekly cycle. So, I think you'll see even
3 more of a change in some of the pendency numbers,
4 on first actions certainly but --

5 MR. ADLER: I guess all I'm really
6 saying is it would be good to track the timing of
7 the major events against the new initiatives that
8 have been put in place whether they're first
9 office action interviews or whether it's the new
10 account system so we could actually get some sense
11 of what's working in terms of the results and what
12 isn't working and what might need to be changed.

13 MS. FOCARINO: Right. Yeah.

14 MS. KEPPLINGER: Just one comment with
15 respect to the first actions. You've doubled your
16 staff on this chart.

17 MR. FAILE: Right.

18 MS. FOCARINO: So that's just a
19 representation of more examiners it would seem.

20 MR. BUDENS: In response to that, Peggy,
21 just from an anecdotal point at the trench level,
22 I think it's a combination of both the expansion

1 of the staff but also retention of the staff that
2 we have, because the retention, as you know, means
3 the people are moving up in position factor, and
4 that's increasing the production naturally, too.
5 So, I think in that regard, that's where the
6 account systems' effects would be most notable --
7 would be in increasing the retention of the
8 examiners.

9 MS. FOCARINO: The other thing that's at
10 play also -- if you just look at raw output in
11 terms of first actions or BDs, the complexity of
12 the applications is increasing as a total
13 percentage of the overall applications that are
14 being done, so you will tend to see less of an
15 output of more complex cases. So, there are a lot
16 of things going on here, but I think it's a good
17 point, Marc, that we can identify by a timeline on
18 the charts what significant internal events are in
19 play.

20 MR. SOBON: I have a question. I
21 apologize for my -- it's my first time here and
22 I've spilled water everywhere. It may have been

1 covered, but I wanted to know about -- on the
2 statistics on the chart a bit before that,
3 actually two before -- no, that one, yes -- what's
4 the relationship between the question that Esther
5 had raised about moving applications on the RCE
6 docket to these numbers and I don't know that
7 we're going back where the blue filings -- did
8 those include continuation applications that now
9 would be considered RCEs and then would not be on
10 the -- would be now off the backlog?

11 MR. ADLER: My assumption is they're not
12 in there, so let's see.

13 MS. KEPPLINGER: They're in the filings.
14 They're in the filings; they're not in the
15 backlog.

16 MR. SOBON: So, the blue continues to
17 include the new RCEs, this blue --

18 MS. KEPPLINGER: That's correct.

19 MR. SOBON: The blue line.

20 MR. FAILE: Okay, other -- okay, move
21 on? Okay, so over on this slide we have pendency
22 per tech center. The average pendency months,

1 average first action pendency. You can see it's
2 split up for -- delineated by tech center. The
3 total is down at the bottom there.

4 Okay, on this graph, the dotted lines
5 are the actual targets. You see the blue dotted
6 line is the total pendency target for 11 at 34.5
7 months and then kind of a chart of the pendency
8 calculated as we started in 10 of '08 all the way
9 up to mid-year of this year and how it charts
10 against that reference line.

11 The same for first action pendency --
12 the dotted green line down there -- targeted at 23
13 months and currently the progress from 10/08 to
14 date. You can see that it's above that line.
15 Obviously on the total pendency we're kind of in
16 and out of our target range, and then we're above
17 it for the first action pendency with respect to
18 the 23-month line for '11. Getting a little bit
19 closer end of February/beginning of March and then
20 starting to rise up a little bit.

21 Okay, this slide shows the 12-month
22 rolling average of allowance rate by bi-week

1 beginning in '08 to date. As you can see from the
2 -- remember back to the first slide, the allowance
3 rate creeping up slightly? This chart has a
4 little bit more detail showing month by month how
5 that allowance rate has moved up to the current
6 level.

7 MR. MATTEO: We have a question.

8 MR. FAILE: Oh, sorry.

9 MS. KEPPLINGER: I just wondered. I
10 think you calculate internally the allowance rate
11 without the RCEs, which is significantly higher.

12 MR. FAILE: Right.

13 MS. KEPPLINGER: Since in 30 percent of
14 the cases you get an abandonment from the RCE,
15 which counts in the disposals and so counts in
16 your allowance rate, could you tell us what it is
17 without the RCEs?

18 MR. FAILE: It's about 20 -- it's
19 60-ish.

20 MR. FITZPATRICK: 62 percent.

21 MR. FAILE: Sorry, Dave?

22 MR. FITZPATRICK: 62 percent.

1 MR. FAILE: 62 percent with the RCEs.
2 Okay, focusing a little bit on the backlog, for
3 this chart on the X axis there you have the age of
4 the cases in months from all the way out to the --
5 in there from 0 to about 60 and then on the Y axis
6 the numbers of cases in those bands. On the red
7 line there is centered at 16 months, so one of the
8 goals we have this year is taking the backlog that
9 was 16 months at the beginning of FY11 and trying
10 to reduce that, bring that to 0, as close to 0 as
11 possible. And this is kind of looking at -- if
12 you're looking at this chart, you're looking at
13 everything to the right of the red line as kind of
14 the tail of the backlog, so the effort is to try
15 to concentrate our first action power toward that
16 tail to reduce that down to 0.

17 This is -- I'm sure you've heard of our
18 COPA effort, Clearing Oldest Patent Applications.
19 The target of this particular effort is to get rid
20 of that tail of cases.

21 MR. MATTEO: So, Andy, this is a
22 snapshot -- current snapshot?

1 MR. FAILE: Current, yes. So, by the
2 end -- if we were to reduce all those by the end
3 of this year, the oldest case would be 21 months,
4 you know, 16 plus 12.

5 MR. MATTEO: Okay. And do you have a
6 sense of how this evolves over time -- has
7 evolved, rather?

8 MR. FAILE: Oh, beginning of the fiscal
9 year, sorry.

10 Sorry, Damon?

11 MR. MATTEO: Do you have a sense of how
12 this has evolved over time?

13 MR. FAILE: The tail -- actually, the
14 tail is scrunched up -- how do I explain this --
15 scrunched up to the left. Overtime was probably a
16 longer tail to the right. So, we're trying to
17 move everything more toward the left of the graph.
18 So, I think if you -- I don't have the historical
19 data in front of me, but I think you'd see the
20 tail a little bit longer.

21 MR. MATTEO: Okay, so length of the tail
22 aside, just to grossly oversimplify, volume of the

1 curve to the left of the line, to the right of the
2 line? How is that changing? Significantly?

3 MR. FAILE: He's asking the volume of
4 cases under the curve, how has that changed
5 significantly over time, from a historical
6 perspective.

7 MR. FITZPATRICK: There are a lot more
8 cases to the right of the line. The next slide is
9 showing (inaudible).

10 MR. MATTEO: I don't think anybody can
11 hear the answer.

12 MR. FAILE: Yeah, Dave, can you come up?

13 MR. FITZPATRICK: Hi, my name is David
14 Fitzpatrick.

15 MR. MATTEO: Welcome, David.

16 MR. FITZPATRICK: Hi. Just in regard to
17 the -- as Andy was saying, this is the backlog at
18 the beginning of the year. We do have slides
19 showing comparisons to '08 and '09, and you see
20 significantly higher cases to the right of the red
21 line.

22 MR. MATTEO: Higher cases. Do you mean

1 volume?

2 MR. FITZPATRICK: I'm sorry, the age of
3 the cases is significantly higher to the right of
4 the red line.

5 MR. MATTEO: No, no, I understand how to
6 read the X and Y axis. I'm asking a different
7 question.

8 MR. FITZPATRICK: Okay, I'm sorry.

9 MR. MATTEO: So, volume -- maybe we
10 could take this offline, but it is a question I
11 would like to have answered at some point. So,
12 you take the volume under the curve, and since
13 you've drawn the line at 16, what is the volume
14 under the curve to the left and to the right of
15 that line and how has that changed over time.
16 That's what I'm asking.

17 MR. FITZPATRICK: Okay.

18 MR. MATTEO: Right. So, what I'm trying
19 to get at is are you attacking a symptom -- i.e.,
20 the three cases that are, you know, 800 years old
21 -- at the very tip of the tail or are we
22 significantly addressing the broader backlog

1 problem that reflects the volume? And, again, I'm
2 simplifying, but that's the nature of the
3 question. If you don't have the answer now,
4 that's fine, but I'd like for us to circle to it.

5 MR. FAILE: Take a look at it.

6 MR. FITZPATRICK: Okay. Well, we can
7 get the data and get back to you.

8 MR. MATTEO: That would be great. Thank
9 you. We think we have a follow-on question.

10 MR. ADLER: Yeah, it's sort of related.
11 I'm looking over at Jim back there -- Jim Dwyer.
12 Are the cases that are the tail cases, you know,
13 the ones all the way out, you know, 40 to 60
14 months out, being factored into the QIR data for
15 performance or -- I mean, I'd like to sort of at
16 some point try to figure out why a case might be
17 sitting on an examiner's or a group of examiners'
18 desks for five years without any action. I mean,
19 are you trying to factor that into the performance
20 in the QIR data.

21 SPEAKER: Can't hear that.

22 MR. ADLER: Okay, can you hear me now?

1 SPEAKER: No.

2 MR. DWYER: So, just to make sure I
3 understood, the question, is the question: Does
4 the QIR, which is our Quality Index Reporting,
5 take into account as to why cases may be at the
6 40-plus month?

7 MR. ADLER: No, not really. I'm looking
8 -- you're tracking outliers in terms of
9 performance both on the plus side and on the
10 downside. Obviously, to me, the ones that are at
11 the tail all the way out are the downside and are
12 those cases being identified to individual
13 examiners to try to figure out what their
14 particular issues might be with regard to those
15 cases and to see whether there's some reason or
16 theme that's going on with regard to why those
17 cases are there.

18 MR. DWYER: Okay, again, going back from
19 an examiner's performance plan, if the cases are
20 on their docket, okay, they have a certain period
21 of time in which to move those cases. So, once
22 they're actually placed on there, we know they're

1 in the process. The question is do we have the
2 right examiners in the right location to handle
3 those cases that might be out there? Some of
4 those cases also may be cases where there's been a
5 transfer of inquiries.

6 MR. ADLER: That's what I'm worried
7 about. I mean, obviously one examiner might leave
8 and he might give it somebody else and then they
9 don't want to deal with it and they give it to
10 somebody else. I mean -- but, is that a systemic
11 issue, and is that -- how is that being dealt
12 with?

13 MR. DWYER: Again, I can't say whether
14 it's systemic or not. But I do say that the
15 concept of doing this COPA -- you know, clearing
16 out the oldest patent applications -- takes into
17 account for that, because again, like I said, once
18 we know we've got it on somebody's docket and
19 their docket is reasonably in the aspect that it's
20 in -- the tail cases is what they're in -- that
21 means every case they work on will be those cases
22 that are out at 36, 38, and 40 months.

1 MR. ADLER: See, COPA is kind of, to me,
2 a triage, right? You're trying to deal with the
3 ones that are, like, way out there. I'm focusing
4 on quality. From a quality perspective, you don't
5 want them to ever get there. So, you use the data
6 to find out why they ever got there to try to
7 prevent that from happening. That's what I'm
8 trying to logic my way through here.

9 MR. DWYER: Right.

10 MR. ADLER: You would have that data.

11 MR. DWYER: This is not to the blame of
12 a particular examiner not doing cases. This is a
13 situation where it is to matching our resources
14 with our incoming, and that's been attempted over
15 the years using our recruiting. We bring folks
16 in, in areas where we need them. However,
17 typically in the years -- in the 2003-plus, the
18 area where we needed examiners was also where
19 industry needed engineers, so we're constantly
20 competing, and that's where our attrition levels
21 were at the highest. We're right now at more of a
22 steady state, which we have an opportunity to

1 recapture. But I don't think you can look at any
2 individual examiners as it's their fault that it's
3 out there at 46 months.

4 MR. ADLER: I wasn't looking at this as
5 a blame thing. I was looking at this as a process
6 improvement question, and I was looking at it as a
7 learning to try to prevent the cases that are on
8 the left of the line from ending up on the right
9 of the line.

10 MR. DWYER: Understood.

11 MS. FOCARINO: I know exactly what you
12 -- for example, the transfer process? We are
13 definitely looking at that entire process from
14 start to finish and reengineering it to be able to
15 make sure that the cases aren't just bouncing
16 around. So, I --

17 MR. ADLER: That's what I would assume
18 would happen to a case that gets pushed that far.

19 MR. MATTEO: Actually, let me jump in
20 here for a moment just in the interest of time.

21 Can you hear me? Okay. Got two
22 different red lights here. Sorry about that.

1 In the interest of time, let me just in

2 --

3 SPEAKER: Sorry.

4 MR. MATTEO: Not at all. Let me jump in
5 here with two things. First, by way of a
6 follow-up, I don't think any question anyone asks
7 here at PPAC is centered around or even hints at
8 allocation of blame. We're really just trying to
9 get a deeper understanding and, to the extent we
10 can, help identify ways for providing feedback
11 mechanisms that support and inform and improve
12 processes going forward. So, that's clearly the
13 intent and spirit of these questions, and we're
14 sorry if it sounded to the contrary, because
15 that's not at all the case.

16 Having said that, to get us back on
17 track let me suggest that we're already a little
18 behind schedule. Why don't we move through the
19 balance of the presentation, and to the extent
20 that we have high-order questions that we need to
21 surface we'll do so but I'll create a little
22 parking lot here and we'll circle back to you,

1 Andy, with those questions.

2 MR. FAILE: Okay.

3 MR. MATTEO: And if you could get us
4 back the information, that would be great.

5 MR. FAILE: Sure.

6 MR. MATTEO: Thank you.

7 MR. FAILE: Okay, so let me go through
8 the rest of it in the time we have.

9 Okay, so real quickly, this is kind of
10 our current situation. Again, everything to the
11 right of the red line is what we want to try to
12 clear out this year. And, again, the snapshot at
13 the beginning of the year at 16 months by the end
14 will be at 28 months with the oldest case.

15 So, this is what we'll look like in the
16 out-years when we have a 10-month pendency goal.
17 Obviously, you'll have a big line, sending it at
18 10 months. You don't have a lot of line -- a lot
19 of room to the left to average out anything to the
20 right, so you're going to have a pretty big spike
21 right in the middle there centered on 10 months.
22 This would be the goal for the future.

1 The way we get there -- our big effort
2 is the COPA effort that Jim had talked about and
3 Marc amplified on a little bit, and that is the
4 matching of hires to these backlog areas, number
5 one, and also looking at examiners that are
6 related to these areas that may be working ahead
7 of some of the older COPA cases, re-shifting those
8 resources and getting the examiners to work on
9 those cases so we can drive that number back,
10 which I think may have been where Marc's going, a
11 two-fold effort. There's the targeting of hiring
12 to the areas. There's also the movement of work
13 and/or examiners to those areas to try to work
14 that tail back off so we're down into, at some
15 point, our idealized world here.

16 Quality measures real quick. This shows
17 our rolling 12-month average. Catch up real
18 quick. And slides here. The blue line is our
19 final disposition measure. Our target line in the
20 red, the in-process review.

21 We have some new quality measures -- I
22 believe members of PPAC have contributed to that,

1 to which we thank you -- that we're looking at
2 now. Again, our traditional measures are the
3 final disposition in the in-process review
4 measures. We're looking at five new measures to
5 compliment this. You'll see those in the blue,
6 the traditionals in the yellow box there and then
7 the blue. Real briefly, we're looking at a first
8 action on the merits search review, checking the
9 searching of the cases. Complete first action on
10 the merits review and the in-process, they could
11 be first actions, second actions, anything short
12 of allowances or finals. This review would target
13 specifically the first action trying to get the
14 best first action possible.

15 Jim had mentioned a little bit about the
16 QIR, Quality Index Report. We were looking
17 basically for statistical outliers with respect to
18 our metrics and seeing if we can identify those
19 and bring those back into some kind of norm.

20 We also have two different surveys, an
21 external quality survey and an internal quality
22 survey. We're going to use these new measures and

1 kind of come up with a composite index of quality.
2 So, we'll have a little bit of richer look at
3 quality versus our traditional in-process review
4 and final disposition review.

5 Quick note on hiring. We're up to about
6 836 hires for this year. This shows you kind of a
7 breakdown by technology center. And, again,
8 linking this back to our COPA plan, targeting
9 these hires in the areas where we can actually
10 reduce some COPA cases is obviously a goal we want
11 to do.

12 Here's kind of a breakdown of the 836
13 hires: 761 patent examiners, about 57 in our new
14 IP experienced hires program, where as a quick
15 note there we are bringing in examiners that have
16 previous IP experience -- we're shortening that
17 training time in the academy, getting them back to
18 the TCs a little bit quicker -- 57 of those, and
19 then 18 reinstatements.

20 There's a 5 percent attrition rate
21 projected for '11, and I believe currently we are
22 just a little bit over 3 percent -- as of March, a

1 little bit over 3 percent. So, doing really well
2 attrition-wise.

3 MR. ADLER: That's significantly lower
4 than what I recall it was when we asked this
5 question a year or so ago. It was something like
6 5.7. So, that's -- you're holding on to them.
7 That's a good thing.

8 MR. FAILE: It is.

9 MS. TOOHEY: Does the 3 percent
10 attrition rate include retirees and transfers?
11 Does it include it or exclude it?

12 MR. FAILE: Excludes. Excludes, right?
13 Yeah, excludes.

14 MS. TOOHEY: Thank you.

15 MR. FAILE: Okay, the last bullet out of
16 the training academy -- we did a review of the
17 training academy. We had an 8-month program. We
18 got a lot of feedback and did some analysis of
19 that and we have changed that to a 4-month
20 program, which is currently being reviewed to see
21 if that's the right amount of time for an examiner
22 to be in the training program before they

1 "graduate" to the TCs and start their work there.

2 A couple of other highlights. We have
3 the Telework Implementation Act. There's
4 currently an Oversight Committee that's meeting.
5 It's comprised of all three unions and management,
6 and they're working out details for the hoteling
7 program, the pilot program authorized by that
8 legislation. The last bullet there -- we are
9 continuing to expand in our hoteling program a
10 target of 500 examiners per year.

11 You'll be hearing a little bit more
12 about this, this afternoon or a little bit later
13 this morning, so I'll just hit the highlights on
14 our IT resources. We have a patents end-to-end
15 project. I believe Fred and John will be giving
16 you more information about that. Jim will be
17 talking a little bit more about our current
18 reengineering process, which obviously dovetails
19 into the patent end-to-end look, so I'll save
20 that for those guys.

21 The last line is our direct docketing
22 initiative, in which we look at cases that are

1 classified with a certain accuracy -- I believe
2 it's about 95 percent correctly placed -- and we
3 just go ahead and straight docket those without
4 going through the actual second-level review,
5 because we've determined that they're within a
6 certain norm, that we can send them right to the
7 examiner's and get going, so that's ongoing as
8 well.

9 And that's it. There are questions,
10 Damon. Do you want to catalog some questions and
11 we can take them offline and get back to you?

12 MR. MATTEO: I think in the interest of
13 time we'll move on --

14 MR. FAILE: Okay.

15 MR. MATTEO: -- and jump right into the
16 next presentation. And to the extent anyone has
17 questions, why don't you just circle them back to
18 me at some point in e-mail.

19 Great. Thank you. So, next up I'd like
20 to introduce Fred Schmidt, Associate Commissioner
21 for Patent Information Management, and James
22 Dwyer, Assistant Deputy Commissioner, who will

1 talk to us about the patent process reengineering
2 effort.

3 MR. SCHMIDT: Okay, thank you very much.
4 We're going to begin this presentation by talking
5 about the overall governance structure that we've
6 established to coordinate patent reengineering
7 with our automation patents and project.

8 Of course, as you know, patent
9 reengineering is one of the major drivers for the
10 IT efforts, and what we want to do is create a
11 governance structure, which is represented by the
12 circle in the middle of this particular diagram,
13 the PE2E Coordination and Operation Group. The
14 idea is to be able to take reengineering ideas,
15 concepts, suggestions from the Reengineering team,
16 which is represented on the left of this diagram,
17 and very expeditiously make a decision as to
18 whether or not we want to go forward with
19 development of IT projects, plans, et cetera, for
20 those reengineering proposals or, if they are
21 simply a change in process and procedure that does
22 not require an IT solution, to again flip that

1 back to the Reengineering team for implementation.

2 So, again, focusing on the COG, or the
3 Coordination and Operations Group, in the center,
4 that's the decision-making body that gets its
5 strategic direction from the Executive Management
6 Committee on top, which of course consists of
7 David Kappos, Terry, Peggy, and Bob Stoll. The
8 COG makes decisions on suggestions that come from
9 Jim Dwyer and Christian Chase's Reengineering
10 team. If there's an IT component, then it goes
11 over to the right- hand side of this particular
12 diagram, where we hand it over to David Landrith,
13 who is the PE2E portfolio manager, and you'll be
14 hearing more from David later on. And of course,
15 as appropriate, David will be initiating agile
16 development teams for those IT developments.

17 The other thing that's really
18 represented by this governance structure is the
19 fact that the Reengineering team as well as COG is
20 trying to solicit input or is open to suggestions
21 from our large stakeholder universe. Whether it's
22 PPAC, the examiners, bar groups, independent

1 inventors, et cetera, all those groups have an
2 avenue through Reengineering or directly to the
3 COG group to provide suggestions to improve
4 operations in patent reengineering as well PE2E IT
5 developments.

6 So, again, we wanted to set this up
7 again so we didn't have to go to the top of the
8 rock to get David Kappos' approval for every
9 single reengineering change or IT development that
10 we wanted to make. This really expedites the
11 whole process of implementing reengineering
12 changes.

13 So, if there aren't any questions about
14 this governance structure that we've established,
15 I'd like to turn the floor over to Jim to really
16 go over the status of some of the reengineering
17 initiatives that are underway right now.

18 MR. BUDENS: I do have one question,
19 Fred.

20 MR. SCHMIDT: Sure, Bob.

21 MR. BUDENS: Who -- what is this COG
22 composed of? Who's all on that Coordination

1 Operations Group?

2 MR. SCHMIDT: Yes. The COG consists of
3 representatives from patent business. Peggy's on
4 that team. Jim's on it. I'm on it. David
5 Landrith is on it. Marti Hearst is on it. So,
6 we've got representatives from CIO, patent
7 business area, finance areas. And of course Jim
8 is represented on that team as well from the
9 Reengineering team, so he brings perspective
10 directly from the Reengineering teams, which of
11 course are heavily involved with end users.

12 Does that answer your question, Bob?

13 MR. BUDENS: Yes.

14 MR. SCHMIDT: Okey-doke. All right,
15 Jim.

16 MR. DWYER: Morning. I'm just going to
17 start off with a real quick background.

18 Obviously in any reengineering process
19 you're looking to streamline that application
20 process. And again as background, we've been
21 looking at the application starting process all
22 the way through issuance. And from that, right

1 now we have 19 working groups that are exploring
2 the processes that we felt had a good capability
3 of making some advancements, and with that 12
4 additional teams were working on some of the
5 processes that came out of the working groups to
6 implement.

7 As all teams are designed around this
8 concept of basically process mapping, identifying
9 problems, looking for solutions and prioritizing
10 those solutions, and then reporting out those
11 deliverables, which include the last deliverable
12 to the COG. Most teams -- those 19 teams are in
13 the third and fourth stages of best process, so
14 we've got a pretty good -- we're moving forward on
15 a lot of these. We've identified a few other
16 teams along the route that are probably still more
17 in the first two bullets, but the majority are
18 along the way.

19 Specific ones that we're working on are:
20 Color drawings -- one is to eliminate petition
21 requirements for color drawings. Classification
22 and transfer -- and this goes back to Marc's issue

1 with respect to some of those cases that may be
2 out there on the 42-month range and so forth; that
3 is, what are they; why are they out there. One of
4 the things that we've come to in our
5 classification team is the transfer inquiry, and
6 this is where examiners or supervisors wishing to
7 move cases around based upon that they don't
8 believe they have the examination resources or the
9 right resources to examine it. So, it's moved to
10 other supervisors. And the recommendation is a
11 central examination support unit, on which I'll
12 get into a little bit more detail later.

13 Another team is one that's been
14 designated to enhance the technical knowledge of
15 examiners, and this is a thing that used to happen
16 naturally when examiners were in search rooms and
17 so forth and they had a good relationship. We
18 were a smaller organization, and we didn't have
19 two or three thousand people hoteling. So, this
20 team is kind of interesting. They came up with a
21 very proactive concept, and this is basically
22 delivering. So, when an examiner opens up an

1 application for the very first time, with it will
2 be an enhanced technical knowledge system that
3 would give them information as to what other
4 examiners may have been working in this area, and
5 it's proactive and it's real time, so it actually
6 could go back to an examiner's outlook schedule or
7 whatever it might be and give the normal times
8 this examiner works and so forth. So, again, it's
9 basically -- we found it a more passive system
10 where an examiner would have to go out and search.
11 It doesn't happen very often. But if they're
12 given all those resources of where they need to go
13 and who has that expertise in that particular
14 area, there is a better chance that they would use
15 that. So, again, this is one of the teams.

16 Central Reexam Unit. We validated the
17 current process and the IT requirements. And this
18 is going to be the pilot for PE2 architecture. In
19 other words, this will be the first time that
20 examiners will have text and text tools available.
21 Again, we're going to try this out in the Central
22 Reexam Unit.

1 Okay, other areas we've looked at are:
2 Pre-exam -- we've looked at things that have been
3 serially processed and we can now parallel process
4 to improve their timing. One of those items,
5 licensing and review, is now in parallel.

6 On post-exam, we've come to the
7 conclusion that a lot of the things in post-exam
8 are eGrant, and eGrant's been, I think, here
9 before, and this is a PE2E initiative.

10 Two other items here are: Restriction
11 practice. This is a team that started in the
12 Reengineering and the DCPEP team took it over.
13 They are looking at a lot of interim measures, and
14 they're also working on a request for comments on
15 unity, which to my understanding will be out
16 shortly.

17 Double patenting is also another one
18 we've looked at. We looked at Rule 105 requests
19 that are being used in some of the technology
20 centers.

21 And we've also looked at the TD
22 processing. We currently have a cleanup in

1 process of those, but also in a long-term aspect
2 we're looking at an ETD, kind of like the
3 ePetitions. This would give the ability to fill
4 out online a terminal disclaimer where they would
5 get instant notification that the TD was
6 acceptable, and we believe that will, obviously,
7 cut down cycle time. And right now we have --
8 about 20 percent of our TDs are returned because
9 of some level there, so we would hope that would
10 improve that piece also.

11 Okay, on the Central Examination Support
12 Unit, just some quick details on this. It's a
13 virtual business unit. In other words, this is
14 not somewhere where we have to move examiners.
15 Examiners that are either on detail or assigned to
16 this would simply stay in their same office. They
17 could be managed remotely through a virtual
18 business unit. The functions of these -- get to
19 the next slide -- they're basically to support
20 patent operations. We've noticed in the
21 reengineering anything that is not the normal
22 path, anything like reissues, reexams,

1 interferences, and classification disputes, these
2 things cause things to go off track and they get
3 delayed, and the hope here was to put them into a
4 Central Examination Unit where we could manage and
5 use the technical abilities and legal abilities
6 defined for that specific function.

7 MR. BUDENS: Okay, I've got to cut in
8 here, Jim, because I want to make sure I
9 understand this one. Are you talking about
10 creating basically another unit similar to the CRU
11 and now you're going to take reissues and
12 interferences and stuff away from -- out of the
13 Examining Corps and move it into this central
14 unit?

15 MR. DWYER: Let me go to the next slide.
16 That might help you a little. Here's the
17 functions. Yes, the concept was to take
18 applications that examiners rarely see, like, a
19 reissue -- I think we typically get around a
20 thousand or so, and we have 6,000 examiners, so
21 you can do the math -- that examiners don't see
22 these very often and when they do there's a

1 situation where there's a lot of rework in that
2 and mistakes are made because they don't know the
3 processes well.

4 We have a lot of oversight currently
5 with TQASs reviewing their work and giving it a
6 lot of the kickback. And I think statistically
7 we've seen that the average number of actions per
8 disposal of a reissue is 4, which is well above
9 the 2.4 that we are for regular cases. So, the
10 theory behind here is that once you've done a few
11 reissues and you become -- if you understand the
12 oath requirements and so forth that are necessary
13 with the reissue, you won't need the oversight nor
14 will you be making those mistakes.

15 MR. BUDENS: This raises a serious issue
16 for me, because I know when this was brought to us
17 originally -- and I know it was brought back to
18 you all, but we were very much opposed to this
19 kind of scenario initially, POPA being -- because
20 of the reissue/issue, I'm concerned about reissues
21 and interferences in the sense that the person who
22 is most familiar with those kinds of cases is the

1 examiner who's doing those cases not suddenly
2 getting it to the point of a reissue or an
3 interference request and suddenly taking it away
4 from the examiner who knows and understands the
5 technology and handing it to somebody who may know
6 interference practice but doesn't know that case,
7 doesn't know, you know, what the past history of
8 that case is or what have you. And I think -- I
9 know that we put in a lot of comments opposing
10 this particular idea in favor of putting resources
11 in the tech centers who can, you know, assist the
12 examiners so that we don't, you know, have four
13 actions for disposal, which I agree needs to be
14 rectified. But I'm not sure this is the path to
15 go, and I'm just -- I was very surprised last
16 night when I was reviewing these slides to see
17 this particular thing here, because I hadn't heard
18 anything more out of the reengineering issue on
19 it.

20 MR. DWYER: Okay, noted. Just to
21 continue --

22 MR. MATTEO: Excuse me, we have one

1 follow-on question.

2 Esther, please.

3 MS. KEPPLINGER: Just one follow-on
4 question to that -- they're more observations
5 rather than questions but, to Robert's point, I
6 think that the GS scale for examiners is -- you
7 know, some of it, the fundamental groundwork is
8 based on some of the complicated issues that the
9 examiners handle, including reissues and
10 interferences. So, that's at least something that
11 should be taken into consideration --

12 MR. DWYER: Yeah, we've considered that.

13 MS. KEPPLINGER: -- since reexams have
14 already been taken out.

15 And, secondly, while the CRU is a good
16 idea, it's not necessarily been the rousing
17 success, because it's received a lot of criticism
18 for being slow, and the petitions in particular,
19 so at least consider enough resources and things
20 to continue to process things expeditiously.

21 MR. DWYER: Understood. Other functions
22 out of the Central Exam Support Unit are cases

1 that may be sensitive, that need a little bit of
2 extra care where somebody needs to maybe put a
3 little bit more time in the search and so forth.

4 Surging technologies is an example of --
5 occasionally we'll have a change -- nano
6 technology is another example as is voice-over IP
7 where we get a tremendous number of applications
8 in a short period of time and getting people who
9 are technically competent in those areas and up to
10 speed quickly such that, you know, they can deal
11 with things like interferences that occur when you
12 have a surge in technology where the prior art
13 really isn't out there yet -- it's all in patent
14 applications -- and having that centralized.

15 MR. BUDENS: How do you -- I'm sorry,
16 Jim, how do you think putting a bunch of what
17 you're trying to turn in to generalists into this
18 group is going to help us deal with an emerging
19 technology? I mean, the best thing you do is you
20 get examiners who know that area and you create an
21 art unit with them or you do something like we did
22 with Business Methods, like we've done with nanos

1 kind of spread around, but, you know, or in the
2 case of Biotech, when it became an industry we
3 created an entire tech center for it. But to
4 suddenly sit here and think you're going to have a
5 Central Examination Support Unit that's going to
6 be able to handle emerging technologies I find a
7 little difficult to swallow.

8 MR. DWYER: And you hit it right on the
9 nail. That's why this concept is virtual. You
10 can bring people into this unit. In other words,
11 if it takes three examiners -- like,
12 nanotechnology is a perfect example where you can
13 have examiners on a virtual issue where they work
14 partial examination in their normal docket, but
15 they also are involved with nanotechnology and you
16 can manage it from a central location. So, you
17 know when you're doing classification and you know
18 the number of resources when it's all spread out.

19 You don't really know how wild of a
20 project you might have or what type of beast, so
21 to speak, you have until it's centralized, so that
22 the concept here of being virtual is that these

1 can come and go quickly. And if an emerging
2 technology is finally situated, you can hand it
3 off back to the TC as a whole with it now totally
4 managed and ready to go as opposed to what we saw
5 in the software area, specifically business
6 methods. It got off to such a bad start, because
7 it was kind of all over the place, and then 'til
8 we found out and tried to manage it, the thought
9 process here was to be proactive, to have a unit
10 ready to go, and to recognize it.

11 And it goes into this issue of the
12 classification dispute transfer, because that's
13 typically where you start to see technology that
14 doesn't fit. You know, it's not mine, so it goes
15 to somebody else, and it's not theirs, it goes to
16 this unit. The unit starts to recognize that,
17 hey, we do have an emerging technology and then
18 can explore that emerging technology and try to
19 find out what the future filings look like in that
20 area and what type of resources we need. So, it's
21 a management tool to be a little bit more
22 proactive.

1 Going into the --

2 MR. MATTEO: Jim, if I could just
3 interrupt by virtue of a time check. You guys had
4 requested 10 minutes on this topic, and we're --

5 MR. DWYER: Okay.

6 MR. MATTEO: -- way beyond that. I
7 don't mean to be dismissive. It sounds like
8 there's a lot more here to cover. So, one of the
9 things that I'm going to suggest -- and I'll use
10 this as a segue into that -- is that for several
11 topics it feels like we might want to constitute
12 outside of the quarterly meeting deep-dive
13 sessions on several topics, and we can set up a
14 PPAC phone call to make that happen. We may want
15 to identify this as one of the topics we cover in
16 one of those deep-dive sessions.

17 It doesn't feel as though we're going to
18 get the level of quality conversation and depth of
19 understanding necessary in the 10 minutes that
20 we've allocated, so if you don't mind, if you
21 could just hit the highlights, we'll move on with
22 the promise to return in deeper detail, please.

1 MR. DWYER: Okay. Going back to the --
2 I'll make it one minute here -- ongoing efforts.
3 IDS -- and that's what Esther had brought up about
4 McKesson and the like -- there's a team working on
5 that.

6 Applicant office interface -- that's to
7 improve the interface between applicants and give
8 them a little bit more ability to manage their
9 dockets themselves with respect to changes and the
10 like.

11 PCT -- we're looking at reuse of work.
12 Sequence listings -- that's the bio area. Trying
13 to get a handle on that. Internal data
14 requirements to better manage our quality and
15 efficiency. An example of that would be right now
16 we do not know how many interviews have been
17 requested versus how many have actually occurred.
18 So, you know, in PE2E we hope to have solutions,
19 so we'll have the denominator how many requests.

20 And then technical support staff is
21 basically looking to see where our employees need,
22 as we do PE2E. Some of these are automated.

1 We'll need folks in different areas. So, it's
2 just basically looking to retrain that staff as
3 needed.

4 So, thank you.

5 MR. MATTEO: Great. Thank you very
6 much. What I'd like to do now is -- we'll take a
7 five-minute break and reconvene at 10:30 with the
8 OCIO update. And do we have John here?

9 (Recess)

10 MR. MATTEO: We're about to start our
11 next session, the OCIO update, and that will be
12 led by John Owens. John, if you would, please.

13 MR. OWENS: Thank you, sir. So, I'm
14 going to tell you a little bit about what's going
15 on with the CIO in their work to support patents.
16 We're going to start with Examiner Docket
17 Performance Plan Improvements.

18 This is to one of our largest automated
19 information systems -- or AISs. It's called PALM.
20 And it's a critical system that's been around for
21 quite some time, so while we're doing this we're
22 also improving its stability and performance by

1 upgrading the system altogether.

2 But just to recap, this was a
3 negotiation between the Patents business and POPA
4 over the summer, and it was approved in October of
5 last year. Some of the major features -- we have
6 Auto Count for GS-12 and -13 employees; new docket
7 categories separating incoming work from
8 additional work on the docket workflow
9 calculations, in fact several calculators to help
10 employees manage their time and performance; pay
11 period calculator as well as the award calculator
12 to let them know they're doing; as well as new
13 docket, new office action integration, and the
14 separation of EFS Web from the rest of the
15 infrastructure for support purposes, which was
16 kind of tangential but it's critical based on the
17 amount of -- the incredibly complicated
18 environment that is in this area.

19 So, as we're looking ahead, we're going
20 to do auto counting in OATS. OATS is the Office
21 Action Tool introducing the new docket categories
22 and new workflow calculations.

1 And the PALM Reporting System will be
2 fully online at the end of April/May time period
3 with the last two things that we're going to
4 introduce, which are those reporting calculators
5 that I had mentioned prior.

6 So, this is critical to us moving
7 forward with keeping our system up and running and
8 operational while providing the best feedback we
9 can between the Patent Office management and the
10 actual employees and how they're performing and
11 doing their job.

12 Next I'd like to talk a little bit about
13 ePetitions, and this was a little initiative
14 actually inspired by Marti Hearst, our chief IT
15 strategist as well as the Patents Business. To
16 take common types of petitions and put them
17 online, eight of them to be exact, and see if we
18 can get more electronic filings and automated
19 processing so these don't have to clog the desks
20 of the folks who normally handle petitions.

21 I'm not going to read them all off, but
22 I am going to take this opportunity to introduce

1 Randy Green, to my right, who I'm going to ask to
2 give you the current stats. This product was put
3 out. It has been in use now for a couple of
4 weeks, and we think it's a pretty big success, and
5 we can grow upon its success to provide even more
6 in the future.

7 Randy?

8 MR. GREEN: Now? Okay. Thanks, John.

9 As a little background, the Office of Petitions
10 every year is processing approximately 35,000
11 petitions, and these are all being done manually,
12 by hand. Obviously, when you process that many
13 petitions you run into cycle time issues, and a
14 lot of the reliefs that are being sought by the
15 users are not actually in place until such time as
16 we grant them.

17 We were approached as part of the
18 Office's overall goal of reducing the backlog and
19 the pendency and asked if we could automate
20 petitions. We worked with John's group here in
21 the CIO. As he indicated, Marti, helped us get
22 this launched. And we were successful in

1 automating eight new petition types. They were
2 listed on there.

3 It's important to note that in
4 automating, it helps us because our growth in the
5 Office of Petitions is approximately 7 percent per
6 year in filings. So, it's an ongoing issue of
7 staffing up, getting the training in.

8 The petitions that we automated with
9 this go- round represent 31 percent of the total
10 petition decisions done by the Office of Petitions
11 per year. We already had two previous types out
12 there, petitions to make special for age and the
13 unintentional late payment of a maintenance fee.
14 Those were 12 percent of our filings. So, if you
15 combine the two and all of the ePetitions that are
16 out there, it now represents 43 percent of the
17 total work done in the Office of Petitions.

18 The advantages of automating it are
19 fairly straight forward. The most significant
20 thing, it allows -- if we could users to recognize
21 this and use it regularly, it frees up our already
22 well-trained and existing staff to work off the

1 other backlog. So, it's a nice double win for the
2 Office.

3 What we would like to do is demo one of
4 the types that we did, and one of the most popular
5 ones in the Office, one of the most commonly used
6 that we're going to show you, is an automated
7 petition to allow you to withdraw as attorney.
8 There are approximately 7,000 of these processed
9 in the Office per year, so this is a big one.
10 Plus the important thing, for those who may not be
11 familiar, with the withdrawal of attorney you can
12 file it but you're still responsible for the case
13 -- keeping it alive and prosecuting it -- until
14 such time as this petition is granted.

15 Currently today when you file it, there
16 are multiple places in the Office that process
17 these, but it can take anywhere from one to two
18 months. By doing it this way you get an immediate
19 change, and you get immediate relief.

20 So, we're going to demonstrate -- I see
21 they're still working on our demo over here.

22 Well, while they're getting that ready,

1 I'll give you some more stats I wanted to give a
2 little bit later on.

3 Director Kappos -- these deployed on
4 March 28th, the eight new types -- Director Kappos
5 made it aware to the public on Thursday. I
6 believe it was April 2nd, or that might be the
7 wrong day. It was Thursday. He sent out a blog.
8 And then there was an e-mail transmission sent out
9 to roughly 7,000 people who have signed up to
10 receive these.

11 I went back and pulled a little bit of
12 information from last week's data before we came
13 over. In the very first full week of usage, the
14 withdrawal of attorneys -- now we had 400, I
15 believe, already in the House that were in paper
16 format. So, it slowed down.

17 Percent of the withdrawal of attorneys
18 granted last week or processed last week were done
19 electronically.

20 The more important withdrawal from
21 issue, the ones that already had a patent number
22 assigned, which are the most critical to get out

1 because they're getting ready to go out the door
2 as a patent, 63 percent of those were processed
3 last week using this new electronic petition
4 format.

5 So, we think the uptake is going to be
6 big. We've done some things along the way to make
7 it easier for the users, and we made all these as
8 a pass/fail so that if any time you're going
9 through the process if there's anything that's
10 deficient we will tell you what that deficiency is
11 so that you can get it fixed and get success the
12 first time through.

13 Okay, Ramesh, we're going. First thing
14 I want to show you is this is our typical PALM
15 screen. If you're familiar with the way the
16 Office works, we have two major systems. One is
17 PALM to track our workflow, and the other is the
18 electric file wrapper.

19 What I want to do is show you the PALM
20 here. We're going to demo -- we're drawing
21 attorney and application No. 11872512. Click the
22 attorney/agent info button. In this particular

1 scenario it shows you all the attorneys of record,
2 gives you their registration number, and note that
3 they've got a customer number. Whenever you are
4 appointed by customer number, you need to withdraw
5 by customer number. We set the system up to allow
6 people to withdraw individually if you are named
7 individually, and we set it up to do by customer
8 number.

9 So, we wanted to show you the screen
10 before, because we're going to come back to this a
11 little bit later to show you the changes.

12 And, Ramesh, if you would show them the
13 inventor address, please.

14 This is the current address of where all
15 the mail is going. One of the things that we're
16 going to do as we get -- well, I'll explain as we
17 get there.

18 Let's flip over to the petition. In
19 order to use these, you must have a PKI
20 certificate. We made all of these so that you
21 have to be a registered user. You will log in the
22 normal way you do. You'll put in your PKI

1 certificate number and you'll log on.

2 This is the standard preexisting EFS
3 screen that you will see. When you come down,
4 you'll notice there's a button here that says
5 "existing applications/patents." You'll click
6 that. Now, this is where you can provide
7 additional information, but there's a new button
8 noted "ePetition," and this is a new change for
9 us. When you bring up the ePetition, you will now
10 see a listing of all the petition types that are
11 available to be done electronically. We did this
12 in hopes that when people go in to use it for
13 whatever -- withdrawal of attorney, withdrawal
14 from issue, or whatever else -- you'll see all the
15 other various types that exist, and that way
16 you'll be aware of them, because otherwise they're
17 just kind of out there and it's the luck of the
18 draw.

19 So, in this particular case, we're going
20 to request a withdrawal of attorney of record.
21 You'll put in the application serial number from
22 which you want to withdraw; and then we're going

1 to ask that you put in the confirmation number.
2 The reason we're asking for the confirmation
3 number is that it is very easy, we have found, for
4 people to transpose numbers accidentally, and if
5 you put in the confirmation number, it's kind of a
6 nice backup system there. You'd put in the name
7 of yourself as the attorney, and you'll put in
8 your registration number.

9 Okay, and you'll scroll down and will
10 hit "continue onto the next screen."

11 Now, if you look at the top button --
12 pull that just a touch, Ramesh, please -- this is
13 application data. Here you'll see listed
14 everything that's relevant to the case: Your
15 application serial number, the title, your
16 inventor's name, your customer number. And if
17 you'll scroll on down a little bit, Ramesh -- and
18 what you're going to do at this point is you'll
19 start filling out the data.

20 Now, important to note, these are
21 Web-based petitions. The original two petitions
22 we had for age and late payment of the maintenance

1 were PDF-based. PDF-based is where you would go
2 on line, download a form from our Website to your
3 personal computer, fill it out. Then you had to
4 sign in, attach it, and submit it. Under the new
5 Web-based scenario, once you log in, you're going
6 to do everything live, real time at the Website,
7 at the PTO Website, and then you'll submit it and
8 you're done. So, that's an important point.

9 So, we're going to walk you through
10 this. We're going to ask for data. These are
11 data fields. You're going to give us some
12 information. That's then going to auto-populate
13 the petition form, which we'll show you in a
14 second.

15 So, you'll check that all petitioners
16 are here. You'll give us whichever reasons why
17 you're withdrawing. And then the three things
18 that are required are that you've given reasonable
19 notice to the applicant; you've delivered to them
20 whatever they're entitled to; and you've given
21 them all the necessary responses.

22 And now you have to make a choice. This

1 is something that we did as requested in the
2 Office of Enrollment and Discipline. One of the
3 things that we found in the past happened quite a
4 bit, and numbers I heard were as much as 30
5 percent. When we were allowing people to
6 withdraw, we did not always necessarily have the
7 most current addresses for applicants, because if
8 an application's in the office for years the
9 people may have moved or relocated, so we had
10 stale addresses. A lot of these were being
11 returned to the Office.

12 So, what we're going to do now is have
13 the person come in and put in the most address for
14 us so we've got a higher rate of success. So,
15 we're going to put in the first-named inventor,
16 their street address.

17 Ramesh keeps changing it so that I can't
18 find where he lives.

19 And then we're going to come down, and
20 you have to sign now.

21 One thing is important to point out. We
22 have a lot of checks behind the scenes that we're

1 not showing you here. If at any time the
2 application number and the confirmation number
3 don't match, you'll get an error saying you've got
4 a mismatch, so you can correct it. If you
5 inadvertently type your registration number wrong,
6 you'll get an error message saying you've got a
7 mismatch. So, we make this to where when you go
8 through it's all correct and you go forward. So,
9 we go through. If you were to not use the proper
10 eSignature address, we can fix that.

11 Okay, Ramesh, thank you. Okay, now,
12 this is showing you -- this is the "confirm and
13 submit." This is the last step before this
14 actually gets granted automatically. Again, the
15 same data. In phantom -- it may be a little hard
16 to see on the screen, but everything that you
17 checked on the previous screen is being shown
18 there.

19 Okay, we'll move this on. Keep going
20 down, Ramesh.

21 If you need it, you could hit the
22 "petition request PDF." It will show you the

1 actual application itself.

2 And going on, if you hit "submit" -- and
3 at this point, this is where the application is
4 actually being granted. It's going a little slow.
5 But in order to save time, what will happen at
6 this point -- okay, it's checked all the
7 information. If you'll notice, the attorney/agent
8 info, if he refreshes this, the attorney/agent has
9 been removed. If you click the address, it will
10 show the address that all future correspondence
11 will be going to.

12 So, that's just an example. All the
13 other petitions work the same way.

14 Okay, John?

15 MR. OWENS: Thank you very much. So,
16 little demo about the things we're doing to make
17 things a little bit easier -- would you hit the
18 button, thank you -- and a little more efficient
19 for the office.

20 So, just a quick update on the Universal
21 Laptop Program. The Universal Laptop Program is
22 going very well. We have already started rolling

1 out to the business units. The Office of Human
2 Resources was one of the first. We are on track.
3 We're delivering approximately 50 of these a day
4 four days a week at night, and then we're ready to
5 handle issues. This is a very hands-on process,
6 because we have to sit down with each individual
7 examiner or customer the way we look at them and
8 manage the moving of all of their data off of the
9 legacy system. So far, everyone that has received
10 them, almost bar one -- and you can see Mr.
11 Kappos' public blog -- are very happy with their
12 new devices and the performance that they offer.

13 PALM slowness -- several people may have
14 noticed that particularly on count Mondays we have
15 experienced some slowness with various systems.
16 They're all related to slowness that we have going
17 on with PALM. We are upgrading the system today
18 in a major way, migrating it not only to a new
19 more modern platform but upgrading several key
20 components, including Oracle. This work is going
21 on right now as we speak and should complete by
22 the end of the month. That will lower the rate

1 down well below the 80 percent acceptable
2 threshold down to around to 60, which is where it
3 should be.

4 I'm going to skip through that. Now I'd
5 like to introduce you very quickly to David
6 Landrith. I've talked on a number of occasions
7 about how it was important to build the folks here
8 at the USPTO's technical capability. That is
9 because I do not believe in a mix of all
10 contractors or all federal employees but a healthy
11 mix of both, and we certainly had a lack of
12 technically capable senior leaders as well as
13 technologists inside the USPTO. And David is one
14 of the best hires we've had to date, and he is the
15 portfolio manager, the top dog, for the Patents
16 End-to-End Program from the CIO's perspective. He
17 has a very good pedigree of experience in related
18 material, including legal processing, and I'm
19 going to turn it over to him, and he's going to
20 tell you a little bit more about the focus we're
21 putting on Patents End-to- End.

22 David?

1 MR. LANDRITH: Thank you, John. We have
2 two major deliverables that we've handled so far
3 with Patents End-to-End. The front-end prototype
4 and vendor selection is the first deliverable that
5 we have. We engaged three vendors to do a
6 substantial amount of research, and they created
7 clickable prototypes of multimedia presentations,
8 and we opened those up for evaluation by the
9 Examiner Corps, and we had a tremendous level of
10 participation. We had more than 2,000 evaluations
11 submitted.

12 We selected, based on those evaluations,
13 two teams that have a complementary skill set and
14 who were focusing on specific areas. They've been
15 working together for the past several months.
16 We've completed the March deliverables.
17 Obviously, we're in progress for April, and we're
18 gearing up to create a critical mass of user
19 interface designs and information architecture
20 information so that we can proceed with
21 development.

22 So, the next stage -- we're going to be

1 planning to go through September, and this will
2 align with the implementation of the fiscal year
3 '11 deliverable for Patents End-to-End.

4 The second deliverable was the
5 prototypes for implementations. So, we engaged
6 three vendors to create a series of prototypes and
7 sprints to implement the Happy Path for patent
8 examination as a sample to evaluate their work.
9 What we found was that the vendors favored
10 technical priorities over business priorities.
11 So, they didn't succeed in actually providing a
12 cogent business-oriented solution. The
13 evaluations that we performed validated the
14 observations that we made when the prototypes were
15 demonstrated. So, the concerns that we had at a
16 high level of the organization were very much in
17 line with the detailed examination that was
18 provided.

19 So, we evaluated on more than 400
20 different factors, and based on that we gained
21 some insight into architectural alternatives that
22 we'll be leveraging for the patents and solution.

1 It also clarified the requirement process,
2 actually identifying more than 400 evaluation
3 factors and evaluating solutions based on them.
4 It did a tremendous job of clarifying what we need
5 to look for and how we need to shape a successful
6 solution.

7 It also aligned the business vision with
8 the technical vision. It's frequently difficult
9 to have technical folks understand that technology
10 is a means to an end rather than an end to
11 itself, and especially in an organization as
12 diffuse as this one it was amazing to see the
13 degree of alignment that was reached among the
14 different parties in understanding how the
15 solution that we're going to deploy needs to
16 address business needs and needs to be in tune
17 with that context.

18 So, this is the timeline for the fiscal
19 year '11 development. The major dates are -- 5/6
20 would be foundational architectures, and so those
21 are going to be fairly specific for the stuff that
22 we planned to develop immediately and we'll add

1 clarification as we go along. The date that we're
2 shooting for to begin development is going to be
3 June 6, and we actually hope to beat that, but we
4 are managing a mountain of contingencies to get
5 there.

6 The environmental build-out is already
7 underway. We have the development environment
8 built out now from the OS level down, and we're
9 proceeding apace to gather requirements and make
10 sure that the other environments for different
11 levels of testing and for deployment will be in
12 place.

13 And on 9/17 that's the date that we plan
14 to release to the Central Reexamination Unit.

15 So, the scope of this release will
16 include a case listing the statuses. This would
17 be a lightweight docket. It's a to-do list for
18 the examiner. There will be a segment devoted to
19 document viewing and analysis tools. That will
20 include a case table of contents. It allows
21 document groupings. It will display relationships
22 among documents. It will have a text-based

1 representation of all documents, so every document
2 in the case would be represented as text and will
3 allow the documents set within the case to be
4 searched.

5 We'll also have a structured patent
6 application representation so that while it will
7 be viewable as a unified document, it will also be
8 decomposable into the separate aspects, abstract
9 claims, figures, prior art.

10 We're going to have an examiner note
11 tool. This is going to be a major feature,
12 because it allows examiners to attach notes to
13 claims, documents, cases; and these will be
14 structured in such a way that it will allow
15 examiners to record the pieces of information that
16 will ultimately populate the office action so that
17 when we move to deploying the office action, it
18 will be pre-populated with content from the notes
19 as a starting point.

20 We'll have a claim analysis tool that
21 displays claim by grouping. That would be, like,
22 a dependency tree claim type, and claim tracking

1 and management tool that allows them to view --
2 changes the claims over time. The status --
3 they've assigned the claims as well as attaching
4 bibliographical information.

5 So, the key resources that we're
6 bringing to bear on this from a governance level
7 -- we have a Coordination Operations Group. We
8 have a dedicated team from Patents and a variety
9 of support needs from the CIO office and that
10 we'll be obtaining from vendors. And the risks
11 that we have that we're managing -- we are --
12 obviously availability of the USPTO resources.
13 We're paying careful attention to the contractor
14 support that we need to make sure that's lined up.
15 We already discussed briefly the hardware
16 environment and then managing the data life cycle
17 to get the information in text so that it's usable
18 within the system.

19 And that's --

20 MR. GREEN: That's all we have.

21 MR. LANDRITH: Great, thank you very
22 much. Do we have questions from the floor?

1 MR. ADLER: This is all good. I have
2 one question. The Examiner Note Section -- is
3 that a temporary note, or has that become part of
4 the file wrapper, the final case? Is that, you
5 know -- that's a legal question, really.

6 MR. LANDRITH: Right. That's a good
7 question. So, it does not become part of --
8 what's currently called the file wrapper is what
9 we're calling the table of contents. So, the
10 notes are going to be specific to examiners.
11 They're not temporary, because they are persistent
12 over time, but they would not constitute part of
13 the patent --

14 MR. ADLER: Legal record.

15 MR. LANDRITH: Yeah, the legal record.

16 MR. ADLER: Ester, please?

17 MS. KEPPLINGER: I just wondered about
18 the impacts, the budget impacts, on what you've
19 laid out. Are these costs already taken into
20 account in the current budget?

21 MR. OWENS: They were certainly part of
22 the current budget request. However, the CR has

1 brought that all into question. And I would say
2 that very much of everything the CIO does will be
3 put on the table to continue to support payment of
4 resources, a.k.a. paying examiners. And I would
5 expect a large impact to the CIO budget here
6 shortly. So, to answer your question, it puts it
7 all in jeopardy.

8 MS. KEPPLINGER: Do you have any idea of
9 prioritization? I think -- there were questions
10 earlier about the laptop delivery. I think that
11 was before you had come. And of course you've
12 already got those, so I think the answer was that
13 those would continue but this program might be in
14 jeopardy?

15 MR. OWENS: Actually, I have some
16 photographs that I've used when talking to folks
17 on the Hill of lots of hardware sitting in the
18 warehouse. However, to personally deliver 50
19 laptops a night, take the phones and computers off
20 the desks, deploy the new laptop, migrate all the
21 data is a very, you know, expensive proposition.
22 There's an entire army of people that literally

1 storm a floor that do this at night. That is in
2 jeopardy. That hardware will sit there and I will
3 lose warrantee time on that hardware. So, I would
4 say that as far as prioritization goes, Mr. Kappos
5 knows all the good work that we are doing to
6 facilitate the growth and stability of this
7 organization, and he and I of course, along with
8 patents management and other management,
9 trademarks, et cetera, will work very hard to make
10 the best choices, but those choices will be
11 extremely limited based on the funds. And I don't
12 have to speak for the CFO, but I'm sure those in
13 the Financial Committee can tell you that the
14 largest amount of money in play in the USPTO, when
15 it comes to budgetary constraint, has been and
16 continues to be the CIO's office, because the rest
17 is largely to pay people. I mean, our money goes
18 over 70 percent for pay. So, it will have a large
19 impact, and I don't think anything is critical,
20 it's sacred, but I am trying to work with the best
21 way that I can to provide the stability to the
22 agency and continue progress under the these

1 continued difficult economic times.

2 MR. ADLER: Follow-on question, Michele?
3 Oh, you looked like you were poised to say
4 something.

5 John, we very much appreciate the
6 presentation. We'll look forward to circling back
7 to you when there's some more clarity around the
8 budget situation. It will be very useful to see
9 what the priorities are as they emerge. And
10 again, to the extent that there's anything we can
11 do to help or facilitate, by all means call on us.

12 MR. OWENS: Thank you.

13 MR. ADLER: Great. So, our next
14 presentation will be Assistance to the Inventor
15 Community, led by John Calvert.

16 MR. MAULSBY: Well, good morning,
17 everyone. I am Richard Maulsby, the newly minted
18 Associate Commissioner for Innovation Development,
19 and I have been here at the Agency for 17 years,
20 and during that time as the Director of Public
21 Affairs our outreach to the Independent Inventor
22 Community has always been part of my portfolio.

1 Undersecretary Kappos and Commissioner
2 Bob Stoll made the decision about a year ago to
3 take our ongoing Independent Inventor Assistance
4 Program to a new level by creating a new position
5 to expand upon the many great things that we have
6 been doing here for, gee, the last 15 years or so.
7 It was Todd Dickinson during his tenure who first
8 started the program.

9 We will continue to do everything we
10 have been doing. We're going to do new things and
11 more things. Our outreach will include to the
12 small entity largely the university community.
13 We'll be working more closely with women
14 entrepreneurs and inventors and other minority
15 groups around the country and building much more
16 closely aligned with the goals of the Obama
17 administration in regard to encouraging innovation
18 in America and entrepreneurship.

19 In that regard, we have been
20 participating in the Startup America forums that
21 have been going on around the country.
22 Undersecretary Kappos and our Deputy Director

1 Terry Rea have both participated in those forums
2 that have been held in Durham, North Carolina;
3 Austin, Texas; Boston, Massachusetts. We are
4 still going to be doing one out in Silicon Valley.
5 We have one upcoming in Pittsburgh and in Atlanta
6 a little bit later on in the spring, and not only
7 will one of our principals be there but we will be
8 there with materials for those people that
9 participate in that.

10 We had a very successful women's
11 symposium a month ago. We had 100 women who were
12 here as innovators and entrepreneurs, small
13 business people. We intend to build upon that
14 going forward with other groups in the near
15 future.

16 At this point, I'd like to turn things
17 over to John Calvert, who has been, for many
18 years, handling our Inventor Assistance Program,
19 to give you a little more ground-level view of
20 some of the things that we have been doing.

21 Two quick notes. We do have copies of
22 our Inventors Eye electronic newsletter, which is

1 now in its second year. We started off with about
2 3,000 subscribers; it's up 6500 right now. My
3 goal by the end of the fiscal year is to increase
4 our subscribers of that publication, which is
5 bimonthly, to 13,000.

6 Also, this afternoon we'll be doing our
7 bimonthly online chat for independent inventors
8 from 2 to 3 o'clock, where we gather together a
9 corps of experts from our Agency to answer
10 questions online from inventors.

11 With all of that, I will now turn it
12 over to John Calvert.

13 John?

14 MR. CALVERT: Thank you, Richard. Can
15 you all hear me okay? Okay, we have a lot of
16 different things that we do for inventors, but one
17 of the first things we always try to do is do
18 customer interaction. We do that a lot of
19 different ways.

20 First of all, we have, as you all are
21 well aware, an Inventors Assistance Center line, a
22 1-800 line that anybody can call, and while it's

1 not directly under our control, it is a very good
2 tool that we use, and we tell our people that we
3 talk to out in the road that this is where they
4 need to call and ask for information.

5 We also have an Independent Inventor
6 e-mail address. It's
7 independentinventor@uspto.gov. We have a number
8 of people that answer that. Right now we're down
9 around 60 current e-mails to be answered. We try
10 to keep that as current as possible. There are
11 times when it gets a little backed up, but this is
12 something -- we actually answer those e-mails,
13 give the independent inventor small businesses
14 advice.

15 I'll talk a little bit more about the
16 Inventors Eye newsletter in a minute, but that is
17 a very good outreach effort for us. It gives a
18 lot of information. And as Richard said, we do
19 online chats, and one of the things that we have
20 on our Website is a listing of all the online chat
21 transcripts that we've had ever since we started.
22 I believe they're all by category as well as by

1 the date, and one of the things that we're proud
2 of -- at one time we had one hour to answer these
3 questions. Sometimes we get as many as 2 or 300
4 questions, and we've answered over 120 questions
5 in one hour, which is quite an output when you
6 think about it.

7 The next slide I have is the Commerce
8 Connect -- is Inventors Eye, and the month that we
9 did this, this was our lead story. It talked
10 about the Commerce Connect, different ways that
11 inventors and small businesses can get information
12 at one stop from the United States government at
13 the Department of Commerce, Commerce Connect.
14 Each one of our Inventors Eye has three stories in
15 it, usually a lead story, which in most instances
16 is from the Under Secretary's office, or one of the
17 commissioners will write a lead story. We will
18 then have some type of news story that gives
19 people the information. It tells more about
20 what's happening in the Office.

21 A story about what we call the "Spark of
22 Genius" -- it's an inventor, and each one of those

1 -- and I'll talk about that in a minute, what we
2 have on this particular issue of January of 2001.
3 But there always is some underlying feature within
4 that story. It's a tip for the inventors. We
5 also have a tip or advice line, and we have events
6 and networking opportunities for inventors.

7 In January of 2011 our "Spark of Genius"
8 story was about a woman who had invented a step
9 stool that was used in public restrooms. It's a
10 permanently mounted step stool for public
11 restrooms for children to use, but it also gets
12 out of the way for adults to use that same sink.
13 One of the things was that she and her husband had
14 gotten together with a product designer, a product
15 engineer to help them design their product, and
16 once they had gotten some allowable claims they
17 went back to that product engineer and asked them
18 to see if they could design around the patented
19 claims, and they were able to -- or the designer
20 was able to, so he filed a continuation. That's
21 the type of thing that we want to let independent
22 inventors know, that sometimes they have to do

1 something beyond what would be normally thought of
2 as just filing a single patent application.

3 A few months ago, people were asking
4 where we had Web assistance for independent
5 inventors. We have a tremendous amount of
6 information on our Website marketed toward our
7 Independent Inventors and Small Business people.
8 We also have a little bit of computer-based
9 training on there, which is a video. It's 50A
10 compliant. It's about 20 minutes in length. It
11 gives independent inventors and small businesses
12 basic knowledge on what they should do when they
13 come up with an idea. We have other videos
14 waiting to go online as well. And just to show
15 you, this -- it's not very clear here, but this is
16 the page that -- if you look right underneath the
17 banner, there's a dark blue, almost a black line,
18 and one of the headings there is "Inventors." If
19 anybody clicks on that particular item, they will
20 get this drop-down window that has a tremendous
21 amount of information on it, including complaints
22 and information about invention promotion

1 companies, which is one of the things that we
2 monitor and post all the time.

3 A few years ago when I was out on the
4 road doing university outreach, which I'll talk
5 about in a minute, some professors asked if there
6 was anything we could do to assist them in getting
7 some information for their freshmen or their
8 first-year engineering students. After a lunch
9 meeting with these professors, we decided to put
10 together a set of videos that students could
11 download through iTunes. We now have four videos
12 up on iTunes. We have a few things on YouTube,
13 not that we produced but were produced by the
14 universities. In fact, one year when we were
15 doing a lot of recruiting I was the number one hit
16 for about two weeks at University of Illinois,
17 Urbana-Champaign, because I was talking about what
18 you need to do to become a patent examiner, and
19 there were a lot of hits on that. We have a
20 number of videos that we have produced and others
21 to come in the future.

22 One of our biggest things we've been

1 doing for many, many years is the Independent
2 Inventors Conferences. For the last number of
3 years, we've been doing them here at the USPTO.
4 We hope to take those on the road. We feel that,
5 you know, to have everybody come here is nice, but we
6 seem to see the same people over and over again.
7 So, it's time for us to get the word out to other
8 parts of the country. We had done those -- you
9 know, the first few were around the country. We
10 did one in Chicago, one in San Francisco, one in
11 Houston. And we have done a number of them on the
12 East Coast outside of the Washington, D.C. area.
13 But we really think that this is a big tool, that
14 we can impact a lot of inventors and get them a
15 lot of information.

16 We have worked with some of the
17 congressional districts to get outreach to them.
18 We plan to, in the future, provide not only
19 government resources but state and local resources
20 in congressional districts. We had one planned,
21 but due to financial constraints we were unable to
22 continue with that plan.

1 I was in Wyoming last week -- just to
2 give you an example, I was in Wyoming last weekend
3 doing a conference for Senator Enzi. It was a
4 town of 2400 people. But we had 60 independent
5 inventors and small businesses in attendance at
6 that conference. So, it was a very good -- it's a
7 good outreach effort for us.

8 We're also going to look at doing
9 two-day regional conferences. We have done those
10 in the past, and they draw about as many people as
11 we do when we have our national conference.

12 As Richard said, we do a lot of
13 university outreach, and I'll just kind of give
14 you an idea. In 2006 we started our University
15 Outreach program with ten universities in the fall
16 of that year, and in that spring we did 15
17 universities -- 25 total universities. By the
18 academic year 2008/2009 we had initially planned
19 to visit 92 universities, ended up visiting 74.
20 Again, that was because of the budget constraints.
21 In that year, those 74 universities we saw in
22 about five months on the road, two of us, and

1 talked to about 11,000 students, our total
2 expenditure was less than \$32,000. And if you
3 figure that out, it's less than \$3 a student that
4 we saw. So, it's a very, very good opportunity
5 for us to get information out on a very low-cost
6 basis per person we talk to.

7 We continued last fall. When we thought
8 we had a little bit of money we did 22
9 universities, saw about 3600 students, and a lot
10 of these 22 universities were new places that we
11 had not been before. And some were repeats. But,
12 again, it's a good opportunity for us.

13 I did a little research the other day.
14 There are 371 universities and colleges that offer
15 engineering degrees in the United States, and if
16 you look at that, we've only been to about 80 of
17 them. We've got a lot of work to do to get
18 everybody on the same scale as these few that we
19 have reached out to.

20 I also made faculty and staff contacts
21 while I was at universities, and the other person
22 that does the outreach with me also made a lot of

1 contacts. We talked with tech transfer offices,
2 and we are now dealing with a consortium of five
3 major universities to try to ask or to get them
4 to, in their first-year engineering and their
5 senior-year engineering components, have a module
6 on intellectual property, a search module, so that
7 students will have a little bit of a knowledge of
8 when they actually get out into the real world and
9 start working.

10 In 2009 you saw how we didn't do any
11 outreach. Again, that was because of fiscal --
12 you know, our financial constraints. So, we did
13 outreach to universities virtually. We set up a
14 studio in the bottom of one of the examining
15 buildings and talked with a number of
16 universities. We contacted well over a hundred
17 universities, and because of the constraints with
18 the electronic equipment in the universities, we
19 were not able to do as many as we had hoped to do,
20 but we have people calling us every year asking us
21 if we can do another one at that university. In
22 fact, one of our big ones is at -- every semester

1 we do an outreach effort with the University of
2 Texas at San Antonio for their business and
3 entrepreneurship programs.

4 And I think that's all I have. Anybody
5 have any questions?

6 MR. MAULSBY:: I do want to add just one
7 thing. There's a wonderful new organization
8 called the National Academy of Inventors. It is
9 made up of inventors who are associated/affiliated
10 with colleges and universities, and we are just
11 starting to work with this group. So, I think
12 going forward, one of the things we'll do more or
13 when we go out to colleges and universities is
14 actually meet with some of the inventors who are
15 affiliated with those colleges and universities.

16 MR. MATTEO: Louis, please.

17 MR. FOREMAN: First off, Richard and
18 John, I need to applaud you for all the work that
19 you do for the independent inventor community.
20 The feedback that I get from them is that the PTO
21 is much more approachable, much more friendly than
22 it's ever been in the past. So, the work that

1 you're doing is actually generating results.

2 But my question and, actually, comment
3 is how do we tie metrics to what you're doing so
4 this way we have a case to ask for more funding?
5 How do we tie the outreach to more patent filings,
6 more job creation, more innovation that's going
7 into society and therefore we've got a compelling
8 reason to make sure that your budget isn't cut --
9 John, that you've got enough money to travel to
10 all these universities and reach out to those
11 engineers?

12 MR. MAULSBY:: Well, I mean, that's a
13 great point, Louis, and that's certainly going
14 forward and we talk about taking this program to
15 the next level. That's one of the things that we
16 have to do.

17 I've started to have some discussions
18 with some of our folks here about how we can in
19 fact develop measurable metrics that would better
20 chart the impact of the work that we do.

21 I don't know, John, do have any thoughts
22 on that?

1 MR. CALVERT: Yeah, there are a couple
2 of things. The only way we were able to measure
3 these things was numbers, pure numbers. How many
4 people do we reach out to? How many questions do
5 we answer? How many people that we see over and
6 over again that file applications? But it's a
7 really hard thing to do, because you may be out in
8 Torrington, Wyoming and see 60 people. How many
9 of those are actually going to file patent
10 applications after a one- day -- you know, short
11 seminar on intellectual property. It's a
12 difficult situation, but we have to figure out how
13 we can do that.

14 MR. FOREMAN: Yeah, and I think one of
15 those numbers also is the patent applications that
16 are not being filed because you've educated the
17 inventor, that maybe their subject matter is not
18 patentable, and we're not tying up the system with
19 garbage patents. So, I mean, I think that's
20 another metric that we should look at -- is by
21 educating the Independent Inventor Community,
22 probably avoiding some of the scam companies.

1 They're not being exploited and we're not filing
2 -- or they're not filing, you know, worthless
3 patent applications.

4 MR. ADLER: But you could track the
5 names of the people who attend the conferences
6 with the names of the people who get granted
7 patents subsequent to having attended your
8 conference. I mean, that would be a way to track
9 it.

10 MR. CALVERT: That's one of the ways we
11 can track it, absolutely. Now, one of the things
12 that we think that -- right now with a two-type of
13 filing system that, you know -- the large entity
14 and small entity -- there's no way that we can
15 track how many independent inventors are actually
16 filing applications, because it's -- unless you go
17 actually -- go into it and physically look at
18 every application that comes in. But with the
19 potential change in law that allows us to capture
20 or have micro entities, that may assist us in
21 capturing more data and getting a better idea of
22 what kind of impact we really have.

1 MR. MATTEO: Thank you very much. Any
2 -- yes, one more question from the floor.
3 Wayne?

4 MR. SOBON: I was curious on your
5 outreach to the universities, which is great.
6 Have you thought about or are working with other
7 organizations and in particular -- I would think
8 it would have to be done carefully -- involving
9 local practitioners to come and assist and
10 leverage and develop training materials so they
11 could, themselves, participate in some of these
12 training courses that would be part of science and
13 engineering coursework? It would be great to just
14 be able to leverage people who are local in those
15 areas to be part of this effort.

16 MR. MAULSBY:: Well, I think -- you
17 know, one of the things -- we were just talking
18 about this yesterday, about the idea of bringing
19 people from universities in here for training just
20 as we do with the librarians that are associated
21 with the Patent and Trademark Depository Library
22 program. That's one thing.

1 You know, we do want to work more with
2 AUTM, the Technology Managers people. And again,
3 this new organization, the Academy of Inventors --
4 I've been very impressed with them in our dealings
5 with them so far. But, boy, that's a good point.
6 I appreciate that.

7 MR. CALVERT: Now, I have worked with
8 the AIPLA. I'm actually on the Public Education
9 Committee. Unfortunately, every time there's a
10 meeting, I'm on the road. I have not been able to
11 make any of the meetings yet, so. But I have
12 talked to some of the people on the committee, and
13 that's one of the things we'd like to do as we can
14 see how we can work it together.

15 I do want to mention that last week we
16 had a -- I don't want to name a university, but we
17 had a major university in here last week that's
18 putting in a Master's -- a professional Master's
19 one-year program into their curriculum to help
20 train or help educate people that could
21 potentially take the patent bar or come to work at
22 the USPTO with a Master's degree with intellectual

1 property already involved. If that happens, I can
2 see that going to a lot of different universities and
3 really becoming a major impact that will help us
4 reach out to these universities and help the
5 USPTO.

6 MR. MATTEO: Great. Thank you very
7 much.

8 MR. CALVERT: Thank you.

9 MR. ADLER: Any other questions from the
10 floor? Thank you very much, gentlemen. So, let
11 me introduce a nontrivial change in the agenda.
12 We've had some time chipping. So, what I'm going
13 to suggest is rather than take a lunch break now
14 as scheduled reconvene, have a 10-, 15-minute
15 session and then end the public session.
16 Considering it is fairly early, why don't we run
17 the public session to ground, draw that to a
18 close, and then do our lunch break? So, any
19 objections from the floor? Seems like a more
20 efficient way to use our time. Okay.

21 So, one of the other items on the agenda
22 was if and to the extent we got public questions

1 to field them. Since there were no questions to
2 field, we get a pass on that, so that will save us
3 a little bit of time as well.

4 One thing I did want to mention for the
5 benefit of whomever listening in, the people at
6 the Patent Office, we had a working session
7 yesterday at PPAC at which we discussed a number
8 of things -- our objectives but also the notion of
9 continuing these topical teams where we identify
10 different topics of interest to PPAC, to the PTO,
11 and hopefully to the Innovation community. And
12 our strategy here is to identify a PPAC member or
13 two that would lead each of these areas. They
14 would form partnerships with the PTO counterparts.
15 They would be the go-to person for this and will
16 continue to move that forward, and hopefully as we
17 move forward in the year we'll have more of these
18 presentations become joint presentations -- PPAC
19 and PTO -- rather than simply static reporting.
20 And my anticipation is that will help avoid some
21 of the surprises, the protracted efforts to
22 develop understanding in and around these topics

1 as we can make them more joint and more
2 collaborative.

3 On the heels of that I think there's a
4 realization here that -- certainly my realization
5 -- that it's not possible to go into any
6 meaningful depth for any of these topics. So,
7 what I'm going to suggest is that we tee up and
8 I'll throw out a straw man here maybe once a month
9 -- and we discussed this yesterday as well -- a
10 focus session on a particular topic of interest,
11 whether it be timely and ad hoc or whether it be
12 an ongoing or a major issue. So, some of them
13 might include updates, vis-à-vis the OCIO after
14 the budget is more certain, revisiting the whole
15 notion of the process reengineering. I think,
16 personally, it would be good to have a focus
17 session on some of the operational work. A lot of
18 the stats are presented, but without the
19 appropriate context -- in particular, trending
20 analysis and the background for the assumptions
21 for the data -- it's difficult for us to grock; I
22 suspect it's also difficult for the public to

1 grock. So what we'll do is we'll set up an
2 operations deep-dive session as well. My hope and
3 intent is to make all of those, or at least as
4 much of those as possible, public sessions so to
5 the extent anybody in the public has interest in
6 these, they can benefit from it as well.

7 Okay, so what I'd like to do at this
8 juncture, since we don't have any more matters
9 before us, is open it up to the floor for PPAC.
10 If you have any wrap-up comments or questions that
11 you'd like to add, please do. Anyone?

12 Very good. All right. So, with that,
13 I'd like to adjourn the public session, and if you
14 could cut off the public access to the microphone,
15 that would be great. Okay.

16 (Whereupon, at 11:29 a.m., the
17 PROCEEDINGS were adjourned.)

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

17
18 -----
19 Notary Public, in and for the Commonwealth of
20 Virginia
21 My Commission Expires: July 31, 2011
22 Notary Public Number 258192