

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

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

2 (12:00 p.m.)

3 MR. MATTEO: I'd like to welcome  
4 everybody to the first fully virtual PPAC meeting.  
5 Apologies in advance for some of the logistical  
6 challenges which we're actually experiencing as we  
7 speak. For those of you who are just joining us,  
8 I wanted to let you know that John Doll will not  
9 be able to attend the beginning of the public  
10 session, he's been called away. Standing in for  
11 John will be Peggy Focarino, Acting Commissioner  
12 for Patents. And I believe we've also discussed  
13 pushing the financial update a little later in the  
14 public agenda.

15 I believe everybody has already  
16 introduced themselves. Let me introduce myself,  
17 Damon Matteo, I'm Acting Chair for this meeting.  
18 And let me introduce Kevin Rivette, the Chairman  
19 of the PPAC who was unable to make it this  
20 afternoon.

21 Just by way of a few housekeeping  
22 issues, what I'd like to mention here is that

1 members and participants are reminded to leave  
2 their private sector affiliations behind and sort  
3 of speak solely with the interest of their role as  
4 PTO PPAC members at heart. Obviously, that goes  
5 without saying, but it's always good to say it and  
6 to internalize it before we start every meeting.  
7 I did want to make mention also that we'll be  
8 taking questions during the public session both  
9 from the live audience there as the PTO, but also  
10 the web audience. And I believe the email address  
11 to which these questions can be sent online is  
12 ppac@uspto.gov.

13           Because we're fully virtual, logistics  
14 will be something of a challenge in terms of  
15 catching and fielding questions in real time. So  
16 with the live audience, we'll be asking the PTO to  
17 identify people there, flag the questions, and  
18 advance them to me for recognition.

19           And with regard to the email questions,  
20 what we'll do is, we'll gather those, and someone  
21 at the PTO will filter them and feed them back,  
22 and we'll discuss them as best we can at the end

1 of the public session. So apologies in advance;  
2 real time Q and A just won't be possible with  
3 regard to the email for certain.

4 And in terms of phone decorum, if you  
5 would, please, when you speak, identify yourself  
6 so we all know who's speaking. And if you could  
7 all please keep your phones on mute when you're  
8 not talking to limit the cross talk and background  
9 noise. And again, with regard to time keeping,  
10 we're already experiencing some difficulties,  
11 we're a little bit behind, and we're going to have  
12 some adjustments to make, but I'll try and be  
13 assertive and keep us on schedule as best I can,  
14 with, of course, being flexible where we're in  
15 deep and productive conversation.

16 What I'd also like to do is mention  
17 that, in particular in the private session, we  
18 have a parking lot time ad hoc catch up time, so  
19 to the extent we identify issues that we don't  
20 have time to address during the normal agenda  
21 period, we can put those in the parking lot and  
22 invest them later. Any questions from anybody?

1                   SPEAKER: No.

2                   MR. MATTEO: Great; so then what I'd  
3 like to do, Peggy, is, I'd like to open it up to  
4 you. Peggy will be standing in for John, making  
5 the Acting Secretary's remarks.

6                   MS. FOCARINO: Okay. Thank you, Damon,  
7 and thank you to the PPAC members and members of  
8 the public for taking the time to meet with us  
9 today. I really appreciate the opportunity to  
10 make a few introductory remarks and would like to  
11 focus on three items in particular.

12                   First, I'll give an overview of the  
13 general direction of the USPTO while we await the  
14 political leadership of a new Under Secretary.  
15 Second, I will mention a few of the noteworthy  
16 developments and patents. And third, I will touch  
17 on some recent legislative developments from the  
18 111th Congress, and Jeff Taylor will be going into  
19 a lot more detail on all of these later in the  
20 meeting.

21                   I'm willing to discuss anything that you  
22 would like or answer questions at any time, so

1 please feel free to interrupt me at any time to  
2 ask questions.

3 As you know, we do not have an Under  
4 Secretary, and although I don't know when the  
5 President will formally announce a designee for  
6 Under Secretary, I can say that we are all  
7 anxiously awaiting the announcement.

8 Once the announcement is made, it's my  
9 understanding that the confirmation process before  
10 the Senate Judiciary Committee could take from  
11 several weeks to a couple of months. And as all  
12 of you know, they are pretty busy right now with  
13 the Supreme Court nominee. So it is possible that  
14 the August congressional recess could move the  
15 confirmation into the September time frame.

16 We're very eager to welcome the new  
17 Under Secretary and are busy working to ensure  
18 that as much preparation as possible is done so  
19 that the new Under Secretary will be up to speed  
20 on our issues and challenges as soon as possible.  
21 Our preparatory work includes creating a new five  
22 year strategic plan framework. In this effort,

1 both PPAC and TPAC will be key players. And we've  
2 already mentioned the framework effort at a very  
3 high level to Damon and TPAC, so both advisory  
4 committees are ready to take an active role.

5 We will be asking the public for input  
6 to help us plan a USPTO that will better  
7 accommodate the needs of our users. I wanted to  
8 emphasize this preparatory work will not in any  
9 way preempt the strategic prerogative of the  
10 incoming Under Secretary. By moving forward with  
11 these efforts, we want to ensure that the relevant  
12 data and input is ready for the new Under  
13 Secretary to review and consider when he or she  
14 arrives at the USPTO.

15 The new administration has given the  
16 executive agencies very clear direction on the  
17 need for open, transparent, and collaborative  
18 government. And Commerce Secretary Locke has  
19 repeatedly made it clear that he expects all  
20 agencies to push the limits on what our agencies  
21 can achieve in the products and services offered  
22 by setting stretch goals. It is my obligation,



1 and that of every member of the USPTO's management  
2 team, to ensure that we fulfill these important  
3 objectives in every possible way. I'm very  
4 excited and proud to announce that we completed  
5 the ISO 9001 stage two final audit. The auditors  
6 from BSI, our registrar, did not find any major or  
7 minor non-conformities, which, according to BSI,  
8 are rare. That's great news. The USPTO's Patent  
9 Training Academy was recommended for registration,  
10 and we have just received our ISO 9001  
11 certification. So this is a tremendous  
12 achievement for the USPTO.

13           You may wonder why we chose to pursue  
14 ISO 9001 certification. For me, it makes a lot of  
15 sense from several perspectives. The 9001  
16 standards are management standards that are used  
17 by many fortune 500 companies and fit our patent  
18 world. Eight IP offices in Europe have already  
19 been certified.

20           Now, granted, these are smaller offices,  
21 however, bigger offices like the EPO and others  
22 are looking to implement the standards. And more

1       importantly, as we work to achieve the work  
2       sharing objectives outlined in our strategic plan,  
3       ISO 9001 ensures standardization of processes in a  
4       work sharing environment.

5                 Imagine how much work we could leverage  
6       if many of our processes and procedures in all of  
7       the IP offices are well documented, standardized,  
8       and fully transparent. I'd also like to talk  
9       about some of the noteworthy developments and  
10      patents. As I mentioned, we're very excited about  
11      our ISO 9000 certification. And we have several  
12      new quality initiatives being implemented in our  
13      technology centers which we will be going into  
14      more detail later in the afternoon.

15                We are planning for a first action  
16      interview expansion expanding into each technology  
17      center, to over 1,200 examiners who will be  
18      trained and participate in the expanded pilot. I  
19      want to thank POPA and our management team for  
20      their hard work and cooperation in this expansion  
21      effort.

22                The areas of expansion include 1610,

1 pharmaceuticals, 1795, which is batteries, fuel  
2 cells, and solar cells, 2160, which is the  
3 computer data base area, 2440 and 50, the  
4 networking area, 2617, cell phones, 2811,  
5 semi-conductors, 3670, which is construction  
6 equipment, 3730 and 60, which is the medical  
7 device area.

8 Another noteworthy development is that  
9 the Supreme Court has granted Cert & Bilski, as  
10 I'm sure most of you are already aware, and we're  
11 looking forward to some of the exciting times that  
12 lay ahead and the decision from the Supreme Court.  
13 On the international front, we are continuing to  
14 push ahead with our IP5 initiatives, as we will be  
15 talking about, in detail, later this afternoon.  
16 We've made progress with the patent production  
17 goal study, the request for bids closes today, and  
18 we look forward to keeping you informed on the  
19 progress as this process continues.

20 On the budget front, we are carefully  
21 monitoring our daily fee collection and making  
22 appropriate adjustments, and we plan on talking in

1 further detail during the Executive Session later  
2 today on that particular issue.

3 I'd also like to mention some of the  
4 legislative developments that have occurred  
5 recently. Of interest to all of our employees and  
6 of special importance to the patent operation,  
7 given the large number of employees who tele-work,  
8 which is currently over 1,500, is S707 titled the  
9 Tele-Work Enhancement Act of 2009. Again,  
10 Jefferson Taylor will fill you in on the details  
11 of this important Senate bill.

12 Regarding patent reform, efforts towards  
13 enactment of comprehensive patent reform  
14 legislation continue in the 111th Congress. On  
15 April 2nd, the Senate Judiciary Committee  
16 completed mark-up of an amended version of S515,  
17 the Patent Reform Act of 2009. A companion bill,  
18 which is HR1260, has not yet seen action in the  
19 House. In closing, I'd like to thank Damon for  
20 the opportunity to share a few remarks. And if  
21 there are any questions, I'd be happy to answer  
22 them; and if not, I look forward to the rest of

1 today's session.

2 MR. MATTEO: Thank you very much, Peggy.  
3 I'd like to open it up to questions from the PPAC  
4 or elsewhere. Okay. I believe, since we're doing  
5 a little bit of schedule juggling, next up on the  
6 agenda would be the legislative update with  
7 Jefferson Taylor.

8 MS. FOCARINO: Damon --

9 MR. MATTEO: Yes.

10 MS. FOCARINO: -- would you mind if we  
11 move to the CIO update?

12 MR. MATTEO: No, not at all.

13 MS. FOCARINO: Okay. We have Jim  
14 Flanagan sitting here ready to give an update on  
15 that.

16 MR. MATTEO: Okay. Why don't we move to  
17 that then? So we'll instead move to an OCIO  
18 roadmap update. Jim Flanagan, Chief Technology  
19 Officer, standing in for John Owens, will lead us  
20 through the presentation. Thank you very much,  
21 Jim.

22 MR. FLANAGAN: Good morning and thank

1 you, Damon. The presentation that we'll be giving  
2 this morning primarily is divided into two  
3 sections. One section that will provide at the  
4 meeting right now relates to the key areas, the  
5 key topics that we're going after. The second  
6 section, which is presented and included with the  
7 presentation, provides detail around various  
8 roadmap and OCIO changes that have occurred since  
9 the last session. So we'll brief primarily the  
10 first section.

11 The significant challenges that the  
12 agency has faced have also translated themselves  
13 into the OCIO's environment. We have extended our  
14 roadmap program from five years to seven years  
15 that has changed the funding allocation year to  
16 year and has driven some of the activities into  
17 out years.

18 Primarily, this has been a financial  
19 change. The programmatic activities are largely  
20 on budget and on time. They remain within a  
21 quarter of their original schedules. We have made  
22 significant progress surrounding our automated

1 information systems and all of the applications  
2 that support the USPTO.

3 We have, as you know, a swat team that  
4 is involved in that effort. They have been  
5 examining each of these systems individually, and  
6 looking for those opportunities to, first of all,  
7 fix the systems and get them to a level of  
8 compliance that will provide a better and more  
9 stable working environment for our patent  
10 examiners, and second, opportunities for growth,  
11 so that we can change and alter those systems to  
12 improve the functions even further.

13 Right now we've examined about 14  
14 systems. You may remember our target was about  
15 five a quarter, so we're pretty much on target.  
16 We will complete the 14th system this quarter.  
17 And each one of them now comes with a series of  
18 recommendations for either change or alteration or  
19 rebuild for that particular system.

20 We have also completed the first phase  
21 in our realignment of the organization. The  
22 organization was moved into essentially five major

1 areas of business, and each of the sub  
2 organizations were placed under those five core  
3 areas.

4 On page three, the funding impacts, this  
5 is just a summary of the financial impacts that --  
6 and their impact on OCIO. The largest of the  
7 budget reductions occurred around business  
8 projects; however, this related not only to the  
9 budget impact that the organization was  
10 experiencing, but also it is a reflection of the  
11 organizational priorities to fix the baseline, to  
12 fix the base environment within OCIO, and to try  
13 to provide a more stable environment for future  
14 growth.

15 One of the key topics that we would like  
16 to address is the changes in our maintenance  
17 window. On page four, we present the current  
18 maintenance window, which essentially is a period  
19 of time each day during the week and a period of  
20 time on Friday nights, Saturday nights, and Sunday  
21 nights in which the computer organization can do  
22 its maintenance.



1                   Now, maintenance for computer  
2 environments takes the form of several different  
3 faces. The first is tape back-ups, which is the  
4 actual back-up and off-site movement of  
5 information to our disaster recovery site. That  
6 uses up the majority of that time. So some 42  
7 hours are available, 30 of those hours are used by  
8 these disaster recovery preparations. This  
9 includes our data bunkering up to Pennsylvania, as  
10 well as our normal local back-ups to ensure that  
11 we could recover environments should they go down.

12                   As a result, there really currently are  
13 only 12 hours available for actual computer  
14 changes, things that require adjustments, the  
15 installation of new equipment, et cetera. The  
16 challenge that we face, and as a result, the  
17 reason for our request, is that this is frequently  
18 not enough time to complete the tasks that we're  
19 trying to complete to improve the overall  
20 operation of the computer environment.

21                   The reason it isn't is because it's not  
22 just the time it takes to do the change, but we

1 have to include time in each change activity to be  
2 able to back out that change should a problem  
3 occur.

4 Our goal is to have changes be  
5 essentially neutral to the organization, meaning  
6 that there should be improvement only, we should  
7 not be further increasing the number of outages  
8 that occur as a result of introducing change. So  
9 that's the reason for our request.

10 Page five summarizes the request, which  
11 is essentially an increase in Friday night and  
12 Saturday night maintenance. We are looking to  
13 extend those maintenance windows. They're still  
14 subject to discussion, and the out product of that  
15 discussion is what the OCIO will work with. But  
16 the reason for the change is this need for  
17 additional support of our maintenance activities.  
18 We further would like to keep the current  
19 capability that we have to request exceptions for  
20 larger maintenance activities. We would, of  
21 course, go through the normal notification process  
22 and provide sufficient insight into that before we

1 actually perform the maintenance. And there will  
2 be additional requests surrounding what we call  
3 PTO Net 3, which is the upgrade of our network, as  
4 well as some of our key systems.

5 Finally, we will continue to respect  
6 obviously the quiet time and make sure that we  
7 don't intrude unnecessarily into any of the key  
8 periods of the year.

9 Finally, looking forward, there are a  
10 number of areas that we will be continuing to  
11 pursue. One is, we're continuing to establish  
12 collaborative relationships with our customers.  
13 To that end, we have created a special assistant  
14 position for patents and one for trademarks. This  
15 person reports directly to the CIO and provides  
16 insight not only to the business end and the  
17 business' needs, but also provides CIO with  
18 someone who thoroughly understands the process and  
19 can help us tweak our activities to meet the needs  
20 of that business.

21 We continue to evaluate our operations  
22 and maintenance and look for areas where we can

1 improve cost and reduce that cost. We are looking  
2 to change the fundamental way in which we produce  
3 and alter our applications. We, in the past, have  
4 typically built to meet requirements on a  
5 recurring basis without as good a focus on quality  
6 as we need. We've implemented a series of changes  
7 which are going to change that dynamic completely  
8 and allow us to focus on quality, provide some  
9 tools that will enable that process, and finally,  
10 provide testing mechanisms to ensure that we do  
11 produce a quality product.

12 We're shifting our training. This year  
13 was primarily focused on the needs surrounding  
14 good contract management and the management of  
15 task orders. And we're now shifting that training  
16 next year towards technology. So we expect to be  
17 able to give our folks some significant increases  
18 in their skill set training.

19 We're looking to complete the second  
20 phase of the organizational restructuring. That  
21 is targeted currently for the first quarter of  
22 fiscal '10. We're continuing to analyze the

1 AIS'es or the applications that we have through  
2 the swat team. And we're looking at mechanisms to  
3 create what we call services which essentially are  
4 reusable components of technology that can reduce  
5 the cost necessary to make change in the  
6 organization. What this means is, these reusable  
7 components are really ways in which a common  
8 service such as Search can provide support  
9 throughout the organization. And finally, we're  
10 working to address our customer's concerns for  
11 performance and capability. That ends the OCIO  
12 presentation unless there are any questions.

13 MR. MATTEO: Yes ---

14 MR. FLANAGAN: I'm sorry.

15 MR. MATTEO: My apologies, some  
16 logistical difficulty. I'd be curious to  
17 understand, with regard to the reduction in per  
18 annum funding, extending your funding from five to  
19 seven years for the roadmap plan; which, if any,  
20 projects will you need to forego, which are the  
21 major projects are going to experience lag effects  
22 due to that extension, and what do you believe the

1 intended impact will be for both of those?

2 MR. FLANAGAN: There are close to 45 --  
3 46 projects that are currently in flight within  
4 the roadmap. The -- what we've tried to do is  
5 maintain progress, even with the reduced funding,  
6 in each of the major program areas, and that will  
7 continue to be the approach that we take. The  
8 reason we're doing that is because it's not clear  
9 that we've uncovered yet all of the challenges  
10 that we face in each of those programmatic areas.  
11 We feel that we need to continue that investment  
12 across the board and focus on each of these  
13 program areas until we've completely determined  
14 what is -- what we're facing in each of those  
15 areas. As to your question about delay, the  
16 majority of what we've done is to delay the  
17 implementation of hardware. So we're really not  
18 impacting the performance of our environment,  
19 we're delaying the implementation of hardware into  
20 later years. So we hope that we will continue to  
21 be able to afford the level of change that we're  
22 performing this year into fiscal '10, and if we

1 do, we should be able to continue another 30 or 40  
2 efforts to improve the environment. Did that  
3 answer your question?

4 MR. MATTEO: It did, thank you. One of  
5 the concerns, though, that immediately flagged is,  
6 system aging, hardware system aging was one of the  
7 issues that we had jointly identified and actually  
8 surfaced in the annual report. If part of the  
9 response to extending the roadmap is to forego or  
10 forestall acquisitions and new hardware systems  
11 and platforms, how would we comprehend the  
12 potential impact of that?

13 MR. FLANAGAN: Maybe I misunderstood.  
14 When I suggest that we're -- we're not really  
15 forestalling the implementation of hardware, we're  
16 just doing a little bit less each year than we  
17 would have normally done under the original five  
18 year plan. Maybe that states it a little bit  
19 clearer. So it's very difficult to provide a  
20 complete list of all of the adjustments. I'm sure  
21 we could at a later time. But the changes that  
22 we're talking about really are changes that are

1 focused on just introducing a slightly longer  
2 period to implement that hardware adjustment.

3 MR. MATTEO: Okay. Yeah, I very much  
4 appreciate that. I actually got the sense that  
5 you were suggesting a much deeper reduction in  
6 hardware acquisitions, where it appears now it's  
7 more of a paring back of plans as opposed to  
8 completely putting them on hold.

9 MR. FLANAGAN: Yeah; I apologize for  
10 giving you that interpretation. It is just that,  
11 it is paring back, and that's the other reason we  
12 wanted to try and stick to a plan that continued  
13 along all nine initiatives. We feel that that is  
14 the soundest way to move forward. If we pare each  
15 one down a little bit, we still accomplish a lot,  
16 and yet we can meet the financial requirements  
17 that we need to hit.

18 MR. MATTEO: Excellent; I did have one  
19 quick question with regard to extending the  
20 maintenance windows. Is there going to be any  
21 qualitative or quantitative impact to production  
22 if you extend those?



1                   MR. FLANAGAN: There will obviously be  
2                   an impact on availability of production systems.  
3                   If we were to extend those windows, then the  
4                   period of time of the extension would not be  
5                   available to the examiners either remotely or  
6                   locally, except, obviously, during those periods  
7                   that we've already talked about as being not on  
8                   the table.

9                   So as a consequence, there will be some  
10                  minor impact, but we've tried to choose periods  
11                  for the extension where the impact would be very  
12                  minimal.

13                 MR. MATTEO: Thank you very much.

14                 MS. FOCARINO: Damon, this is Peggy  
15                 Focarino. I just want to piggyback a little bit  
16                 on what Jim said about the impact on production.  
17                 We're currently discussing the extension of the  
18                 windows with the CIO, and Patent is very mindful  
19                 of impinging on any regular work hours of our  
20                 examiners. We recognize the need to have more  
21                 maintenance hours, and so we're working closely  
22                 with CIO to try to accomplish that without

1 impacting regular work hours.

2 MR. BUDENS: Damon, this is Robert  
3 Budens. A question for Jim. On these changes to  
4 the maintenance times, are you foreseeing this as  
5 a temporary change on the Saturday/Sunday or  
6 Friday to Saturday windows while you're doing  
7 these upgrades to the networks and the programs,  
8 or do you foresee this as a permanent change to  
9 the availability of these systems for the future?

10 MR. FLANAGAN: Well, the driving force  
11 of the change is the roadmap and the need to  
12 enhance the baseline under which patent services  
13 are provided. As a consequence, it is likely that  
14 this will have to continue certainly for the  
15 period of the roadmap. After that period, I think  
16 we could re-examine it and determine whether it  
17 needs to continue beyond that.

18 Again, given, you know, Peggy's  
19 comments, please understand that this is really a  
20 recommendation at this point in time and does not  
21 reflect the decision.

22 MR. MATTEO: Okay. Are there any

1 further questions from anyone else?

2 MR. ADLER: This is Mark Adler. I have  
3 a question for Jim. When we're looking at the  
4 roadmap, I appreciate the hows, the things that  
5 you're trying to accomplish, and I understand the  
6 restrictions that the changes in the budget may  
7 impact those changes; are you prepared, or have  
8 you prepared a timeline for each of the projects  
9 that you are discussing so that we all could sort  
10 of see how progress is being made towards those  
11 goals?

12 MR. FLANAGAN: We do not have a seven  
13 year timeline, and the reason for that is that the  
14 projects don't -- really don't lend themselves to  
15 that type of presentation. However, each year  
16 each project constructs its individual timeline  
17 and project plan and that's how we're managing the  
18 results.

19 It sounds as though, however, we need to  
20 provide a greater contextual document that would  
21 give you some insight into what we expect to get  
22 from each of these improvements. Some of that

1 will be available through a strategic plan that  
2 OCIO is trying to complete this year. However, I  
3 would expect that it will probably have to be  
4 refined to meet the kind of objective your  
5 question seems to be indicating.

6 MR. ADLER: Yes, that would be terrific.  
7 I understand that there would be necessarily  
8 adjustments or changes, but it would be good for  
9 us, for the context, to have some idea of the  
10 timeline for each -- the projected timeline for  
11 each of the projects that you're working on.

12 MR. FLANAGAN: I will address that with  
13 John Owens and I'm sure he will be back to the  
14 Committee.

15 MR. ADLER: Thanks.

16 MR. MATTEO: Great; this is Damon again.  
17 Peggy, since you're there and you know who would  
18 be set to go next, can you tell me who would be  
19 ready to present? Is Michelle there? Should we  
20 go with finance? Jeff Taylor for legislative?

21 MS. FOCARINO: Jeff Taylor is here ready  
22 to do his report on the legislative update.

1           MR. MATTEO: Very good. So then it's my  
2 great pleasure to introduce Jefferson Taylor,  
3 Director, Office of Government Affairs, who will  
4 provide us all with a legislative update. Thank  
5 you very much, Jeff.

6           MR. TAYLOR: Thank you. I'm happy to be  
7 here this morning. I think this is a very  
8 interesting time for legislation, because without  
9 a USPTO nominee and someone that is confirmed, we  
10 are only able to provide technical assistance to  
11 Congress, no policy guidance whatsoever. So that  
12 has presented an interesting challenge to us.  
13 Certainly, patent reform is a bill that is moving,  
14 it has moved in the Senate, it is -- had a  
15 mark-up. There are actually three patent reform  
16 bills; there's HR 1260, which was introduced by  
17 Chairman John Conyers in the House and has four  
18 co-sponsors; there's S 515, which is Chairman  
19 Leyheigh's bill, which was introduced with also  
20 ranking member Orrin Hatch and had nine  
21 co-sponsors; and then Senator Kyle has a patent  
22 reform bill, S 610, which was also introduced last

1       spring. The goals of patent reform are to improve  
2       patent quality, to reduce patent litigation costs,  
3       to further international harmonization of patent  
4       laws, to restrict potential abuses committed by  
5       patent speculators, and to address the special  
6       needs of independent inventors in universities.

7                   And while USPTO supports these good  
8       goals as principal policy positions, certainly  
9       there's a diversity of opinion as to the nature  
10      and scope of the statutory language necessary to  
11      achieve these goals.

12                   On April 2nd, the Senate Judiciary  
13      Committee marked up S 515, they completed the  
14      mark-up, they ordered the bill reported by a 15 to  
15      four vote, but that really doesn't tell the story.  
16      The story of that day is very interesting.

17                   There was a compromise that was crafted  
18      that morning on the assessment of damages  
19      provision. This was put together by Chairman  
20      Leyheigh and Spector and Finestein of California.  
21      It was a gatekeeper approach using the Georgia  
22      Pacific 15 factors. This is something that the

1 USPTO is very interested in in the previous  
2 Congress. Of course, we didn't take a position on  
3 it this Congress. But this compromise approach,  
4 it seemed to most folks that this was going to  
5 really propel the bill forward. However, at the  
6 mark-up, Senator Hatch, who was a co-sponsor of  
7 the bill, expressed his concern about the bill.  
8 He wanted inequitable conduct put into the bill,  
9 and he said he was frustrated with that, and he  
10 made his statement and then walked out of the  
11 mark-up. It was very much like the bride leaving  
12 the groom at the chapel during the marriage. It  
13 was very dramatic, sort of a double statement, an  
14 oral statement, and then a walk-out.

15 In the bill, interestingly enough, aside  
16 from the ten major sections in the bill, there are  
17 also three other sections which are interesting to  
18 USPTO. There is a USPTO tele-work pilot in the  
19 bill, there is USPTO fee setting authority, and  
20 thirdly, there is a program to enhance the  
21 expertise of patent judges, the training of patent  
22 judges, which is a bill that Darryl Issa, a House

1 member who holds I think three dozen patents,  
2 inserted in -- introduced in a House bill, which  
3 passed, but then Senator Spector took --  
4 introduced a companion amendment to the S 515.  
5 The reported bill also creates a post-grant review  
6 procedure, improves inter-parties re-examination  
7 to challenge patent validity. And, indeed, this  
8 week there was a two and a half hour work session  
9 that we attended on post-grant review and  
10 inter-parties. It was a robust discussion of how  
11 we could make this a very workable process, and it  
12 did not result in any specific legislative  
13 language, but it was I think a good, healthy  
14 discussion to keep the patent reform bill moving.

15 The outlook for enactment at this time  
16 remains quite uncertain. I think there are a  
17 number of factors involved, and I'll go through  
18 these factors. One, I talked about Senator Hatch  
19 literally walking away from the bill. There has  
20 not been an attempt to put that marriage back  
21 together again, unfortunately.

22 Secondly, much to the surprise of many,



1 Senator Spector, who is a co-sponsor of the bill  
2 and a partner of that compromise on damages,  
3 changed parties and lost a lot of power. He was a  
4 ranking republican and now he is the lowest  
5 democrat on the Committee.

6 So the third factor comes into play, and  
7 that is Senator Sessions walks in as the ranking  
8 republican. He is the new member, he has not had  
9 a lot to say on patent reform previously, but I  
10 think he will be certainly fully engaged when the  
11 bill comes to the floor, and I don't know when  
12 that is, but he is a new player. He also has a  
13 new General Counsel. He has Senator Kyle's former  
14 General Counsel, Joe Mattal, who was one of the  
15 hosts of this meeting on post-grant section that  
16 we went to this week. So that's another factor  
17 that's interesting and have a different dynamic.

18 Ryan Triplett has left the Hill. She  
19 used to staff up Senator Spector. And if you  
20 recall at the last PPAC meeting, she was in  
21 attendance and a very, very knowledgeable General  
22 Counsel to Senator Spector.

1           No one had any idea that Supreme Court  
2 Justice Soto was going to retire. And how does  
3 that affect patent reform? Well, the Sotomayor  
4 Supreme Court hearing begins July 13th and it  
5 begins in the Judiciary Committee. So this is  
6 going to be, needless to say, a huge distraction  
7 away from patent reform.

8           I will say additionally that when a  
9 USPTO director's name is announced, it will be a  
10 huge challenge for yours truly and USPTO to get  
11 that nominee through that same Judiciary Committee  
12 given that the main attraction is soon to be the  
13 Sotomayor hearings. The other reasons why this  
14 bill looks uncertain, there's no inequitable  
15 conduct in the bill. Again, I mentioned the  
16 post-grant review and the inter-parties to be  
17 worked out. There are concerns about USPTO  
18 resources to handle that. The seventh reason is,  
19 there's an August recess coming up through --  
20 August 3rd through September 4th, and after that  
21 we have 15 working days in September, 20 working  
22 days in October. The target adjournment for

1 Congress this year is October 30th.

2 And the last reason for the uncertainty  
3 is that this is the third time that the Senate has  
4 tried to bring a patent reform bill to the floor.  
5 In the 109th Congress, there was S 3818, in the  
6 110th Congress, there was S 1145, in this  
7 Congress, there's S 515.

8 Last year, when there were a couple of  
9 attempts to bring patent reform to the floor, they  
10 didn't have the votes, and so I really believe  
11 that Leader Harry Reid will really demand a vote  
12 count that is more than 60 votes. I've also heard  
13 that the time on the calendar to get floor time is  
14 very, very tight. And all of this does not bode  
15 well for seeing patent reform in the first session  
16 of the 111th Congress.

17 I will shift from patent reform and say  
18 that we have also been watching the SGS  
19 appropriations bill. So far it looks like we have  
20 full funding coming our way. There have been a  
21 number of amendments, 44 that we have counted, to  
22 move funding from other agencies, not PTO, but

1 other agencies. There was a reference for  
2 increased oversight by the Department of Commerce  
3 of PTO, but so far so good as far as that funding.

4 We are also watching tele-work  
5 legislation, which includes a seven year pilot.  
6 This is independent legislation. There is  
7 tele-work language in the patent reform bill. But  
8 there's S 707, which is an independent bill that  
9 gives our examiners the ability to move anywhere  
10 in the United States, returning back to PTO, once  
11 a quarter, it's a seven year pilot.

12 In addition to that, we are up on the  
13 Hill very regularly. We have done Hill briefings  
14 on our 2010 budget, the patent production study,  
15 and the OCIO roadway, so we're quite busy. I'll  
16 leave it there.

17 MR. MATTEO: This is Damon. Thank you  
18 very much, Jeff. I'd like to open it up to  
19 questions from the floor, please.

20 MR. WESTERGARD: Dave Westergard here,  
21 Damon. The question I have, Jeff, is, you  
22 indicated that there appear to be four areas of

1 PTO interest, the damages provision, the tele-work  
2 pilot, fee setting, and the ISSA patent experience  
3 judges. How does that interest manifest itself in  
4 terms of PTO lobbying? Is PTO simply on standby  
5 pending the appointment of a new Under Secretary  
6 or is PTO continuing to push some agenda with  
7 respect to these items?

8 MR. TAYLOR: Dave, we're -- first of  
9 all, we don't lobby, we do outreach and education.

10 MR. WESTERGARD: I didn't mean to  
11 suggest otherwise, sorry.

12 MR. TAYLOR: No, that's okay. I just  
13 want to be clear. Secondly, we are interested in  
14 all aspects of legislation that touches USPTO, but  
15 we really have only been able to provide technical  
16 assistance and no policy guidance whatsoever, no  
17 advocacy of any sort. We really have been focused  
18 on operational, what will work for PTO, and what's  
19 plausible, and we leave it at that.

20 I will say that in the patent reform  
21 bill, we're also very much watching and going to  
22 the meetings. We just went to that meeting on

1 post-grant review, that's the key area that we're  
2 interested in. Inequitable conduct is an area  
3 that we're interested in, aside from the damages,  
4 the tele-work, the fee, and the judges.

5 MR. WESTERGARD: And on the specific  
6 question of post-grant opposition, does PTO have  
7 the resources that are necessary to implement that  
8 program within the timeframes anticipated by the  
9 bill, or to implement it, you would require a  
10 substantial increase in budget and staff?

11 MR. TAYLOR: Well, I think it would be a  
12 little bit presumptuous for me to answer that when  
13 I have the General Counsel, Jim Toupin here. I'll  
14 refer that to Jim.

15 MR. TOUPIN: Hi; I guess I respond to  
16 this because the board is in my -- here. When the  
17 post-grant review was first proposed back in  
18 2002/2003, the number of appeals reaching the  
19 board per year were hovering around 3,000.  
20 They've gone up substantially in the last several  
21 years so that we are expecting this year, although  
22 this may be the peak of the increase, to get -- to

1 docket about 13,000 at the patent -- appeals at  
2 the patent board.

3 And the agency as a whole is in a  
4 constrained budgetary situation. So obviously  
5 that situation makes the process of taking on  
6 additional jurisdiction more complicated than it  
7 was earlier. And I think that was part of the  
8 nature of the challenge that Jeff and Rob Clark  
9 were addressing on a technical basis on the Hill  
10 last week. Does that respond?

11 MR. WESTERGARD: Yes, thanks.

12 MR. MATTEO: This is Damon again. Does  
13 anyone else have any questions from the floor?

14 MR. KIEFF: This is Scott; can you just  
15 say a little bit more about the inequitable  
16 conduct issue, in what way were you expecting it  
17 to be present, just flush that out a little bit  
18 more, if you would?

19 MR. TAYLOR: Well, this is the primary  
20 issue for Senator Hatch. It was in the bill last  
21 year. It was omitted from S 515 this year in  
22 hopes that a deal would be brokered at some point

1 down the road. The House had a hearing on their  
2 bill, HR 1260. Several members expressed the,  
3 including the Chairman, expressed that they would  
4 want to work with Senator Hatch on inequitable  
5 conduct.

6 I have not seen any language put forward  
7 by the Hatch folks or others, so I don't -- I  
8 can't say with any certainty what the inequitable  
9 conduct would look like, unfortunately. But I  
10 think that if you're going to get a patent reform  
11 bill, if Congress is going to pass one, they're  
12 going to have to address this issue in some way,  
13 shape, or form.

14 MR. ADLER: This is Mark Adler; I have a  
15 question for you, Jeff. Since the confirmation  
16 hearings will be before the same Judiciary --  
17 Senate Judiciary Committee that has recently  
18 passed the 115 -- 515, I would expect that the  
19 Senators would be asking the new nominee, his  
20 position, and the Patent Office's position on  
21 inequitable conduct, the issue that we just talked  
22 about, about post-grant opposition and other



1 aspects of the patent reform bill during the  
2 confirmation hearings. Can you tell us a little  
3 bit about how you expect to brief the new nominee  
4 on the technical aspects and the political aspects  
5 of that bill in preparation for the confirmation  
6 hearing?

7 MR. TAYLOR: I'd be happy to. Even  
8 though we have not been working the Hill and  
9 providing anything other than technical assistance  
10 to the Hill, we have been working with the  
11 Department of Commerce in preparing a views letter  
12 on S 515. It is in a draft stage right now. I  
13 wish I could share it with you, but when it does  
14 come out, I will share it with PPAC, and I hope  
15 that it will be out maybe as soon as a couple of  
16 weeks and maybe as long as three or four weeks.

17 But it will be included in a briefing  
18 book or the nominee, along with every other  
19 subject we can think of that would reach the Hill  
20 and be a subject for questions for the nominee. I  
21 think, frankly, given the fact that the patent  
22 reform legislation has not reached the floor, this

1 nominee will have to field a lot of questions on  
2 patent reform, on all aspects of patent reform, as  
3 well as I think questions on what are we doing at  
4 PTO regarding our budget and our budget shortfall  
5 and how are we doing with our IT and our patent  
6 production study, I'm sure they'll get a lot of  
7 questions. But I think that patent reform will be  
8 the number one area and a close second will be our  
9 budget issues.

10 MR. ADLER: Thank you --- looking  
11 forward to receiving that, reviewing it when you  
12 can.

13 MR. TAYLOR: Certainly.

14 MR. PINKOS: Damon, Steve Pinkos.

15 MR. MATTEO: Yes, Steve, this is Damon.

16 MR. PINKOS: Yeah, I have a quick  
17 question for Jeff.

18 MR. MATTEO: Please.

19 MR. PINKOS: Jeff, thanks for the  
20 presentation. How are you doing?

21 MR. TAYLOR: I'm fine; how are you,  
22 Steve?

1                   MR. PINKOS: Good, thanks. And I see  
2 Judy back there, I can see her on the  
3 tele-conference, she still has that Stanley Cup  
4 victory glow about her.

5                   MR. TAYLOR: And the penguin glow, too.

6                   MR. PINKOS: Exactly, that's what I'm  
7 referring to.

8                   MR. TAYLOR: That's right.

9                   MR. PINKOS: Is it possible to shed any  
10 light on your discussions with the Hill regarding  
11 the PTO's budget situation or will that come later  
12 in the CFO's presentation?

13                   MR. TAYLOR: I think it will come later  
14 in Michelle Picard's presentation.

15                   MR. PINKOS: Okay. Well, I'll reserve  
16 the question again until then.

17                   MR. TAYLOR: Okay.

18                   MR. PINKOS: Thanks, Jeff.

19                   MR. TAYLOR: Thank you.

20                   MR. MATTEO: This is Damon; thank you,  
21 Steve. In fact, it probably makes sense to circle  
22 back on several of these issues, vis-à-vis, the

1 whole financial situation, but thanks for giving  
2 us a pointer to that. Did anyone else have any  
3 questions for Jeff? Very good, okay. Peggy, I  
4 don't know if Michelle is there yet, but in terms  
5 of who we have on deck, I'd like to keep the two  
6 quality sessions together, so if we can either tee  
7 up the International Work Share update or the CPIO  
8 update, they're both later in the agenda, would  
9 either Mark or Barry be free to make their  
10 presentations now?

11 MS. FOCARINO: Yes; Michelle isn't here  
12 yet, so we have Mark Powell here, and he can go  
13 ahead and do the work sharing update for you.

14 MR. MATTEO: Okay, great. So why don't  
15 we proceed with that, and that will more or less  
16 put us on schedule with regards to timing of the  
17 agenda, and then after Mark goes, we'll take a  
18 very brief break.

19 MR. POWELL: Great, thank you. I wanted  
20 to give you all a brief overview of the current  
21 work sharing situation. Just to step back a bit,  
22 WIPO had estimated in 2006 that, for the 20 years

1 prior to that, that world wide patent filings  
2 increased from 800,000 to about 1.8 million cases  
3 world wide. And a great number of those  
4 applications were for the same invention filed in  
5 multiple offices around the world.

6 Work sharing attempts to reduce the  
7 duplication of work, obviously, and this is  
8 something that the users of the system have been  
9 advocating for a long time. All of the major IP  
10 offices recognize this as a mechanism to increase  
11 quality, reduce pendency, and otherwise benefit  
12 both the offices and the users. The USPTO has  
13 been firmly committed to exploring ways in which  
14 we can realize these results. And in a way, as  
15 Peggy had mentioned Senator, rather Secretary  
16 Locke's ammunition to work cooperatively, this is  
17 the international version of that. I wanted to  
18 talk about this in terms of the long term and the  
19 near term as this first slide shows here.

20 Looking first at legal harmonization,  
21 offices have been discussing legal harmonization  
22 for many, many, many years, and I think that there

1 will be at least several more before any  
2 substantive resolution to some of those issues,  
3 including the first to file and grace period  
4 issues are resolved.

5           However, our patent laws are much more  
6 alike than they are different. We all have a test  
7 for novelty, we all have a test for obviousness or  
8 inventive -- for clarity and so on. And there are  
9 small ways that we can work cooperatively to try  
10 to minimize the legal differences, you know, to  
11 the extent that we can until we hit a statutory  
12 barrier.

13           And also, I wanted to talk about systems  
14 harmonization with reference to the IP 5 context,  
15 which are the five largest offices, including  
16 ourselves, the Japanese office, Korean, Chinese,  
17 and European offices. Then I'd like to talk about  
18 some of the short term programs and pilots that we  
19 are working on right now. On the next slide, you  
20 will see a listing of the IP 5 foundation  
21 projects, which many of you have probably heard  
22 about. The IP 5 relationship is very much a new

1 one. For more than a quarter of a century we've  
2 had a cooperative relationship with the European  
3 and Japanese offices known as the trilateral.

4 The very first meeting of those three  
5 offices, plus the Korean and Chinese offices,  
6 occurred in May of 2007, so just a little more  
7 than two years ago. And the very first meeting  
8 was more of an introductory, you know, can we work  
9 together, should we try, and so on.

10 And there have been essentially three  
11 meetings subsequent to that. And over the last  
12 two, the five major offices agreed to work  
13 cooperatively in ten areas, and they are called  
14 the Foundation Projects.

15 And I won't go into each of them in  
16 detail, but if you read through them on the slide,  
17 you can see that most of them are systems related.  
18 So this is my point about systems harmonization.  
19 The offices feel that if an examiner in one office  
20 can look at the work of an examiner in another and  
21 understand it and understand, you know, why, how,  
22 how he searched or came to a legal conclusion that

1 he did, we feel that that would increase the level  
2 of confidence among examiners from one office to  
3 another and thereby maximize, you know, the extent  
4 to which an examiner in the second office of third  
5 or fourth office could work in another.

6 MR. KIEFF: Damon, this is Scott; may I  
7 just jump in for a moment?

8 MR. POWELL: Please.

9 MR. MATTEO: Please do.

10 MR. KIEFF: I don't know if the rest of  
11 you are having this problem, but I'm basically  
12 getting only about half the audio, on/off,  
13 intermittent, every maybe 20 to 30 seconds.

14 MR. MATTEO: Scott, this is Damon. I  
15 was actually experiencing the same problem, so  
16 ultimately what I've done is, I'm relying on the  
17 audio from the computer feed and using the  
18 telephone to speak.

19 MR. KIEFF: Understood.

20 MR. MATTEO: Perhaps not an optimal  
21 solution, but it works.

22 MR. KIEFF: Great, thank you.



1                   MR. MATTEO: Certainly; sorry for the  
2 interruption, Mark.

3                   MR. POWELL: Oh, no problem. Let's see,  
4 where was I? Okay. Indeed, the offices have  
5 agreed to work cooperative in these areas. And,  
6 once again, most of them are technical and IT  
7 related. Now, we had a discussion about the CIO  
8 roadmap earlier, and obviously there's a great  
9 deal of cost involved with that. And if you look  
10 at the projects that we have listed here, they're  
11 certainly in the long term and certainly very  
12 ambitious and very expensive.

13                   However, the offices have agreed that in  
14 the long term, they're worthy of pursuit. And  
15 there will be benefit and sharing the cost among  
16 five offices rather than each individual office  
17 trying to, you know, rehash or redo, you know,  
18 search systems, for example, individual.

19                   Just as a quick update, there was a  
20 meeting of the IP 5 technical people last week,  
21 and they've resolved to start lower level working  
22 groups to try to iron out some of the finer

1 details of the various proposals that are working.  
2 And I believe that either this September or in  
3 April, I'm not sure what the schedule currently is  
4 on the table, but the heads of the offices would  
5 sit down to agree to move forward and at what  
6 rate. I'd like to go to the next slide, please,  
7 and talk about some of the current things that are  
8 going on. Work sharing had been talked about in  
9 the trilateral context for many, many, many years,  
10 but it's only really relatively recently that  
11 we've actually done anything with it. And about  
12 four years ago, the Japanese office came forth  
13 with a proposal called -- what they call the  
14 Patent Prosecution Highway, and essentially what  
15 that is, to be very basic, is, claims are allowed  
16 in a first office, for example, an applicant in  
17 Japan files an application there, the Japanese  
18 office grants claims on that.

19 That applicant, having cross filed here  
20 in the United States, can or would essentially  
21 copy the allowed claims from the Japanese office  
22 into the application here, deleting all others,

1 and we, in return, grant accelerated examination,  
2 if you will.

3           The very first pilot started was Japan  
4 in 2006, in January of 2006, and became permanent  
5 with Japan a year and a half after that. We also  
6 have a permanent program with Korea and eight  
7 other offices, which will include Finland starting  
8 next month. Most of the applications in the  
9 program have come from the Japanese or Korean  
10 office so far. To date, we have about 1,300 PPH  
11 cases. And we see from a, you know, operations  
12 standpoint, from the data that we have from these  
13 cases, some very promising results. To date,  
14 approximately 94 percent of these cases have been  
15 allowed, which is about double our current  
16 allowance rate for non PPH cases. We've also  
17 found that the number of office actions required  
18 to get one of these inventions through the system  
19 is about half. And there are also clearly, if  
20 you've -- we are essentially re-examining what the  
21 first office already had. There's a quality  
22 implication there, as well.

1           So we're surmising that, to a degree or  
2           to an extent, some of those basic examination  
3           issues that I discussed earlier such as novelty,  
4           such as, to some degree, inventive step for  
5           obviousness, perhaps clarity, some of the very  
6           basic issues have been resolved in the first  
7           office, and the claims we have here are, to a  
8           degree, or in most circumstances, a result of  
9           those.

10           As for the future of the PPA system, we  
11           have a relationship with ten countries; there are  
12           two or three other countries that we don't have a  
13           relationship with that have relationships with one  
14           or more of those other ten countries. So there's  
15           this spaghetti bowl of bilateral agreements all  
16           over the world upon which the PPH is operating  
17           currently. Over the last year, we've worked with  
18           all of those offices in what they call a  
19           plurilateral environment to try to see to what  
20           extent some of the requirements among offices  
21           could be normalized or standardized and to look  
22           for ways to advertise to applicants and users to

1 get -- to see an increase in the program and its  
2 benefits.

3 And in addition to that, the offices are  
4 looking at the question of whether we can use what  
5 we call intermediate work products in some sort of  
6 PPH type scheme, and that -- an intermediate  
7 product would be something like a search report  
8 from the German office or the EPO or perhaps a PCT  
9 search of some sort.

10 Those discussions are just preliminary  
11 because, particularly as regards to the PCT,  
12 there's a lot of questions as to whether the  
13 search provided by all of the ISA's would be  
14 considered acceptable and so on, but we're  
15 discussing those, and it will be probably some  
16 time before that goes on.

17 And just briefly, I'll go through a  
18 couple other things I put down on the slide here.  
19 There's a share concept which was proposed a  
20 couple of years ago, and the major deal with that  
21 is that an office of second filing or subsequent  
22 filing would delay working on an application until

1 a previous or first office has done work in the  
2 case, all right. That's a concept. The USPTO  
3 has, you know, traditionally examines in order,  
4 and we don't have really the means of rearranging  
5 our work like that, you know, without some  
6 substantial change in policy.

7           However, we tried to simulate that by  
8 looking at dockets, where the timing between us  
9 and another country might be generally right for  
10 that anyway. One major point about the share  
11 concept is that it would be an office initiated  
12 activity rather than an application initiated  
13 activity.

14           Many of our things such as --  
15 examination, Patent Prosecution Highway and others  
16 are applicant initiated. This concept would be an  
17 office initiated one.

18           There is a pilot, a very small pilot in  
19 the trilateral on this concept known as Triway.  
20 The idea there is that each of the three offices  
21 in the trilateral, us, the Europeans, and the  
22 Japanese, would do a search of an application

1 prior to substantive examination and share that  
2 service not only with the offices, but with the  
3 applicant, with the applicant admonished to review  
4 the art and preliminarily amend before substantive  
5 examination, to see what effect that would have on  
6 reducing the pendency of that case. You know,  
7 would be we able to be closer to allowance to  
8 begin with rather than two or three actions later?

9           On the next slide I wanted to share with  
10 you, we're trying to be proactive about, you know,  
11 availing our examiners to the work of other  
12 offices and using the systems we have now. So  
13 recently we put together something we call the  
14 Prosecution Passport. We tried to come up with a  
15 catchy international name there. And it's  
16 essentially from our automation department, it's a  
17 guide that shows examiners how, you know, in our  
18 current systems they can quickly access the work  
19 of some of the offices.

20           At the moment, the only offices that  
21 have -- that are fully electronic to the extent  
22 that we can get to them through our systems are

1 the European office, the Korean office, and the  
2 Japanese office, and hopefully in the future there  
3 will be a greater number.

4 One of the foundation projects that you  
5 saw was called One Portal, and the idea behind  
6 that is, in the future, perhaps there will be a  
7 button on the examiner screen, on his harmonized  
8 search tool or whatever, you know, click here for  
9 all international related work, and the examiner  
10 would be able to make use of that should he  
11 choose. This is sort of a very early precursor to  
12 that. And that's where we are today, so if there  
13 are any questions, I'd be happy to accept them.  
14 Thank you.

15 MR. MATTEO: This is Damon; thank you  
16 very much, Mark. I had a few questions, but I'd  
17 like first to open it up to the floor.

18 MR. ADLER: This is Mark Adler, I have a  
19 question for you, Mark.

20 MR. POWELL: Hello, Mark.

21 MR. ADLER: Hi; I noticed the --- in a  
22 previous presentation that you sent to us, of the



1 ten projects, the ten IP 5 projects, two were  
2 identified for the USPTO to take the lead. Those  
3 were the common search and examination support  
4 tools and the common approach to sharing and  
5 documenting search strategies. Could you -- you  
6 started to say a little bit about it, but could  
7 you tell us a little bit about where the USPTO is  
8 on those two projects which you're going to be  
9 leading?

10 MR. POWELL: Okay. The search strategy  
11 one, Mark, I think is one of our efforts to push  
12 the issue of search recordation. In our office,  
13 and I believe in the Korean office, but no other  
14 office world-wide that I know, the examiner  
15 actually, as part of his procedure, puts down  
16 where he searched, you know, not only in terms of  
17 where in a classification system he searched, but  
18 also search tool, syntax and so on. Another  
19 point, Mark, is that a lot of these projects are  
20 really very much tied together. For example,  
21 you've got search and examination tools and search  
22 strategies. Well, it would likely be one tool or

1 one interface that those things function together  
2 with; and the same with machine translation.

3 So what's happening, at the last meeting  
4 that I mentioned last week, they decided to put  
5 working groups together on each of these projects.  
6 And what they've done is, they've taken those ones  
7 that are very much intertwined and that will be a  
8 single working group actually working on it.

9 And what I see happening over time is,  
10 while an office would be, you know, designated to  
11 lead on something, you know, one or another of the  
12 projects, I would think that that lead role would  
13 become more of an organizational or management  
14 type role, not an actual, you know, contributory  
15 role. I think it's all going to blend together.  
16 Does that help?

17 MR. ADLER: Yes, that helps.

18 MR. MATTEO: Okay. This is Damon again.  
19 Mark, I had a couple of questions for you, if you  
20 don't mind.

21 MR. POWELL: Sure.

22 MR. MATTEO: You indicated that the PTO

1 is leading several of these initiatives and that  
2 other offices are leading others; is the  
3 implication that leading an initiative suggests  
4 that that office is best of breed or has a  
5 particular advantage in some fashion, or was there  
6 some complimentary way in which these initiatives  
7 were divvied up; can you help us understand that a  
8 little bit better?

9 MR. POWELL: I think it was pretty  
10 arbitrary, and I think that there originally were  
11 eight projects, because the Chinese office wasn't  
12 able at the time to commit -- make a commitment to  
13 do any of this; they later did. But I think that  
14 the EPO historically, they've been sort of the  
15 documentation office, if you will, so they kind of  
16 jumped ahead and said we'll do that. And our  
17 office, you know, volunteered more or less to do  
18 some of these others. And that's essentially how  
19 it happened. I really probably can't add anymore  
20 to it than that. It was -- there was these ten  
21 things, and there happened to be five offices  
22 there, so they basically took two each.

1                   MR. MATTEO: Okay, fair enough. Has  
2 there been any discussion about a common language  
3 for applications?

4                   MR. POWELL: The USPTO brought up that  
5 concept, you know, citing the fact that English,  
6 for example, is the common language of aviation  
7 and sometimes is referred to as the language of  
8 business and what not. Obviously, our friends in  
9 the Asian offices disagree with that.

10                   And I think that the route we'll be  
11 taking is the more prudent route, which is going  
12 to be, you know, working with machine translations  
13 and improving -- improving those, and they are  
14 improving.

15                   It would be very expensive for Japanese  
16 applicants, for example, or Korean applicants, or  
17 Chinese applicants to have to do everything in  
18 English. And I think that, you know, it was a  
19 suggestion, but we just discussed it as a concept.  
20 That's about it on that.

21                   MR. MATTEO: Okay, fair enough. And I  
22 did actually have one other question about how

1 you're orchestrating the process. So, for  
2 example, we would get an application that was  
3 previously reviewed by JPO; is there a formal or  
4 informal mechanism for feeding back lessons  
5 learned and information? So if we re-exam a JPO  
6 application and we discover oversight A, B, and C,  
7 or there's some learning that we derive from that,  
8 is there any way that this is captured, codified,  
9 shared, are there feedback mechanisms built into  
10 this to optimize the value that we're getting from  
11 it?

12 MR. POWELL: There's not a formal  
13 feedback. I assume you're referring to the JPO  
14 and the use of the passport and that sort of  
15 thing. There is not a formal feedback mechanism  
16 built into it. But I think -- it's somewhat tied  
17 together. If you, again, take a look at one of  
18 the foundation projects, the common training, and  
19 kind of harmonization in general, there is not  
20 likely to ever be a situation where one office can  
21 simply adopt the work of another office, because  
22 there is sufficient differences in patent law.

1 There's always the secret prior -- issue and so  
2 on.

3           We have, to an informal degree, for  
4 example, the passport, we have a feedback loop in  
5 there to see, you know, what the examiners think  
6 about it, if they choose to answer and that sort  
7 of thing. So the answer really is, no, there's  
8 not a formal feedback loop there. And with  
9 reference to a specific case, for example, if we  
10 found a piece of prior art in the Japanese didn't,  
11 we don't actually say, JVO, here, you missed this  
12 or anything like that, there's not, at a case by  
13 case level, any specific feedback.

14           And again, I want to emphasize that, you  
15 know, we would like to be able to share this work  
16 to the extent that we can, I mean I think that's  
17 the important thing. It's not likely ever to be  
18 all, but, you know, to the extent that we can, to  
19 the extent that an examiner in one office can --  
20 the work and that of another, it makes the  
21 examiner's job easier.

22           MR. MATTEO: Thank, Mark. This is Damon

1 again. And I didn't mean to suggest that any  
2 office could swallow whole the work of another,  
3 only that, to the extent that there are recurrent  
4 themes or errors or learning that we can capture  
5 in this interaction, either inter office or intra  
6 office, it seems to be a formal mechanism for  
7 capturing, codifying, and leveraging those as  
8 completely in the spirit of the whole notion or  
9 the genesis of the work share project to begin  
10 with.

11 MR. POWELL: Right; now that you phrased  
12 it that way, one thing we are working on in work  
13 sharing as a whole is metrics, and we're currently  
14 working particularly with the JPO on this, is, how  
15 do you quantify degrees of work, and some of it is  
16 difficult to quantify because of the difference in  
17 the laws.

18 But there actually is a project in the  
19 trilateral right now that's addressing that. I  
20 didn't pick that up from your -- the way you had  
21 phrased it originally, I'm sorry.

22 MR. MATTEO: Okay. Not a problem, Mark.

1 I very much appreciate your answer.

2 MR. ADLER: Mark, this is Mark Adler.  
3 This is a similar follow-up to what Damon was just  
4 saying. Earlier you mentioned something about the  
5 cases coming from the Patent Prosecution Highway  
6 from Japan coming to the USPTO. I would assume  
7 that there are going to be some learnings that the  
8 USPTO might take from those cases in terms of time  
9 to allowance or response, nature of response. I  
10 would hope that some feedback might be captured,  
11 some learnings might be captured both ways from  
12 that.

13 MR. POWELL: Yes, Mark; all of the  
14 countries that are participating in PPH submit  
15 statistics, not by serial number of a case, but in  
16 terms of percentages, which describe what types of  
17 rejections applied and what number of cases and so  
18 on, and that's all shared commonly, I think the  
19 JPO actually manages that date base, if you will,  
20 so we look at the number of instances in which it  
21 was a secret prior art issue, in other words, the  
22 reference was not available to the first office,



1 but was at the second and so on. That information  
2 is --- very detailed, statistical information is  
3 kept on all of these.

4 MR. ADLER: Thank you.

5 MR. MATTEO: This is Damon again. So if  
6 there are no further questions, we'll wind up this  
7 presentation with our thanks to Mark Powell. And  
8 to put us more or less back on schedule, why don't  
9 we take ourselves a break until 12:40 East Coast  
10 time? And before we break, Peggy, is Barry there?

11 MS. FOCARINO: Yes, Barry is here.

12 MR. MATTEO: Okay. So then why don't we  
13 -- if he's available and ready, why don't we lead  
14 off with him and then we can keep the two quality  
15 initiatives together and deal with Michelle when  
16 she returns?

17 MS. FOCARINO: Okay, sounds good.

18 MR. ADLER: We should all stay online,  
19 right?

20 MR. MATTEO: Yes; given the difficulties  
21 in getting online, I suggest we all leave the  
22 lines open.

1 MR. ADLER: Okay.

2 MR. MATTEO: Thanks very much,  
3 everybody. We'll circle back at 12:40 East Coast  
4 time.

5 MS. FOCARINO: Thank you.

6 MR. MATTEO: Thanks everybody.

7 (Recess)

8 MR. MATTEO: Not everybody is quite back  
9 in yet.

10 MR. HUDSON: Okay, fair enough.

11 MS. FOCARINO: Yeah; we do have everyone  
12 here. Barry Hudson is here and he's ready to go  
13 if you'd like to start with him.

14 MR. MATTEO: That would be spectacular,  
15 thank you very much. Well, again, welcome back,  
16 everybody. I'd like to introduce Barry Hudson,  
17 Acting Chief Performance Improvement Office, who  
18 will speak to us about the new CPIO initiative and  
19 some of its targets, goals, and objectives. Thank  
20 you very much, Barry.

21 MR. HUDSON: Thank you, Damon. Just as  
22 a way of background, we created the Office of the

1 Performance Improvement Officer late last fiscal  
2 year, in September. I was asked to step in to  
3 start kick the process. So I want to give you  
4 today a sense of our strategy, our approach, and  
5 some of the things we're focusing on in the short  
6 term. When we talk about performance improvement,  
7 we're talking about an enterprise-wide  
8 perspective, you know, it's a systems approach  
9 that all the organization components, as well as  
10 its subsystems, from IT, to the employees, the  
11 work force, to our processes are working together  
12 in an optimum fashion to achieve the results  
13 desired by the organization.

14 One of the underlying aspects of that  
15 performance improvement would be data driven, fact  
16 based results and outcomes. So when we're talking  
17 about performance improvement, we're looking from  
18 an organization perspective and all its  
19 subsystems.

20 I first want to -- on the next slide, I  
21 just want to give you a sense of our  
22 responsibilities that the PIO is driving towards.

1 First and foremost, the first bullet is  
2 implementing performance improvement strategies  
3 and tools, and there's a difference between  
4 strategies and tools.

5 A strategy basically would be the  
6 framework by which we monitor, judge, evaluate our  
7 performance across the organization. The tools  
8 would be things that would help us to achieve  
9 those things, such as Lean Six Sigma and some  
10 other process management tools that would be used  
11 to accomplish those overarching goals. The second  
12 bullet is part and parcel of what a PIO would be  
13 responsible for, ensuring that, as we do our  
14 strategic planning, our goals are aggressive,  
15 they're realistic, and they're outcome oriented,  
16 and that they focus our energies and our resources  
17 towards the critical things that will make an  
18 impact in terms of the performance at the USPTO.

19 The last bullet is something that  
20 basically the Administration has counted as  
21 something that all agencies are expected to do,  
22 and that is evaluate the potential impact and

1 effectiveness of programs.

2           And what that means is a systematic  
3 assessment to, you know, how well a program is  
4 working. It would include things like, you know,  
5 a needs assessment, is it meeting the needs of the  
6 customers and stakeholders, is it designed to meet  
7 those needs in an effective and efficient fashion.  
8 You would look at the processes and you would also  
9 look at the impacts.

10           Now, of those three, that's a huge  
11 workload and portfolio. The third one is  
12 something that we will probably institute much  
13 later in terms of how we execute that aspect in a  
14 PIO and USPTO. Next slide. This slide basically  
15 is a graphic of what we call our strategic  
16 management process, and I label this priority  
17 number one, you know. In order for us to address  
18 the performance of any organization, in particular  
19 USPTO, you need to understand your performance  
20 gaps. This process helps us do that, it  
21 incorporates the strategic planning as part of the  
22 process. We have five phases in which we're

1 working through with the leadership team, as well  
2 as all the business units have been engaged in  
3 terms of working through these phases.

4 Phase one, two, and three will actually  
5 get a strategic plan that allows us to identify  
6 the critical gaps and performance that we will  
7 address in the next three to five years.

8 Priority number one is, because  
9 implementing tools and other approaches to address  
10 those gaps, we first have to know what the gaps  
11 are, so this is the process we're going to  
12 undertake. The Phases four and five in the  
13 graphic basically are the ways that we would  
14 evaluate, monitor, and measure how we're achieving  
15 those objectives to close our performance gaps,  
16 and that's important in terms of actually  
17 learning, adjusting, modifying any of our  
18 strategic objectives on an ongoing basis. So what  
19 this process will do is, will not make strategic  
20 planning an event, you know, something we do every  
21 three years, but an ongoing regular review of how  
22 we're meeting and addressing our performance and

1 always continuously improving that performance  
2 through this type of process.

3 The next slide. Just a snapshot of some  
4 of the activities that have been completed. One  
5 is, as you know, we established a CPIO, it's a  
6 brand new office here at the USPTO, it's a small  
7 office, and I'm detailed as the Acting Performance  
8 Improvement Officer.

9 We do have engagement from across all  
10 the business units, a dotted line of senior people  
11 in each business unit supporting this effort and  
12 working in those phases that I showed on the other  
13 slide.

14 We also have done some education and  
15 training. All the planners, the performance  
16 improvement leadership that are working with me on  
17 this have been trained in Baldrige and Lean Six  
18 Sigma. And, in fact, some of our offices are  
19 actually applying some of those principals today,  
20 so that's good news. Some have actually taken it  
21 to heart and have got several projects underway.

22 Coming down the pike, the next slide, is

1 -- obviously, I mentioned we're developing a  
2 strategic plan, and that is going to be a process  
3 that's going to take us all the way through this  
4 summer and into early fall to complete. I know  
5 John Doll, who's on the agenda to talk a little  
6 bit about PPAC's involvement, engagement, and  
7 helping us to develop that plan. We also, as  
8 Peggy mentioned earlier in her remarks, we've had  
9 a real success; I think that the Patent and  
10 Training Academy has been registered ISO 9001, and  
11 again, with no deficiencies or, Peggy, what do  
12 they call them, non-conformances, minor or major,  
13 so that's an achievement.

14 We also have in the office of the CIO  
15 basically the implementation of ITIL, which is the  
16 Information Technology Infrastructure Library,  
17 which is really a quality approach to delivering  
18 IT services. So these are two good examples of  
19 items that assist us in terms of performance  
20 improvement.

21 We will have a framework that will be a  
22 process management, we will be looking at



1       Baldrige principals, and Baldrige principals are  
2       the criteria for excellence that's a standard for  
3       most corporations and has been touted as the  
4       premium approach for performance quality  
5       management.

6               And so we are mandated by congressional  
7       directive to adopt those principals, so we're  
8       embedding those into our process today in terms of  
9       our strategic management process that will help us  
10      identify performance gaps in several areas. The  
11      Baldrige focuses on seven categories, from  
12      leadership systems, to our work force management,  
13      to our customer focus, process management,  
14      knowledge, learning, and results. So we'll be  
15      taking a look through this strategic management  
16      process as to our maturity, if you will, in all  
17      those levels to see if there's any performance  
18      gaps that we need to address.

19             We will also be looking at -- across  
20      horizontal perspective, if you will, of the  
21      USPTO's and our main products and services, you  
22      know, from trademark related products and services

1 to patent products and services to international  
2 policy and guidance and advice.

3 And those are going to crosscut  
4 throughout the organization horizontally to see  
5 how we deliver those products and services that  
6 meet the expectations of our customers and  
7 stakeholders. And from that, we will be able to  
8 find, if you will, pain points or opportunities  
9 for improvement that will help inform our  
10 strategic planning. Damon, that concludes my  
11 remarks. I'm happy to address any questions you  
12 may have.

13 MR. MATTEO: This is Damon again; thank  
14 you very much, Barry. A couple of quick  
15 questions. I understand this is a new office and  
16 a new position. When exactly was it constituted?

17 MR. HUDSON: It was constituted in  
18 September of this year -- no -- yeah, 2000 -- end  
19 of last fiscal year, in September, so it was  
20 September, 2008.

21 MR. MATTEO: 2008; and what level of  
22 staff and resourcing do you have?

1                   MR. HUDSON:  It's a -- I'm a detailee,  
2                   and I have four individuals that have been  
3                   detailed to me, either full-time or part-time, two  
4                   full-time detailees and two part-time, 50 percent  
5                   of their time.  In addition, we have actually  
6                   identified throughout the USPTO and in each  
7                   business unit individuals that will be giving 60  
8                   percent of their time to this effort.

9                   MR. MATTEO:  Okay.  And you had  
10                  mentioned that it was a holistic approach and that  
11                  representation from each of the business units was  
12                  part of your -- either part of your organization  
13                  or matrix standard dotted line; how exactly does  
14                  that work?

15                  MR. HUDSON:  That's working very well.  
16                  I haven't had any issues whatsoever in terms of  
17                  the nature and the qualifications of the people.  
18                  I think once we start talking about a holistic  
19                  approach to improving the performance, they get on  
20                  board right away, they bring a lot of good ideas  
21                  and are engaged.  So it's a dotted line matrix  
22                  approach and it's working very well right now.

1                   MR. MATTEO: The senior representation  
2 from each of the BU's, and also, when you say  
3 BU's, do you also mean service and infrastructure  
4 like the CIO office?

5                   MR. HUDSON: Yes; every business unit  
6 has a representative, and it's usually not an  
7 executive level, but it's one of their senior  
8 people.

9                   MR. MATTEO: Excellent; and you said you  
10 were going to be rolling out your plan, looking at  
11 your slide number three, rolling out your plan  
12 sometime this summer; where are you on this pie  
13 chart, one, two, three, four, five, are you doing  
14 some measure of triage, have you established  
15 priorities or pilots, can you give us a feel for  
16 where you are there?

17                  MR. HUDSON: Well, on that slide three,  
18 the wheel basically, we've completed phase one and  
19 we're in the process of phase two. Phase two is  
20 the deep dive, as I described in terms of trying  
21 to identify any of the performance gaps, both from  
22 a Baldrige perspective in all our major systems,

1 as well as a crosscutting products and service  
2 delivery perspective. We also will be doing a  
3 SWOT analysis, environmental scan, getting input  
4 from employees and stakeholders to kind of feed  
5 that. From that, we'll have basically a  
6 comprehensive listing of our strengths, because if  
7 we do have strengths, we want to make sure we  
8 leverage those in the future, capitalize on what  
9 we do well, and we will have what we call  
10 opportunities for improvement, which will be, we  
11 identified certain gaps, performance, we have an  
12 opportunity to make a greater impact.

13 And from that, the leadership team, with  
14 input from our stakeholders, will go through that  
15 and prioritize those and say, well, here's the  
16 ones that we should focus on in the near term in  
17 terms of developing our strategic plan that have  
18 the greatest impact on our customers and our  
19 stakeholders' expectations and adding value and  
20 continuously improve that ability to add that  
21 value.

22 MR. MATTEO: Okay. So then you believe

1 you more or less completed at least your first  
2 major deep dive on organizational understanding?

3 MR. HUDSON: Yes, we have. We have --  
4 in our first deep dive, we've actually gone  
5 through and identified all our customer segments,  
6 our stakeholders, collaborators, and partners, and  
7 get clarity across who those are. We've actually,  
8 you know, talked about our products and services,  
9 making sure everybody understands what our key  
10 products and services are, and that we deliver to  
11 all those customer segments.

12 MR. MATTEO: And just so I'm clear, I'm  
13 hoping the reference to customer segments implies  
14 that this analysis is intro PTO, as well as  
15 external, the external customer base, as well?

16 MR. HUDSON: Yeah; this is primary  
17 external.

18 MR. MATTEO: So no understanding of  
19 customer -- requirements in terms of comprehending  
20 efficiencies and gap and leverage analysis?

21 MR. HUDSON: That will come; one of the  
22 things we are doing is, as we define our products

1 and services, that we deliver to the external  
2 customers. And again, external customers is very  
3 broad, it includes, you know, stakeholders,  
4 public, and applicants, and owners, and IP  
5 offices, and information users.

6 What we'll be doing is, going through  
7 that and saying, okay, in order to deliver those  
8 products and services, who are the main players,  
9 obviously patents and trademarks and intellectual  
10 property, policy, and guidance. But within the  
11 organization, there's the General Counsel, our  
12 Office of Government Affairs, CIO, CFO, they have  
13 a key role in adding value to get those products  
14 and services, and so that will be identified, and  
15 we will find gaps associated, or pain points, if  
16 you will, during that process.

17 MR. MATTEO: Excellent; a holistic  
18 approach is the only way you're going to do this.  
19 So I would be very much interested in seeing -- I  
20 suspect you've created some distillation or report  
21 of this organizational understanding indicating  
22 strengths, weaknesses, or identified opportunities

1 for leverage or other kinds of gap analysis?

2 MR. HUDSON: That's correct.

3 MR. MATTEO: So I would be very much  
4 interested in seeing that, and also, your pie  
5 chart is interesting, but rather than that, some  
6 sort of rollout plan, gap chart, however you  
7 formulate it, to give us a feel for how you see  
8 this playing out in the future, in particular,  
9 tying the initiatives to specific output would be  
10 very useful.

11 MR. HUDSON: Will do; I do have the  
12 first two, I have the results from phase one and  
13 what we're doing in phase two, as well as a  
14 project timeline.

15 MR. MATTEO: Excellent; so rather than  
16 monopolize the microphone here, I'd like certainly  
17 to open it up to broader questions from the  
18 balance of the PPAC or audience.

19 MS. FOCARINO: Damon, this is Peggy  
20 Focarino. We do have a couple of questions from  
21 the public, if you are interested in taking any of  
22 them right now.



1           MR. MATTEO: Yes, I believe we have time  
2 for at least one question, please.

3           MS. FOCARINO: Okay. One is related to  
4 work sharing and the others are related to  
5 quality, which perhaps we can get to after the  
6 quality presentations. But one question is on the  
7 subject of machine translations and it's directed  
8 to Mark Powell. Mark, you said that the other  
9 nations were not willing to go to using English as  
10 a common language. Machine translations have  
11 great difficulties in accurately translating  
12 complex, technical content. So how can we depend  
13 on machine translations, and will this problem  
14 greatly limit international cooperation and work  
15 sharing?

16           MR. POWELL: That's a very good  
17 question, and machine translations are, in some  
18 instances, fair, some good, but certainly not to a  
19 level where, for legal, if no other reason, it  
20 would be suitable for filing applications, filing  
21 responses and so forth. In our current context,  
22 we do have machine translation programs with the

1 Koreans and the Japanese. And we're actually  
2 currently conducting a study to see how useful  
3 they are.

4 The Japanese language is the most  
5 difficult language to translate into English. And  
6 we have cooperated with the Japanese office for a  
7 number of years on helping improve their  
8 dictionaries and so forth.

9 So where we're trying to go with this in  
10 the intermediate term is, can an examiner look to  
11 the file wrapper of an application in Korea or  
12 Japan, and using the machine translation tool, be  
13 able to garner enough information from that to  
14 see, perhaps to understand what the examiner was  
15 doing.

16 And the question did mention complex,  
17 technical terms, and that is a serious problem.  
18 The dictionary based feedback we've been giving  
19 the Japanese for so many years has improved that  
20 to a great degree. But I'll also add that, as I  
21 said before, all of these are very, very long term  
22 projects, and it's a matter as to what extent that

1 we can make use of them. Thank you.

2 MR. MATTEO: Thank you very much, Mark.  
3 This is Damon again. Oh, and by the way, I speak  
4 Japanese, so I'm happy to take any overflow  
5 translations, feel free.

6 MR. POWELL: We need the help, I assure  
7 you.

8 MR. MATTEO: Peggy, were there any other  
9 questions? I believe there might have been one  
10 directed to Barry?

11 MS. FOCARINO: I don't have one directed  
12 to Barry right now. Do you have -- I'm asking Ann  
13 Farson to take a look at the questions that have  
14 come in.

15 MR. MATTEO: I actually have it here.

16 MS. FOCARINO: Oh, you have it there,  
17 okay.

18 MR. MATTEO: I'll just -- well, I got it  
19 via email, I'll read it. I have heard repeatedly  
20 that patent examiners are seriously overworked,  
21 which can impact the quality of their work. What  
22 steps are being taken to correct this situation?

1 MS. FOCARINO: I'd be happy to have  
2 Barry try to answer that question.

3 MR. MATTEO: I didn't notice the  
4 question until -- so, yes. Why don't we open that  
5 more broadly to anybody who would like to take a  
6 shot at it, Peggy?

7 MS. FOCARINO: Right; I'll start off. I  
8 had mentioned the patent production goal study  
9 which we are currently looking for vendors, and  
10 hopefully we'll be able to award a contract before  
11 the fall on that study. And I think a lot of the  
12 concern comes about with the amount of time that  
13 examiners are given to examine their applications,  
14 and so we would like to get an expert in here to  
15 do a complete analysis and give us some  
16 recommendations as to how we may adjust that time,  
17 if appropriate, and then how we would go about  
18 adjusting it in the future when it's appropriate  
19 to do that. So, you know, that's my initial  
20 reaction to that question.

21 MR. HUDSON: I can add to that from a  
22 strategic perspective which doesn't get to the

1 bottom line. But the organization obviously is  
2 relying on our work force as the key driver in  
3 terms of delivering quality products and services.  
4 So as we go through this process, when we look at  
5 our performance gaps and say what is the critical  
6 things that we need to address to meet the  
7 expectations of our stakeholders and our  
8 customers, we will always be looking at it from a  
9 holistic approach. And so when you talk about  
10 that, it's our processes that we do currently in  
11 terms of examination, most efficient and  
12 effective, is the work force engaged, are we  
13 actually, you know, leveraging them to the point  
14 where they have high levels of engagement and  
15 desire to examine and have the time to do it, as  
16 well as, you know, the enabling structure, our IT  
17 systems.

18 So from a strategic standpoint, if we  
19 have to have quality, timely patent products and  
20 services, then all those components have to be  
21 integrated, and we have to make sure that our work  
22 forces have the tools, the time, the capabilities

1 to deliver those products and services.

2 And that will, hopefully, as we go  
3 through this process, we will have a strategy, an  
4 approach that says in order to make sure those  
5 products and services are the most effective, that  
6 we address each and every one of those aspects.

7 MR. MATTEO: Peggy, Barry, thank you  
8 very much. Given the time, I'd like to move on to  
9 our next subject, which is quality. We're going  
10 to approach this in two parts, a one, two punch,  
11 if you will. The first segment is led by Marc  
12 Adler, a PPAC member, along with Andrew Hirshfeld,  
13 Acting Deputy Commissioner for Patent Examination  
14 Policy. And they'll speak to us about the  
15 underlying definition of quality and some of the  
16 indicia that we can perhaps discuss and use to  
17 measure the quality. So without further adieu,  
18 let me turn this over to Marc Adler. Thank you,  
19 Marc.

20 MR. ADLER: Thank you, Damon, and thank  
21 you, everybody. If you recall at our last PPAC  
22 meeting, we had our first discussion around the

1 definition of what we meant by patent quality.  
2 That discussion was -- we didn't get very far, it  
3 was mostly a discussion of whether we were talking  
4 about internal patent examiner performance or we  
5 were talking about external measures.

6 I took it upon myself to draft something  
7 for all of you to see, to get some feedback on.  
8 I've also since then have had a number of  
9 productive discussions with Drew about this  
10 difficult question about defining what we mean and  
11 how we might go about improving the quality of  
12 patent.

13 So what I plan to do now is to go  
14 through that preliminary memo that I wrote, as  
15 well as sort of some of the pieces from it, so  
16 that we can maybe have a further discussion and  
17 get down to some of the nuts and bolts of this.

18 Let me go to the second slide. What I'm  
19 -- let's start with what do I mean by the  
20 definition of quality. I'm not defining quality  
21 in terms of the commercial value of any patented  
22 invention. What we're referring to here is the

1 validity of a granted patent and, therefore, also,  
2 how long it takes the process efficiency of search  
3 examination, prosecution, and how we might be able  
4 to reduce uncertainty in what is granted.

5 One of the problems that we all know  
6 exists is that the application pendency is still  
7 continuing to be much higher than we all would  
8 like, and everything that we do in terms of trying  
9 to measure improving the quality of a patent  
10 should also look at the pendency, the process  
11 efficiency.

12 Now, I'm defining pendency a little  
13 differently here than the way the patent office  
14 tends to define pendency. I'm looking at the  
15 overall process, so I'm looking at it from the  
16 time of the initial filing to either the grant or  
17 a decision on the appeal of all the claims that  
18 were originally presented, not just the pendency  
19 to the first office action.

20 What I'm referring to about quality  
21 patent, a quality patent has three major portions;  
22 one, obviously, is outside the purview of the



1 patent office, although you -- we can all help the  
2 users improve the quality of what they submit by  
3 both education and by the information we provide  
4 back to users. So let's put that aside for a  
5 second, although that is an important aspect,  
6 since we're not going to get a quality patent if  
7 we have a very poor quality application. I'm  
8 really focusing here on the quality of search and  
9 examination and the quality of the prosecution.

10 Let me go to the next slide. As I just  
11 said, I believe the quality of a patent is a  
12 shared responsibility. And we need to do things  
13 that will drive behavior modification by  
14 applicants and examiners focused on both valid  
15 patent grants, as well as reducing pendency.

16 I'm not really referring to quality as  
17 some type of a euphemism for examiner performance  
18 or production goals, although some metrics that we  
19 might come up with can be used for training and  
20 performance reviews for examiners.

21 I'm also focusing on quality based on  
22 existing rules, not based upon new statutory

1 changes that would require congressional action.  
2 I believe that both uncertainty and a lot of the  
3 problems that were -- I've got a different slide  
4 here -- some of the problems that we see are a  
5 result of poor quality, you know, all the claim  
6 interpretation issues, as well as the time delay  
7 to grant. I'm seeing a slide that say PPAC  
8 participants who are phoning in to speak, instead  
9 of the third slide. I'm still here, but I'm  
10 trying to --

11 MR. MATTEO: Sorry, Marc. Peggy,  
12 someone on the PTO side, can we address the slide  
13 issue?

14 MS. FOCARINO: Yes; you want number --

15 MR. ADLER: Three?

16 MS. FOCARINO: -- three.

17 MR. ADLER: All right.

18 MS. FOCARINO: Is that the right one,  
19 Marc?

20 MR. ADLER: Thank you very much. That's  
21 good, oops, we can go to four, all right. As we  
22 all know, from whether it's ISO or other quality

1 processes that people have used, Six Sigma, and by  
2 the way, I want to commend the Patent Office.  
3 There are a number of initiatives that are already  
4 going on that are directed to improving quality,  
5 whether it's the OCIO effort, the first action  
6 interview, and the IP 5 projects.

7 I'm not meaning to direct my comment to  
8 those projects, I think they're great, I'm just  
9 talking about additional measures that we might be  
10 able to identify to drive the behaviors that we  
11 want from both applicants and examiners.

12 We all know that there are many, many  
13 measures that one could pick, and our job, I  
14 think, is to try to find some of the most  
15 important ones, maybe limiting it to a number of  
16 five. Now, this is a debate that Drew and I are  
17 having about whether that's really possible, but I  
18 think that we need to not worry about being  
19 perfect. The five that we identify may initially,  
20 may not be the -- all of those that we need to use  
21 and that refinements and modifications will be  
22 needed in the metrics that we're using over time.

1           I believe that the focus of the process  
2           improvements should be on the earliest stages of  
3           search and examination. It is much harder, in my  
4           view, to fix something such as a quality patent as  
5           we go further down the road during prosecution,  
6           appeal, continuations and all that.

7           In fact, I think some of the data that  
8           we're seeing on final office actions and  
9           continuation applications, not all of it, but some  
10          of it has to do with some issues that we're seeing  
11          early in examination, and that's why I do believe  
12          that the first action interview is critical to  
13          improve the process. Let me go to the next slide.  
14          Basically, as I said earlier, we're not going to  
15          get quality out if we don't have quality in. But  
16          we need to be looking at quality, not just in  
17          terms of substantive actions, but also the  
18          timeline. Pendency increasing creates problems in  
19          terms of feedback, in terms of uncertainty in the  
20          public as to what is actually going to be granted,  
21          and it becomes a problem for -- that leads to  
22          litigation and other inefficiencies in the public

1 use of patents.

2 I think that the quality will improve  
3 when all the participants understand the metrics  
4 that are being used, and they get clear feedback  
5 during the process. One of the key aspects, in my  
6 view, is whether or not the patent office is  
7 adequately utilizing 35 USC 112 compliance to push  
8 the applicants to be -- do a better job in  
9 describing or defining their inventions.

10 Obviously, I also believe, as I've said  
11 before, that applicants are not going to get a  
12 quality patent if they don't conduct a search to  
13 know what the prior art was before they try to  
14 define their invention. And we've seen a push  
15 back on attempts to do that, require that by  
16 rulemaking. I think there are probably other  
17 things that we can do to get the message to  
18 applicants. Let me go to the next slide. All  
19 right. As I just said, a thorough and complete  
20 initial search of the prior art is critical to  
21 quality and pendency. This is both from the  
22 applicant's perspective, as well as from the

1 office's perspective. And the IP 5 discussion  
2 that we had earlier to coordinate the activities  
3 of all the offices, at least to be able to make  
4 sure that the best prior art is before the USPTO  
5 examiner, is critical.

6 It also, as we just heard during Barry's  
7 presentation and the question that was asked, are  
8 examiners really given the right amount of time  
9 and the credit in the initial phases of searching.  
10 And I question whether some of the efficiencies  
11 from restructure requirements actually unduly  
12 increase pendency backlog and make it harder to  
13 search effectively.

14 I know that it's difficult to take  
15 patent applications out of turn, but we need to  
16 possibly look at ways to provide incentives for  
17 applicants who do conduct searches before filing  
18 so that maybe their applications, similar to  
19 accelerated exam, can be reviewed sooner, so that  
20 more applicants will actually do that.

21 Maybe we're asking for too much with the  
22 rulemaking that I propose, but maybe there's some

1 modification there that we can approve. Let me go  
2 to the next slide. Let me talk a little bit about  
3 quality examination. One of the key problems that  
4 I see and I think the patent office is seeing is a  
5 significant increase in the number of continuing  
6 applications. Clearly, some of those are  
7 applicants strategically filing continuing  
8 applications. But I do believe that some of them  
9 are a result of premature final office actions  
10 that cause additional unnecessary continuations  
11 and longer overall pendency. And I do believe you  
12 do have some data on reversals or, you know,  
13 restarting prosecution after final that we could  
14 look at to determine what might be the cause of  
15 those final rejections.

16 We also question, or I question  
17 crediting examiners for continuing applications  
18 the way they're presently being credited and  
19 whether or not there could be some incentives for  
20 examiners to not force those continuations or  
21 maybe not get credit or as much credit for  
22 continuing applications. Let me go to the next

1 slide.

2           During prosecution, we all understand  
3 that reaching the issue, what is the issue here,  
4 what is the critical issue for patentability early  
5 improves quality in the sense of getting to the  
6 final point quicker. And in that regard,  
7 interviews before and after the first office  
8 action on the merits certainly can improve quality  
9 and reduce pendency. And I'm encouraged by the  
10 expansion and the FIA for examiners to conduct  
11 these interviews. I've also seen some references  
12 to further discussions before appeal to reduce  
13 continuations and possibly eliminate or reduce  
14 premature final actions. I think that would also  
15 be an issue to look at carefully.

16           There's another aspect with -- that the  
17 patent office is probably already looking at in  
18 terms of monitoring or tracking examiners response  
19 times between the time that an applicant responds  
20 to an office action and the time that the next  
21 office action is issued, and also whether or not  
22 they can get a handle on some of the open status



1 requests that are made that sometimes are there  
2 for a long time and that indicate that there's a  
3 potential issue with a case. Go to the next  
4 slide.

5 Really what I'm focusing on is trying to  
6 find out and have a robust discussion on whether  
7 we can identify five, maybe it's ten, but not 100,  
8 maybe a limited number of the most important  
9 criteria that you believe and that the public  
10 believes could drive improving quality and  
11 reducing pendency.

12 Now, at the end of this memo, which is  
13 an excerpt, I've identified a number of possible  
14 indicia for search, examination, and prosecution,  
15 but I don't know which you think would have the  
16 biggest impact. And I would like over the next  
17 couple of months to try to get PPAC and the PTO to  
18 have a proposal on five to ten key metrics. This  
19 may be difficult, but I think we need to start  
20 somewhere.

21 At that point, but not before that  
22 point, I would then hope that the PTO could seek

1 public input, whether it be a roundtable  
2 discussion or a forum focused on the metrics, not  
3 just an open discussion about, gee, quality isn't  
4 that good, quality should be better, not a  
5 qualitative discussion, but a focus on, gee, these  
6 are good metrics, or did you think you can combine  
7 these two metrics or compare this against that in  
8 some way that might actually help us move this  
9 forward faster.

10           The next two slides really just have a  
11 listing, and you can go to the next slide, which  
12 is difficult to see, but it just lists a number of  
13 indicia of what might constitute a quality search  
14 and a quality examination. And I wasn't intending  
15 this for the next slide, and you can go to the  
16 next slide, as a final thing, I've highlighted  
17 some of those, but my goal would be to try to get  
18 us all to work together to figure out what key  
19 things would really make the biggest difference in  
20 the shortest amount of time. And at that point, I  
21 would like to end my presentation and turn it over  
22 to Drew, if he would like to add or comment on any

1 of this or anything else.

2 MR. HIRSHFELD: Thanks, Marc. I would  
3 like to start off by saying I have reviewed your  
4 -- the slides, and you and I have had this  
5 discussion a few times about quality, and I agree  
6 very much with the content of what you have  
7 written and believe that there are many aspects to  
8 quality that we can focus on improving.

9 It's my feeling, what I liked most in  
10 your documents are really the idea of the -- two  
11 things stand out mostly is the, you know,  
12 qualities of shared responsibility, and I also  
13 believe that the early stages of prosecution are  
14 critical. I think if you make a mistake early on  
15 in prosecution on either side, that that mistake  
16 can be magnified as the prosecution goes on.

17 The last discussion that we had, I think  
18 we talked about throwing out to the group what was  
19 identified as the most critical elements of  
20 quality, and I think that, to bring everyone else  
21 up to speed where you and I were, Marc, that's  
22 where we had some difficulty, at least I did,

1 identifying the five most important or ten most  
2 important. I think we can identify very important  
3 elements and certainly key elements, but to label  
4 any as more important than others is somewhat  
5 difficult. And I also -- ones that I am very  
6 interested in, of course, are the interviews. I  
7 think, again, getting back to the early stages of  
8 prosecution being important, I think the early  
9 interview and meeting of the minds between both  
10 sides and getting on the same page is one of the  
11 most important aspects of quality, in my opinion.

12           And I also think that claims -- defining  
13 claim terms, making sure that this is similar to a  
14 meeting of the minds, although not necessarily in  
15 an interview, but making sure that claim terms are  
16 clearly defined and understood by both signs is  
17 what the scope of those terms are can go a long  
18 way.

19           In any case, I think that -- I'd be  
20 curious if the group had thoughts of it was  
21 possible to identify most important or if there's  
22 anybody who had any input as to what they would

1 identify as being some of the key drivers of  
2 quality. Nobody?

3 MR. BUDENS: Oh, no, we can't let this  
4 one go. This is Robert Budens. We can't let this  
5 one go entirely by. I'm interested in the stuff  
6 that Marc and Drew are saying here, but I don't  
7 think there's any question in anybody's mind, at  
8 least in the examining core, that the two key  
9 drivers to getting us to be able to do a good job  
10 is to give us the time to do the job and to  
11 improve the tools that we have so that we can do a  
12 better search in the time that we have.

13 And the only thing I'm going to say  
14 about that here is, as Peggy has mentioned, we're  
15 going to be going into a goal study, and if the  
16 PPAC, you know, wants to stand behind these  
17 discussions and goals of Marc and Drew, then I  
18 hope that the PPAC's voice will be heard loud and  
19 clear as this goal study goes forward and the  
20 discussions of time for examiners and what that  
21 time is likely to cost the agency goes forward,  
22 because that's where your two drivers are going to

1 be, to get, you know, the examining core to be  
2 able to do what we want to do.

3 MR. ADLER: This is Marc; can I comment  
4 on Robert's point? I think Robert and I have had  
5 this conversation briefly before, and I agree  
6 completely that the time required up front  
7 initially to search and examine the application  
8 the first time is the most important thing for us  
9 to be looking at. If we are short changing the  
10 examiners at that point, we're not going to be  
11 able to recapture or fix it later. And if we move  
12 time to give the examiners at that point, I firmly  
13 believe it will reduce the time that the examiners  
14 will spend later, and overall, will reduce  
15 pendency and improve quality. So I'm totally on  
16 board with the goal study that would identify --  
17 and it could be different by text sector, by, you  
18 know, types of applications in terms of the time  
19 and effort required to do a thorough search and  
20 examination up front.

21 I believe that we've been putting off  
22 some of this, some of our restrictions, practices,

1 actually push some of this to the future, and it  
2 may, in the long run, end up costing the examiners  
3 more time to re-examine the same application  
4 later, looking at different statutory claims that  
5 they could have done more efficiently or  
6 effectively earlier. Or there may be different  
7 examiners at a later date who pick up a divisional  
8 application, and therefore, start from scratch.

9 So I do believe that the early stage  
10 time requirements for the examiners is a critical  
11 aspect of improving the quality of the patents.  
12 But I think I'm with you, Robert, on that.

13 MR. MATTEO: Robert, this is Damon.  
14 I'll chime in sort of broadly, philosophically.  
15 You were asking about a voice and an ear. I'm  
16 certainly more than enthusiastically willing to  
17 lend an ear. And you know me, Robert, I'm not  
18 bashful, so my voice is certainly something that  
19 you'll hear, as well. You know, I view our  
20 participation in whatever fashion in the goal  
21 study as very much a part of our role, as a  
22 partnership between the PPAC and the PTO, you

1 know, for mutual education, facilitation, and  
2 hopefully some enabling fashion, as well. So, you  
3 know, I think we stand ready to assist in any way  
4 we can with the goal study.

5 MR. ADLER: Damon, this is Marc again.  
6 I also believe that the public will be supportive  
7 of helping -- have a discussion around the metrics  
8 and the problems that they see and possibly come  
9 up with some very good ideas and metrics to look  
10 at. Maybe some of the metrics that we -- some of  
11 the data that we have could be compared in a way  
12 that we haven't thought of.

13 And I believe that a public discussion  
14 around this in a collaborative and cooperative way  
15 would really be helpful, but it shouldn't be just  
16 focused around, gee, you know, we're doing a great  
17 job, or you're not doing a good job, you know,  
18 some general gripe session. So I really hope that  
19 the identification of a few indicia, even if  
20 they're wrong, and Drew and I may not agree that  
21 these are the right ones or the wrong ones, I  
22 don't even care, I just would like to have a straw



1 proposal around the metrics that we can have a  
2 public discussion and maybe come up with some new  
3 ideas that could be fed back to the effort.

4 MR. MATTEO: Okay. Marc, this is Damon.  
5 That's a perfect set-up. What I wanted to ask is  
6 if both PPAC and PTO would support setting up a  
7 framework for exactly that, a public forum  
8 discussion where the PTO or PPAC and the public  
9 can discuss the indices and other measures and  
10 metrics that would be useful in terms of  
11 identifying what really are the quality metrics of  
12 interest and how best can we execute against them.  
13 So I think from a PPAC perspective, Marc, you're  
14 stepping up and suggesting you're willing to do  
15 that.

16 MR. ADLER: Yes.

17 MR. MATTEO: Would the PTO support such  
18 a public form and open discussion?

19 MS. FOCARINO: Damon, this is Peggy.  
20 Yes, we would definitely support that. It was  
21 interesting, a question just came in and it was  
22 from Marc and it was, could the USPTO have a

1 mechanism for online submission of potential  
2 quality metrics, so I think that's a great idea.

3 MR. MATTEO: I think we just answered  
4 that question.

5 MR. ADLER: Yes.

6 MR. MATTEO: Great, okay. So then in  
7 the spirit of collaborative teaming, Marc, I  
8 suspect you're the lead for PPAC. Drew, are you  
9 the appointed PTO rep to work this framework for  
10 the public forum?

11 MR. HIRSHFELD: Sure, absolutely.

12 MR. MATTEO: Great, okay. Well, Marc,  
13 Andrew, I want to thank you very much for your  
14 considered thoughts and opinions on this, and  
15 equally for stirring us all to think rather deeply  
16 about this issue. And I'm looking forward to  
17 seeing what the public forum and the framework for  
18 that public forum look like and elicit.

19 MR. KIEFF: Damon, this is Scott; may I  
20 jump in for a sec?

21 MR. MATTEO: Absolutely, Scott. You've  
22 got some interference on your end of the line,

1        though.

2                   MR. KIEFF:  Sorry; is it still there?

3                   MR. MATTEO:  No, we're fine.  Thank you  
4        very much.

5                   MR. KIEFF:  Excellent; so, first of all,  
6        I just would echo what you were saying.  I, as I  
7        think the folks in the room, so to speak, know, I  
8        have been very skeptical about approaches like  
9        this to kind of perfect quality.  But I think that  
10       the approach that Marc and his team have adopted  
11       is one that, as a so called skeptic, I would say  
12       makes the fantastic deal of sense.  They I think  
13       are thinking about this in a hugely productive  
14       way, and so I applaud very much what they're  
15       doing, and I'm happy to help.  And one just  
16       thought that I hope could be kept in mind is that  
17       any time metrics are envisioned, people often  
18       start to have in their minds kind of the notion  
19       that they are going a long way towards achieving a  
20       really central goal.

21                   And I think that, as Marc pointed out,  
22        this is not a search for perfection, but rather a

1 search for understanding, first of all, what the  
2 goals are, and second of all, realistically how  
3 close we can come to accomplishing them, which is  
4 to say even a -- I at least would declare a  
5 victory if all that the study accomplished was an  
6 understanding of a common set of goals and an  
7 understanding of the factors that are available to  
8 be used to achieve those goals and the relative  
9 strengths and weaknesses of those factors, that is  
10 to say even if that's all we get out of this  
11 process, I think we've done the system and the  
12 office a huge service.

13 MR. MATTEO: This is Damon again. You  
14 know, Scott, I'm going to absolutely agree and  
15 amplify it. Often the benefit of the exercise  
16 outweighs its output proper, so I fully support  
17 that. And not to let an opportunity go by,  
18 nothing better than a skeptic to have on the team  
19 to make sure that the output and direction is such  
20 that it would satisfy most people. Would you be  
21 interested in second sharing the effort from PPAC?

22 MR. KIEFF: Oh, sure. I mean my sense

1 is they don't need another chair, but I'm happy to  
2 be a working body and be available to them in  
3 whatever way they would like.

4 MR. MATTEO: Excellent; well, very good.  
5 I hate to do this, but I'm going to wind at least  
6 part of the quality conversation to a close and  
7 introduce Peggy Focarino again, Acting  
8 Commissioner for Patents, who will talk about  
9 quality and efficiency initiatives at the PTO.  
10 Peggy, if you would, please.

11 MS. FOCARINO: Okay. Thanks, Damon. I  
12 think we heard a lot of really good things from  
13 Marc and Drew, and particularly the shared  
14 responsibility aspect of it. But I wanted to  
15 touch mainly on what we are doing internally at  
16 the USPTO to try to improve quality and  
17 efficiency. And the first thing I want to talk  
18 about is our interview training initiative. We've  
19 heard a lot, especially through the PPAC outreach  
20 efforts, all the focus sessions that were held all  
21 over the country, that interviews are an emotional  
22 subject and the public and applicants very much

1 want to talk to our examiners, and so we had a  
2 team together and put a pretty extensive training  
3 module in place, and we currently have trained  
4 over 3,000 examiners on interview practice.

5           And some of the focus of the interview  
6 training was when to have an interview and also  
7 when not to have an interview, how to hold an  
8 effective interview, what are -- procedurally,  
9 what are the guidelines for holding interviews,  
10 how do you grant an interview or deny an  
11 interview, and really emphasizing that interviews  
12 that are held early in prosecution help to better  
13 focus the examiners on the key issues and the  
14 applications, and that, in our experience, and we  
15 have data to show this, that interviews lead to  
16 early indication of allowable subject matter when  
17 there is allowable subject matter present in an  
18 application. And we're also focusing on expanding  
19 interview usage later in prosecution to identify  
20 allowable subject matter really with the goal of  
21 closing prosecution in the case and avoiding  
22 unnecessary RCE's. The other thing that we would

1 need to do, and we're working on this now, is  
2 developing a program to track interview requests.  
3 We hear a lot anecdotally that certain examiners  
4 deny interviews, and I don't think we have a good  
5 handle on the factual evidence of that, so we  
6 would like to develop a program to track interview  
7 requests and ask applicants and their  
8 representatives to use this program, and  
9 therefore, we can -- if we are having areas or  
10 pockets where requests are being routinely denied,  
11 then we can address those areas.

12 So the interview practice and the  
13 training on that is moving forward. We survey  
14 examiners at the end of each of these training  
15 modules. We're getting overwhelming positive  
16 feedback from our examiners that the training has  
17 been very effective and very useful.

18 And, as you know, we have a lot of  
19 junior examiners. Some of them don't feel that  
20 they had perhaps the appropriate skill set to  
21 suggest interviews. And for whatever reason,  
22 we're trying to close the gap there, and also

1 focusing on our whole --- population and how they  
2 can hold effective interviews telephonically, as  
3 well as the time that they're in the office once a  
4 week. So we recognize that there's two aspects to  
5 this, and we feel that we can really make a lot of  
6 end roads in this by having the training.

7 The next area that we're really focusing  
8 on is compact prosecution training. And this  
9 training includes early indication of allowable  
10 subject matter; it also includes proper after  
11 final practice, when to make proper final  
12 rejections, and raising the RCE awareness level of  
13 our examiners.

14 I think you heard Marc say that RCE's  
15 definitely have increased. There's plenty of, I  
16 don't know if you want to call it blame, but  
17 there's plenty of blame to go around on both  
18 sides.

19 We have situations where applicants  
20 desire the RCE, and we have situations where  
21 perhaps the examiner didn't close prosecution when  
22 they may have had the opportunity to close it, so



1 we're going to focus in on that.

2 We are looking at areas where we have  
3 applications that have numerous RCE's filed. Some  
4 of that is technology driven. Applicants desire  
5 RCE's sometimes at a higher rate and certain  
6 technologies than other technologies. But perhaps  
7 we do have areas where examiners are reluctant to  
8 allow applications, and we want to focus in on  
9 those areas and give examiners the tools to be  
10 able to close prosecution, to indicate early  
11 allowable subject matter when appropriate, and to  
12 make final rejections when appropriate.

13 And we're also looking at emphasizing  
14 the completeness of our first office actions, and  
15 Marc touched on this, that a first office action  
16 is critical, and giving examiners the tools to be  
17 able to do a thorough and complete and quality  
18 first office action will lead hopefully to a  
19 quality examination of that entire application.

20 Another thing that we heard a lot in our  
21 focus sessions around the country was the desire  
22 to have an ombudsman. And this person we envision

1 being in each TC. It would be -- the person would  
2 be a resource to applicants on TC specific issues,  
3 they would be able to resolve administrative  
4 issues very quickly, returning emails or phone  
5 calls within one business day, and provide  
6 applicants with personalized service when problems  
7 arise.

8           And I know when I go out and speak, I  
9 hear a lot of comments from practitioners that  
10 they're very reluctant to contact a SPE or a group  
11 director when they're having problems with a  
12 particular application, and perhaps the  
13 communication with the examiner in that case is  
14 broken down for whatever reason. So we really  
15 envision this person as sort of a neutral  
16 facilitator to deal with applicants, to try to get  
17 applications back on track, and to try to move the  
18 application along in the process.

19           They would also be a source of  
20 information independent from the examiner's chain  
21 of command, and like I said, a neutral facilitator  
22 to try to get the application moving forward when

1 it would otherwise not appear to be going that  
2 way.

3 And, again, we would like to be able to  
4 develop a system for tracking the number and type  
5 of request for ombudsman assistance, maybe a  
6 common email box for each TC to capture requests,  
7 and be able to analyze any trends or things like  
8 that and perhaps share some best practices in each  
9 of the TC's.

10 Another initiative that we are  
11 undertaking is search enhancement. We are in the  
12 process of providing search strategy training,  
13 peer to peer, if you will, where we would have one  
14 examiner share best practices and results of their  
15 searches with other examiners, a search  
16 information exchange, where a reviewer from our  
17 Office of Patent Quality Assurance would meet with  
18 examiners to evaluate their searches, again, on a  
19 neutral basis, where they would offer feedback and  
20 assistance and input, training on -- search tip  
21 training, capturing best practices for searching,  
22 perhaps posting them on our share point site, and

1 eventually on the examiner collaboration center,  
2 otherwise known as the examiner Facebook, which we  
3 are about to beta test, mandatory training for STN  
4 dialogue in -- we do have pockets or areas where  
5 examiners seem to have a lot of time in these  
6 particular data bases, so we like to zero in and  
7 focus them on making efficient use of those data  
8 bases.

9 We have our ITRP's, which are our  
10 Information Technology Resource Personnel,  
11 providing sessions on searching classification,  
12 searching the schedule, locating class  
13 definitions, focusing on classified searching, and  
14 also giving examiners feedback on their search  
15 strategy, because these people are experts in  
16 searching various data bases, so that's another  
17 initiative we have in place.

18 And we can't lose focus that a lot of  
19 our managers are also junior, so they need our  
20 attention and training also. So we have training  
21 on reviewing PAP guidelines, Performance Appraisal  
22 Plan guidelines. We're holding workshops for end

1 of the year ratings, progress reviews. We have a  
2 case review workshop that's aimed at how to  
3 efficiently and effectively review cases and to  
4 give constructive feedback to our examiners. And  
5 we have a mentoring program for our SPE's, where  
6 we have more senior SPE's helping our junior SPE's  
7 and guiding them as they try to manage a large  
8 work force of junior examiners, and also  
9 developing TC guidelines that outline policies and  
10 procedures to ensure consistency among SPE's  
11 within the same area of technology.

12 And then another aspect that we're  
13 looking at is maximizing examination resources.  
14 And what this entails is really looking at areas  
15 where we can recapture resources. One of those  
16 areas is our training academy, which, because of  
17 the decrease in the number of hires, we were able  
18 to redirect resources from the training academy  
19 back to the technology centers to help train and  
20 manage the examiners and the technology centers.

21 Another area is the Office of Patent  
22 Quality Assurance, where we were able to redirect

1 reviewing resources to the technology centers to  
2 be able to do more up front reviews early in the  
3 prosecution to help develop training in the TC's  
4 and to be more proactive and deal directly with  
5 the technology centers in their quality efforts.  
6 Does anyone have any questions on any of those  
7 initiatives that I mentioned?

8 MR. ADLER: This is Marc Adler; it's not  
9 a question, it's a comment. I think that all of  
10 the things you just mentioned, Peggy, are  
11 excellent. I think the maximizing of the examiner  
12 resources earlier in the process, especially from  
13 second pair of eyes to initial, you know, issues,  
14 whether it's interview or first office action, is  
15 a great step.

16 And we know that this will help; but I  
17 also feel that some of the examiners, the training  
18 is good for the interview, but it may also be  
19 helpful to have the supervisors participate on  
20 some kind of, you know, maybe not on every  
21 interview, but routinely with their junior  
22 examiners during these interviews to help give

1       them some feedback on how they're doing relative  
2       to the training that they receive, and whether or  
3       not they possibly could have reached some kind of  
4       compromise during the discussion instead of  
5       saying, well, I'm not sure, I'll have to check  
6       with my supervisor. Many interviews, somehow it  
7       feels like the examiner is somewhat uncertain  
8       about whether -- about what he or she could do at  
9       the interview, and having their primary or a  
10       supervisor there might help move those to  
11       resolution faster.

12                MS. FOCARINO: I think those are good  
13       suggestions, Marc. And as a matter of fact, we  
14       have talked about having the SPE sit in on a  
15       certain number of interviews for their examiner so  
16       they can get a feel of how comfortable the  
17       examiner is with holding the interviews, if they  
18       have the right tools to be able to hold effective  
19       interviews, and also looking at negotiation  
20       authority and when that authority is held by the  
21       examiner, that we do make a commitment in the  
22       interview at least so the attorney knows what

1 we're thinking, and if not, if the examiner does  
2 not have negotiating authority, then someone would  
3 be present in the interview who has that  
4 authority.

5 MR. ADLER: Great, thanks, Peggy.

6 MR. BUDENS: This is Robert; Peggy,  
7 since skeptics are raising their head here, I'm  
8 going to be one on one of these issues. I'm a  
9 little skeptic about how this ombudsman is going  
10 to work in the -- and how they're going to  
11 interact with examiner core. I appreciate the  
12 idea of the neutral facilitator, and I appreciate  
13 the idea of them being outside the chain of  
14 command, but given those two things, I'm trying to  
15 -- wondering if you can give us some more detail  
16 of how you envision that ombudsman actually being  
17 of service and interacting with the examiner and  
18 the examiner's supervisors, et cetera, to  
19 facilitate.

20 MS. FOCARINO: There are other skeptics  
21 besides you, Robert. I'm not one of them. But I  
22 do envision this person to be sort of a



1       troubleshooter.  And I know we've tried it in  
2       various areas.  I think Tech Center 1600 had a  
3       similar position many years ago, and you know,  
4       there's pros and cons to that, but it was  
5       something that we heard repeatedly in the PPAC  
6       outreach efforts, and it's something that we would  
7       really like to try, not impinging on a  
8       supervisor's authority to, you know, tell an  
9       examiner what they feel a good office action is  
10      that they would be willing to sign, for example,  
11      but to help when sometimes there's just no --  
12      people may be at loggerheads with the applicant  
13      and the examiner, and there just doesn't seem to  
14      be any movement, just to agree to disagree at that  
15      point and to move the application forward so that  
16      it's not languishing.

17                 And, you know, there may be issues that  
18      we have to deal with that you're thinking of and  
19      we're prepared to, but we certainly don't envision  
20      this person being another level of review and an  
21      obstacle to advancing prosecution.  This is meant  
22      for cases that are stuck, for whatever reason, in

1 prosecution, and there's a reluctance on the part  
2 of the applicant to deal with the examiner or the  
3 SPE or -- and, you know, it's not always the  
4 examiner that's at fault either, so someone with  
5 experience that can step in and just be a  
6 facilitator I think is what I envision.

7 MR. BUDENS: It's funny you should  
8 mention 1600, because that's one of the reasons  
9 I'm a skeptic about this, because we did have  
10 positions many years ago that started out with  
11 good intentions and eventually morphed into  
12 somewhat of a disaster, you know, depending on  
13 your point of view, I suppose, and that's where  
14 I'm concerned, is how we prevent us from going  
15 down that path again as we do this on an  
16 agency-wide basis.

17 MS. FOCARINO: Right; and I have heard  
18 about that, and I certainly don't want to repeat  
19 that, but learn from what did not work well in  
20 that and try to have a pretty effective program.

21 MR. ADLER: This is Marc; I have a  
22 comment on this, on the ombudsman. I think that

1       it's a good idea when we're -- the applicants may  
2       not understand all the time what the examiner is  
3       trying to tell them, and if they can reach out to  
4       somebody who might be able to explain it to them  
5       that, look, you don't have any data in this case  
6       to support the arguments that you're making, or  
7       the arguments you're making aren't related to the  
8       claims that you're making, you know, you don't  
9       really understand that the claim says one thing  
10      and you're arguing something totally different.

11                 These are things that could very much  
12      help applicants more than they possibly could help  
13      the patent examiners. So, Robert, maybe you could  
14      think of it a little bit from that perspective, as  
15      well.

16                 MR. BUDENS: I appreciate that, Marc,  
17      and we're certainly open to looking at this idea  
18      and seeing. Again, my skepticism comes from how  
19      the situation could morph. And a lot of that I  
20      think is going to be dependent on the  
21      personalities and capabilities of the person being  
22      put into these ombudsman positions. If they're

1 very senior, very experienced, and have good  
2 people skills, it has a potential for being a  
3 successful program I think; if not, then we could  
4 be morphing back into the problems we had. And  
5 basically some of the problems we still have are  
6 leftovers from those situations in 1600 during the  
7 '90's and later.

8 MR. MATTEO: Okay. This is Damon. If  
9 there are no further questions, I think we'll wind  
10 down the quality discussion. And we have coming  
11 up the financial update. And standing in for  
12 Michelle Picard will once again be Barry Hudson  
13 who will provide the update for us. If you would,  
14 please, Barry, thank you.

15 MR. HUDSON: Damon, I'm here, thank you.  
16 We'll just pull up the slides real quick. Okay,  
17 they're up. If you go to the first slide. What I  
18 want to do is, on behalf of Michelle and Mark,  
19 just kind of give you PPAC members an update of  
20 our revenue collection to date, actuals.

21 So on this chart, we'll focus on the top  
22 graph, which are really the patent fee

1 collections. And these are actuals through May.  
2 And as you can tell, although the change, because  
3 of the size of the graph, doesn't really  
4 demonstrate that, but over time -- since the  
5 beginning of the year and today, you can see the  
6 trending down of our revenue, which is basically  
7 not consistent with prior years.

8 For example, October, November, and  
9 December, during the course of the year, that is  
10 revenue collections on average per day. So those  
11 months were pretty typical in terms of the same  
12 pattern we would see for the prior fiscal year.  
13 So there was nothing there to alarm us basically  
14 that there would be a downturn in filings or  
15 maintenance fees until January, and there was a  
16 drop in January, and that's not the pattern that  
17 we typically see in terms of filings and  
18 maintenance fee renewals, which are the bulk of  
19 our revenues.

20 At that point in time, that was a red  
21 flag, as you well know. And since that time, we  
22 have seen the trending down, the biggest happening

1 between April and March.

2 Now, the bottom line is, through May, we  
3 see it kind of leveling off. The real critical  
4 factor here is, will that be the forecast for the  
5 rest of the year, June, July, August, and  
6 September. The indications are that June will be  
7 a month that we have to watch very closely because  
8 June is like -- in terms of certain filings from  
9 the international community has an impact because  
10 they close out their quarters or their annual  
11 budget and they may make decisions in terms of  
12 their portfolio and filings. So June will be a  
13 very telling month.

14 The bottom line on this chart is that  
15 with the drop in revenue, I think everybody well  
16 knows, we've taken a lot of action since January  
17 to reduce our costs. We have budgetary  
18 constraints, and we have reduced costs  
19 significantly to make sure that we live within our  
20 projected revenue. If the remaining months of  
21 this fiscal year, June, July, trend like we have  
22 seen for April and May, at that level, we will get

1 through FY '09 without any further cost reductions  
2 or an influx of new revenue. The next chart.

3 MR. MATTEO: Excuse me, Barry, this is  
4 Damon.

5 MR. HUDSON: Yes, Damon.

6 MR. MATTEO: A quick question; I think  
7 these charts would be more illustrative if we  
8 could get a sense of year over year changes.

9 MR. HUDSON: Yes.

10 MR. MATTEO: So April dropped to, I  
11 don't know, on the order of 6.1 for this year;  
12 would it be -- do you have a sense of what the  
13 year over year change is?

14 MR. HUDSON: I don't have that with me,  
15 but I can get that to you.

16 MR. MATTEO: Okay. Yeah, it would be  
17 very interesting to understand the trending  
18 analysis. Thank you very much.

19 MR. HUDSON: Yes; on the next chart,  
20 basically all this is is a breakout of our major  
21 fee areas. The top line, blue, is -- is that me?

22 MR. MATTEO: What is that?

1           MR. HUDSON: I don't know. Bob said it  
2 was a blender going, we're having Margaritas. I  
3 think we're back. All right. Well, this chart  
4 basically is just a breakout of the major fee  
5 categories. The top bar is maintenance, the  
6 second bar, red bar, is filing fees, and then the  
7 three below are extensions of time, PCT, and  
8 patent issues. So focusing on the top two bars,  
9 this is just a breakout of the previous chart,  
10 which was cumulative revenue.

11           That shows that maintenance fees and  
12 filing fees have dropped. Since maintenance and  
13 filing fees account for about 80 percent of our  
14 patent fee revenue, then, obviously, this supports  
15 that previous chart.

16           Again, if these maintenance and filing  
17 fees continue at this rate for June, July, we'll  
18 get through the year in terms of all the cost  
19 reductions we are taking and budget constraints  
20 that we have to date. Next slide.

21           One of the things that we did do was to  
22 work with IPO and AIPLA, and they were gracious



1 enough to go out and survey their members on their  
2 membership in terms of what they were projecting  
3 in terms of filings and renewing their portfolio  
4 for maintenance fees. And the bottom line is that  
5 it's tough to really tell, it's kind of, you know,  
6 on the maintenance -- you can see in the summary  
7 there the trends. The first two lines are patent  
8 filing fees and maintenance fees. You can see  
9 that the overall response was really that the  
10 filings, that the member said we're not -- we're  
11 going to decrease possibly the number of filings  
12 by 48 percent, and some said 25 percent would  
13 increase, and 27 percent would remain unchanged.  
14 So what the net effect of that means, we don't  
15 know, but it's a data point.

16 Maintenance fees basically is similar,  
17 you know; percent said they would increase, and 40  
18 percent said that they would -- so that seems like  
19 good news, and, in fact, is good news, and we  
20 would see that maintenance fees would continue to  
21 be paid without any significant reductions.  
22 There's still some unknowns --

1 MR. MATTEO: --

2 MR. HUDSON: I'm sorry, Damon, go ahead.

3 MR. MATTEO: I see -- just a data point  
4 here. The 2009 forecast from IPO AIPLA, does that  
5 jive with what you're seeing so far, and as a  
6 correlating point, how does that support or  
7 diminish your faith in their 2010 forecast?

8 MR. HUDSON: Well, there's two things,  
9 it kind of supports what we're seeing, at least  
10 through -- initially from the fact that there has  
11 been a change in the way a lot of the members and  
12 the applicants are -- the bulk payers have been  
13 trimming their portfolios and things like that.  
14 This came out basically and I said that it looks  
15 like there may be some increases in '10. Whether  
16 or not those members or the community starts  
17 recognizing the change in the economy now and they  
18 actually change that, we'll see that in June and  
19 July of -- coming down the pike. So we're  
20 hopeful, but we don't have any, you know,  
21 predictive analysis that said this is what will  
22 happen.

1           So we monitor fees on a daily basis. I  
2           mean we're able to know from yesterday to today  
3           what we collected. And to get us through the  
4           year, we're looking at, on average, for patent  
5           fees, about \$6.2 million per day on average. Now,  
6           there are spikes during the month because there  
7           are different periods of the week where bulk  
8           payments are made from our bulk filers. That's  
9           all I have.

10           MR. MATTEO: Thank you very much, Barry.  
11           In particular, thank you for standing in for  
12           Michelle on such short notice. We very much  
13           appreciate your help and effort here.

14           MR. HUDSON: You're welcome. We may  
15           have to edit my comments for the record if I  
16           misstated anything, but I think I captured it.

17           MR. MATTEO: Well, we were doing our  
18           best to throw you softball pitches, so not to  
19           worry. I would like at this point to open it up  
20           to broader questions from PPAC or the audience for  
21           Barry on this presentation.

22           MR. PINKOS: Barry, it's Steve Pinkos;

1       how are you?

2                   MR. HUDSON:   Steve, fine; how are you?

3                   MR. PINKOS:   Good, thanks.  Thanks for  
4       the presentation.  Two quick questions; how short  
5       is the USPTO thus far this year, or I guess what  
6       you're projecting out at this point in total for  
7       the year, you know, \$100 million short, \$150, \$70,  
8       and also, where have the most significant cuts  
9       occurred thus far?

10                  MR. HUDSON:   We are -- in terms of  
11       dollars, I think we -- because we have about a  
12       seven percent decrease in terms of filings from  
13       what we had planned, that translated into a \$140  
14       million shortfall.  Now, a lot of that shortfall  
15       --- \$140 million this year approximately was our  
16       shortfall.  We didn't have to obtain all that in  
17       terms of cuts, but we identified I think over \$110  
18       million of cuts to date.  The largest piece of it  
19       would be hiring.  We have put a -- we have froze  
20       all the hiring across the agency except for some  
21       critical positions, and those are just a few, and  
22       only hired attritions, I believe, and patents; is

1 that right -- placement? So hiring is the biggest  
2 thing.

3 I think you heard a presentation from  
4 our CTO earlier that we did scale back some of the  
5 IT roadmap initiatives to lengthen the time so  
6 that we could have some cash flow for this year.  
7 But those are the two big areas, as I recall.

8 MR. PINKOS: Thank you very much.

9 MR. MATTEO: This is Damon again; any  
10 further questions for Barry on this topic?

11 MR. PATTON: Hi, Barry; this is Doug  
12 Patton. I've just kind of been listening a lot.  
13 I've got a quick question for you. It may not be  
14 in your purview exactly. But I have a number of  
15 associates working at Homeland Security, and they  
16 have gotten substantial funds from the Obama  
17 Administration to increase efficiency and study  
18 efficiency, and has the USPTO not been able to tap  
19 into some of this, because there's a number of  
20 other agencies that have been getting funding, and  
21 it certainly seems important, you know, obviously,  
22 to improve USPTO services -- the budget cut? Is

1       there any future consideration or does the USPTO  
2       strictly have to live within its own funding?

3               MR. HUDSON:   Peggy, do you have a  
4       response?

5               MS. FOCARINO:  Yeah; Barry wants me to  
6       answer that.

7               MR. HUDSON:  Well, Peggy, maybe it's for  
8       you.

9               MS. FOCARINO:  Yeah; Doug, I guess what  
10       you said was that the Department of Homeland  
11       Security has obtained funding to study efficiency  
12       in their organization, right?

13              MR. PATTON:  Yeah; it's quite a  
14       substantial amount.  And is there any way for -- I  
15       mean amid all these budget cuts and how important,  
16       as I've learned over the past three years, how the  
17       Patent Department is really a foundation of our  
18       economic system; is there any way to -- for this  
19       to be a consideration, or do we -- are you and  
20       John, you know, aware that this has to be -- you  
21       guys have to live within your own budget?

22              MS. FOCARINO:  Well, we have to live

1 within the budget that we project, and it's based  
2 on our fee income. So we budget to the  
3 collections that we project, and we don't get any  
4 supplemental money.

5 MR. PATTON: And there's no process to  
6 -- for reconsideration, you know, or -- there's no  
7 other way to do it, because, you know, obviously,  
8 in the past, the patent fees have diverted, you  
9 know, and I'm just wondering if there is any  
10 reciprocity, you know, in the process for that  
11 consideration. I'm just asking because it just  
12 seems a pity amid all the great things that are  
13 going on at the USPTO that there couldn't be some  
14 way to step outside the box and tap into  
15 something.

16 MS. FOCARINO: Right; and you're exactly  
17 right, Doug, and I think because of the financial  
18 situation we find ourselves in with the unexpected  
19 change in our filings, that we didn't anticipate.  
20 As you know, historically, we've had a really good  
21 model and a way of pretty accurately projecting  
22 filings, and this year was certainly an anomaly,

1 and I think internally, it's caused us to come up  
2 with a lot of creative ideas on what we may do to  
3 try to prevent this from happening in the future.  
4 But we need an Under Secretary in here to be able  
5 to advocate for that, and, you know, move those  
6 types of ideas forward for us.

7 MR. PATTON: -- maybe by August or  
8 September. Could that be a -- would there be kind  
9 of a podium that that Under Secretary could pursue  
10 that would be able to do this, or is that totally  
11 -- so far, you know, out of any realm of  
12 possibility that, you know, my question is, you  
13 know, is completely just blue sky, this will never  
14 happen?

15 MS. FOCARINO: I don't think it's blue  
16 sky. I think the timing and the economic  
17 situation, you know, may present an opportunity  
18 for us. But again, we're looking forward to  
19 having an Under Secretary in here so that we can  
20 explore some of the ideas that we have.

21 MR. PATTON: Yeah; it just seems, you  
22 know, the Patent Department is so important to



1 have all the improvements not stay at best case  
2 and all the important things, it just seems, for  
3 the amount of funding you need, based on, you  
4 know, the complete government budget, it just  
5 seems so ridiculous that that can't be done. And  
6 I guess probably everyone has accepted that  
7 reality, but, you know, just being kind of an  
8 outsider looking in, it just seems like it would  
9 be such an important thing to approach someone on,  
10 but regardless, thanks for your answer.

11 MR. MATTEO: This is Damon again. Thank  
12 you, Doug. In the absence of any further  
13 questions --

14 MR. FOREMAN: Actually, Damon, I'd like  
15 to add something; it's Louis.

16 MR. MATTEO: Oh, please do, Louis.

17 MR. FOREMAN: Peggy, you know, I think  
18 we all agree that for innovation to thrive, the  
19 patent system has to be -- it's essential in that  
20 engine of innovation, and I understand that you  
21 guys feel like you have your hands tied at this  
22 point in this process, but what can PPAC do to

1 assist?

2 I mean I understand you can't go to the  
3 Hill and necessarily lobby for dollars. There's  
4 an enormous economic stimulus package out there  
5 that seems to be generating innovation in other  
6 areas, but the engine of innovation is running out  
7 of gas. So is there anything that PPAC can do at  
8 this point to assist, or is there a way to  
9 mobilize the public to draw attention to the fact  
10 that we're starving off the most critical function  
11 of innovation?

12 MR. TAYLOR: Louis, this is Jeff Taylor.  
13 I think that we've, you know, we share your  
14 concern, we share your frustration, we're trying  
15 to be as patient as we possibly can in waiting for  
16 the name of the next Under Secretary. I will, you  
17 know, commit to everyone that I will do my best to  
18 move heaven and earth to get this nomination  
19 confirmed as quickly as possible and against great  
20 odds with this, again, Supreme Court nomination  
21 really being the big show and us being the little  
22 show with the Judiciary Committee. But I think

1 that there is very little that can be done  
2 otherwise. I can't, you know, in all honesty,  
3 advise anyone to do anything other than to be  
4 patient. And, you know, we have -- I know that  
5 John Doll and others have spoken to the Department  
6 of Commerce, we've spoken to OMB several times and  
7 had good, honest conversation with them, but  
8 really the ball is in their hands, and so we've  
9 just got to be, you know, patient and hopeful that  
10 we're going to have a name announced any time now  
11 and then we can move from there.

12 MR. FOREMAN: Thanks, Jeff, I appreciate  
13 your feedback. And I know you've been copied on  
14 some of the correspondence that John Doll and I  
15 have been having. There are a number of people in  
16 the public sector who would like to participate  
17 and help assist the Patent Office. It just  
18 doesn't seem like there's a forum at this point  
19 for anyone to help you get through this mess.

20 MR. TAYLOR: I have had conversations  
21 with John Doll about that, and I -- unfortunately,  
22 I agree that, you know, right now we're sort of in

1 a holding pattern.

2 MR. FOREMAN: That's it, Damon.

3 MR. MATTEO: Thank you very much, Louis.

4 Okay. So then it would appear this is certainly a  
5 day of first, the first fully virtual PPAC, and as  
6 far as I can tell, the first time we've ever  
7 actually finished this on schedule. So without  
8 further adieu, I'd like to bring the public  
9 session to close, but I'd also like to do it with  
10 ample and well deserved thanks to the PTO  
11 participants, to the PPAC participants, to our web  
12 and our live audience, thanks, everybody, for your  
13 patience, your questions, and your kind attention,  
14 and most importantly, your interest. Thank you  
15 very much, everybody.

16 (Whereupon, at 2:21 p.m., the  
17 PROCEEDINGS were adjourned.)

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