

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

PUBLIC SESSION

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Anderson Court Reporting
706 Duke Street, Suite 100
Alexandria, Virginia
Tel. (703) 519-7180 Fax (703) 519-7190

- 1 PARTICIPANTS:
- 2 KEVIN RIVETTE
- 3 ROBERT BUDENS
- 4 CATHY FAINT
- 5 MAXIMILIAN GRANT
- 6 CARL GULBRANDSEN
- 7 DEAN KAMEN
- 8 JOHN LOVE
- 9 GERALD MOSSINGHOFF
- 10 LISA NORTON
- 11 DOUGLAS PATTON
- 12 ANDREA RYAN
- 13 DAVID WESTERGARD
- 14 JON DUDAS
- 15 JOHN DOLL
- 16 BARRY HUDSON

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

2 (2:40 p.m.)

3 CHAIRMAN RIVETTE: Welcome,
4 everybody here. Since it's a small group,
5 could we go around and kind of state who's
6 here? Can we start on this side?

7 MR. WALSH: Hi, my name is Chris
8 Walsh. I'm an attorney here in Washington
9 with Stern Kessler.

10 MR. KEY: Hi, my name is Stephen
11 Key, and I'm with Searching.

12 MR. NOY: I'm Steve Noy with AIPLA.

13 MR. KAZENSKE: Kaz Kazenske,
14 Microsoft.

15 MS. ASAKI: I'm Yoko Asaki,
16 Washington Core.

17 MR. BARRETT: I'm Glen Barrett,
18 Exxon Mobil.

19 CHAIRMAN RIVETTE: Over on that
20 side?

21 MR. RILEY: I'm Ron Riley. I'm the
22 president of the Professional Inventors

1 Alliance, and the executive director of
2 Inventor Ed.

3 CHAIRMAN RIVETTE: Perfect.

4 MR. HAJEC: I'm Don Hajec. I'm a
5 group director in TC 3600.

6 MR. STERN: I'm Ron Stern, and I
7 help out with POPA.

8 CHAIRMAN RIVETTE: Good.

9 MR. MORSE: Greg Morse, SPE on
10 detail with John Doll's office.

11 MR. JOHNSON: Bob Johnson. OCIO,
12 PTO.

13 Ms. Alston: Donnetta Alston Office
14 Manager, Commissioner for Patents.

15 MS. AUSTIN: Chaunte Austin, Staff
16 Assistant, Office of the Under Secretary
17 and Director.

18 MR. SEWELL: Al Sewell, Acting
19 Director (off mike).

20 OPENING REMARKS

21 CHAIRMAN RIVETTE: Perfect. So,
22 what I'd like to do now is start going

1 through -- John, if you wouldn't mind, some
2 strategic overview. Or we can go with the
3 patent operations -- whichever one you feel
4 like. Then we'll kind of go through a recap
5 of what we've done today.

6 COMMISSIONER DOLL: Why don't we do
7 operations first, because I think that will
8 set the stage on where we were last year,
9 where we'd like to go this year. And then
10 I'll talk about where we want to go two,
11 three five years from now.

12 CHAIRMAN RIVETTE: Before we start
13 that, is there anyone here that wants to make
14 a statement, wants to say anything? Raise
15 your hand now or forever hold your peace. Is
16 there anybody that came in?

17 COMMISSIONER DOLL: Darn -- we're
18 actually going to have to talk the whole
19 time.

20 CHAIRMAN RIVETTE: Okay. My name's
21 Kevin Rivette, if anybody wanted to know.
22 Carl, are you still there on the phone?

1 (No response)

2 CHAIRMAN RIVETTE: I guess not.

3 COMMISSIONER DOLL: He went with
4 Dean.

5 CHAIRMAN RIVETTE: That's what I'm
6 wondering. So we lost two members at the
7 break. So why don't we start in.

8 PATENT OPERATIONS OVERVIEW

9 MR. LOVE: My name is John Love.
10 But for the next 40 minutes, if you can
11 imagine me being Peggy Focarino, that would
12 help.

13 (Laughter)

14 CHAIRMAN RIVETTE: John -- let's
15 back that one up. Peggy's not able to be
16 here today, so I'm going to present to you
17 some of the facts and figures and goals, and
18 give you an idea of where we are in terms of
19 pendency, and number of examiners, and so
20 forth -- for this year, or if you want to go
21 to next year -- in our operations. There
22 should be a copy of the PowerPoint that was

1 handed out as part of your packet. And I
2 think we have paper copies for the public
3 session. I'll just go through it very
4 quickly. If you have questions, please
5 interrupt, and we can talk about it. And
6 I'll try not to use too many acronyms.

7 At the end of the year -- and we've
8 had a lot of talk about this -- the backlog
9 of applications that are awaiting first
10 action -- that means they have not had a
11 first office action on the merits yet, did
12 surpass the 700,000 number, hence the concern
13 about the backlog and where we are with that.
14 With the hiring of 1,200 examiners, we are up
15 to 4,883 patent examiners; we have 397
16 supervisors -- and these include what we call
17 "SPEs" -- special program examiners -- and
18 quality assurance examiners. We have 29
19 Patent Academy trainers. That's in the new
20 training academy; and 22 TC group directors.

21 CHAIRMAN RIVETTE: How large is
22 that academy? How many people are we running

1 through it?

2 MR. LOVE: This past year I think
3 we ran about half of our hires through, with
4 about 600.

5 CHAIRMAN RIVETTE: About 600? And
6 where is it located?

7 MR. LOVE: Throughout the campus.
8 We've had to basically -- really find space
9 in all areas. And actually we went out and
10 got some new space, too, that's adjacent to
11 the campus. Okay -- so let's in the
12 operations, we're going to talk about the
13 2006 filings, the 2006 goals and results, and
14 then some of the initiatives that we
15 undertook in 2006.

16 (Slide)

17 CHAIRMAN RIVETTE: What's it? UPR
18 filings? That's utility --

19 MR. LOVE: Plant and reissue
20 filings. You can see we've had a steady
21 increase. And in '06 -- a rough number, but
22 pretty accurate -- is 417,000 filings. And

1 since what we've put out was in the 300,000
2 area, so you can see again that we're not
3 able to keep up with what's coming in the
4 door each year, let alone get to the backlog
5 from the previous year. (Slide.) And the
6 filing growth rate was over 8 percent for
7 this past year.

8 CHAIRMAN RIVETTE: What was it?

9 COMMISSIONER DOLL: 8.7.

10 MR. LOVE: 8.7.

11 MR. MORSE: Preliminary 8.7. I
12 think there's another 2,000 filings. I think
13 it's up around --

14 MR. LOVE: How many precincts have
15 reported in?

16 (Laughter)

17 MR. LOVE: 9 percent of the --

18 CHAIRMAN RIVETTE: Are we pretty
19 close to 9? Or closer to --

20 MR. MORSE: My best guess is 9.1.

21 (Slide.)

22 MR. LOVE: The next slide shows you

1 the continuation filing rates. The top graph
2 there is the continuations, which includes
3 straight continuations, continuing
4 prosecutions applications which are phased
5 out; requests for continued examinations; and
6 divisionals.

7 CHAIRMAN RIVETTE: Why are we
8 seeing such an increase, John?

9 MR. LOVE: Well, I think --

10 (Laughs.)

11 CHAIRMAN RIVETTE: No, I'm serious.

12 MR. LOVE: Well, there's a lot of
13 reasons. We think that people are -- one of
14 the things that the rules package was
15 addressing was the increase in the number of
16 continuations being filed. And there's
17 various reasons and strategies why our users
18 are doing that. Some of the reasons that are
19 out there is that applicants want to keep the
20 case pending longer so that they have more
21 options, so that they can understand where
22 they are in terms of what the real embodiment

1 is that they need to protect, the scope of
2 the claims and so forth. Some will say that
3 because of the youth of our examiners that
4 they're not getting to the real issues early
5 enough and it's causing more continuations.
6 That's a concern of some individuals.

7 COMMISSIONER DOLL: What's
8 interesting, though, is that when we go out
9 and talk to bar associations, we hear that it
10 takes two, three, four continuations before
11 the examiner understands the invention. When
12 I come back and we have town halls with the
13 examiners, the examiners say: it takes us
14 three, four, five continuations to get the
15 claims narrowed down to something that's
16 reasonable that we can search and that we can
17 actually give a good office action on. And
18 both those statements are probably true,
19 because we have a spectrum of problems, and
20 we have a spectrum of quality. And I think
21 both are true.

22 CHAIRMAN RIVETTE: Robert, are you

1 seeing the same thing? From your site?

2 MR. BUDENS: I think what John has
3 said I would tend to agree with. And, also,
4 the trunk of that is just prosecution in some
5 of the tech centers; you know, 1,600 -- we
6 have a lot of continuations just because
7 prosecution continues on while the companies
8 are looking for FDA approval, for example.
9 They just keep the cases alive.

10 CHAIRMAN RIVETTE: Do we have any
11 breakdown on this by TC?

12 MR. LOVE: Yes.

13 CHAIRMAN RIVETTE: Have we? Where
14 are we finding the most continuations?

15 MR. LOVE: Well, the first
16 continuations are relatively even across the
17 TC's: it's 1600s that subsequent really stick
18 out.

19 MS. NORTON: Do you think that's
20 related significantly to the quality
21 initiatives? That more rejections are going
22 out because of quality review?

1 MR. LOVE: No, I don't think so.
2 But I don't have the experience in 1600s, so
3 I couldn't really say.

4 CHAIRMAN RIVETTE: Well, we were
5 talking right over here.

6 MR. LOVE: Yes.

7 MR. BUDENS: I don't think -- I
8 mean, the quality initiatives are playing a
9 part in the last two years, but I think the
10 other issue really is a case of the
11 companies' taking time to overcome enablement
12 rejections; for example, collecting the data
13 they need in order to overcome the rejections
14 that are being made. That would be my view
15 from an examiner's point of view. We can get
16 the industry point of view also, but -- but
17 that's, I think, where we mostly would see
18 them.

19 MS. RYAN: And I think it's a
20 combination of things. I think that there's
21 a great pressure in the pharmaceutical and
22 biotech industry to file early, and there's

1 the weighing of do you have enough to file?
2 Do you wait? And so there is that balance.

3 MR. BUDENS: In reply to that, too,
4 I would also point out: this one also
5 includes divisionals; 1600 does a lot of
6 restrictions and stuff, and some of the
7 electrical areas do. So by factoring in the
8 divisionals in that statistic, you've also
9 increased that somewhat.

10 CHAIRMAN RIVETTE: So let's just --
11 for the people that are just joining us --
12 one of the things we're trying to do is get
13 rid of the acronyms, get rid of the
14 priesthood jargon. Doug, are you familiar
15 with what a "continuation" is, and what a
16 "divisional" is?

17 MR. PATTON: Yes.

18 CHAIRMAN RIVETTE: Okay. Fine.
19 Thanks.

20 MR. LOVE: Okay, moving on then to
21 the next slide -- this, Jerry, shows some of
22 the targets of the past year in terms of

1 quality goals. The goal for '06 was to be
2 less than 4 percent with respect to our
3 allowance error, and to be greater than 86
4 percent in the in-process compliance number.
5 And that has to do with -- the difference is,
6 allowance error has to be with allowed
7 applications that are reviewed by our quality
8 review examiners. The in- process review
9 compliance number has to do with reviews of
10 applications before they're allowed; in other
11 words, first office actions, restriction
12 requirements, final rejections -- that sort
13 of thing. So that's the two different
14 numbers and what they're looking. And in '06
15 you see -- and, by the way, one of the things
16 we really want to do, and we'd like the
17 board's input -- the PPAC -- go from
18 characterizing it as an "allowance error" to
19 a compliance factor for allowances also.

20 One goal is expressed in terms of
21 "compliance," and the other is "error rate."
22 So we'd like to be consistent and also

1 express it in terms of compliance with
2 respect to the allowance error rate. But the
3 overall is 3.5 percent for the corps for the
4 allowance error rate, which is below the 4
5 percent, which means we surpassed our goal --
6 significantly. And the compliance rates for
7 the in- process reviews were 90 percent,
8 which is again exceeding the goal by a
9 significant amount.

10 CHAIRMAN RIVETTE: Why don't you
11 give us an idea of what the numbers are.
12 1600 is bio?

13 MR. LOVE: It's biotech-1700 is
14 traditional chemistry; 21 is computer
15 software, computer architecture; 26 is
16 telecommunication -- any communication-type
17 system; 28 is the traditional electrical
18 areas; 3600 is -- they have business methods,
19 they have civil engineering -- a lot of the
20 traditional transportation arts; then 3700
21 has the other mechanical arts.

22 CHAIRMAN RIVETTE: So you get

1 software in 21 and 26?

2 MR. LOVE: Yes.

3 CHAIRMAN RIVETTE: 36?

4 MR. LOVE: 36 has the business
5 methods area.

6 CHAIRMAN RIVETTE: So, as I look at
7 this, in the high-tech area it looks like
8 we're doing real well? Is that what I'm
9 seeing? And the question then becomes: why
10 is that different than 1600 and 1700? Is it
11 we've got different people? Is it the
12 problems are different? Are we attacking it
13 differently?

14 MR. LOVE: Well, it's the same
15 review process. There are different
16 reviewers that specialize in certain
17 technologies.

18 CHAIRMAN RIVETTE: Because you get
19 a 2 percent differential.

20 MR. LOVE: Right.

21 CHAIRMAN RIVETTE: It seems like a
22 lot -- especially when you're talking about

1 the high-tech stuff. I mean, I commend the
2 office; 2.8 is great. I just wonder why the
3 4.8 -- why the difference of almost 50
4 percent. Any ideas?

5 MR. LOVE: Well -- in the complex
6 arts, the people that file the applications
7 really know what the state of the art is, and
8 perhaps the examiners start from a better
9 point in terms of what the state of the art
10 is. And the other areas, where they don't
11 get enough information that's good
12 information up front, and it certainly may be
13 a little bit more difficult to search and to
14 find the art; whereas in the high tech, it's
15 a narrow field, the scope of the art is
16 really pretty well defined, and they might be
17 in a better starting point than the other
18 examiners.

19 COMMISSIONER DOLL: One of the
20 things that I like to mention -- and this
21 relates to the chemical and the biotech, is
22 that the number one error that we have is

1 that quality review finds prior art that the
2 examiners did not find. And they find prior
3 art the examiner did not find because the
4 examiner misinterpreted the scope of that
5 claim; they didn't read the claim broadly
6 enough. When you get into the extremely
7 complex areas -- digital encryption, computer
8 architecture -- things are much better
9 defined. When you look at a Markush claim
10 that contains, you know, 10 to the 6,000
11 species, it's hard to search the scope of
12 that claim; it's hard to appreciate. We're
13 working on -- and those are some of the
14 things about, quality initiatives to help the
15 examiners search, help them understand the
16 scope of a claim -- and in the higher tech
17 art areas, such as the satellite
18 communications, things seem to be much better
19 defined, which gives the examiner a much
20 better opportunity to zero in on what they
21 should search. Because they don't have a
22 claim that reads "On the sun, the moon and

1 the stars," which is the typical pharma or
2 biotech case.

3 MR. PATTON: I have a layman's
4 question: are there Google-like search
5 engines designed for each one of these areas
6 by the Patent Office to do this? It would
7 seem that with technology now -- is that
8 something that exists? Or not?

9 COMMISSIONER DOLL: We have search
10 engines. We usually use East or West, which
11 is our primary search engines. We search
12 databases such as Dialogue, Questell. I
13 mean, we search every database that's
14 possible. Mostly it's through Boolean logic.
15 Again, one of the strategic initiatives that
16 we're looking at is going out to
17 universities, corporations, and art-specific
18 areas to see: what are they using to search
19 their particular art to see if we couldn't
20 important that technology here to help in a
21 particular area, or to see what's the best
22 search engine for mechanical devices, or

1 medical devices, or chemical compounds.

2 MR. PATTON: But something like
3 that is used by the examiners.

4 MR. LOVE: Right. And for
5 non-patent literature, for example, each area
6 has a collection of databases that the
7 examiners are directed and encouraged to
8 examine.

9 CHAIRMAN RIVETTE: One of the
10 things that may be useful is next time we get
11 together, Doug, would you feel like spending
12 maybe an extra half-day or something? And
13 anybody else who wants to -- maybe, John, you
14 take us through a day-in-the-life, and we
15 walk through it?

16 COMMISSIONER DOLL: We'd be happy
17 to.

18 CHAIRMAN RIVETTE: Because we won't
19 do it in the full meeting, but maybe you and
20 I and a couple -- on a Thursday, and we'll go
21 through it? Because I think it will give us
22 a much better feeling of exactly what the

1 issues are.

2 MR. PATTON: Okay. Sure.

3 COMMISSIONER DOLL: I would
4 recommend that for anybody who hasn't
5 examined, to actually understand what a day
6 in the life of an examiner is.

7 MR. GRANT: Well, we can take a
8 couple examiners out for a couple beers, and
9 then they can really tell us.

10 COMMISSIONER DOLL: We'll take the
11 Commissioner out for a few margaritas and
12 he'll tell you.

13 MR. GRANT: He'll probably tell us
14 stuff we don't want to know.

15 CHAIRMAN RIVETTE: The
16 Commissioner's a pretty good guy. Go ahead.

17 MR. BUDENS: Yes, I wanted to add
18 one more comment on one of the concerns I
19 have with some of these numbers, because
20 while we recognize, to some extent, that
21 perhaps some technology's a little better
22 defined, I'm also concerned that these

1 numbers perhaps reflect just the difference
2 -- as John kind of alluded to -- the
3 difference of reviewers. It's very hard for
4 me to understand how 1600 and 1700, which are
5 relatively senior tech centers, with a lot of
6 senior people are going to have a higher
7 error rate than 21 and 26, where more than
8 half of the examiners have under two years of
9 experience in the office. Okay? They're all
10 junior examiners and they're learning the job
11 still. And I'm worried that this reflects a
12 little bit of -- you know, either whether the
13 reviewers aren't calling as many errors, or
14 the way the process is designed to allow
15 argument between the managers and the
16 examiner and the reviewers and stuff to
17 modify the errors but not call them. The way
18 the process works may not always accurately
19 reflect exactly what's going on in a
20 particular tech center. These numbers are a
21 little bit of a concern to me, that they
22 would be that low in those two tech centers,

1 for just those kinds of reasons. These are
2 very young tech centers.

3 CHAIRMAN RIVETTE: Have you taken a
4 look at the process they're using for
5 evaluating the error rates?

6 MR. BUDENS: Oh, yes. It was
7 something we had to negotiate and fight over
8 for quite awhile. So we're familiar with the
9 processes that go on.

10 CHAIRMAN RIVETTE: So your concern
11 is that they're not following the process?

12 MR. BUDENS: No, I think the
13 concerns could be that -- they may be
14 following the process but, for example, if
15 you have reviewers in 2100 and 2600 who
16 aren't calling as many errors as they could
17 -- okay -- it artificially skews the numbers.
18 Maybe they don't know the art as well because
19 they haven't been around that long. These
20 two tech centers are very young tech centers,
21 with a pretty small number of really senior
22 people. One of the reasons why the Patent

1 Academy was first used for the 2100 and 2600
2 examiners, because we don't have enough
3 primaries over there to train the people on.
4 So it's just another issue that I think we
5 need to keep in the back of our minds as
6 we're looking at these processes. Gerry said
7 quality's a difficult thing to measure, and
8 it's a concern that we have.

9 CHAIRMAN RIVETTE: Okay.

10 COMMISSIONER DOLL: I can't help
11 but add a comment -- is that when you look at
12 the QR examiners and I know them -- there's a
13 spectrum: some are very good, and some are
14 okay. And every technology center has one
15 really hard-ass that, you know, is just
16 really, really good at what they do, and then
17 they have some average ones. Because I've
18 heard that argument, as well: "We have Mr. X,
19 and he's just horrible. He tears us up."
20 But when I look at every technology, there is
21 at least one, if not two, really hard-nosed,
22 hard-core great QR reviewers. And so I think

1 the spectrum is pretty well distributed
2 across. I'm just sticking up for your POPA
3 members and our QR examiners.

4 MR. BUDENS: No, QR examiners
5 aren't POPA members. But that's a different
6 hat.

7 CHAIRMAN RIVETTE: Okay, so let's
8 just -- we'll put it in the back of our
9 heads. (Slide.)

10 MR. LOVE: Okay -- with respect to
11 production, the 2006 goal was roughly 350,000
12 balanced disposals. And for those of you who
13 aren't familiar with that term, the way we
14 credit examiners with work is: first action
15 on the merits of an application, and a
16 disposal of the applications -- which is
17 typically abandonment of the application, an
18 application, or an examiner's answer. So for
19 a first action on the merits, and then a
20 disposal, that's consider one balanced
21 disposal. The goal was 348,000, as you can
22 see. And we got over that. That was an

1 aggressive goal, and we were able to achieve
2 341,664. And the goal for 2007, based on the
3 hires and the rather sophisticated model, is
4 363,900 Bds. Questions?

5 MR. STERN: Can a member of the
6 audience ask questions?

7 CHAIRMAN RIVETTE: Yes, please.

8 MR. STERN: Does this include just
9 UPR? Or does this include designs and PCTs,
10 or -- what's included in this number?

11 MR. LOVE: This does not include --
12 I don't believe it includes PCTs. This is
13 UPRs.

14 CHAIRMAN RIVETTE: What's a "UPR?"

15 MR. LOVE: "Utility, plant and
16 reissue."

17 MR. MOSSINGHOFF: The interesting
18 thing about the production chart is that
19 group 2800 has damn near double the amount of
20 balanced disposals as all the other groups.

21 MR. LOVE: Because they're damn
22 near twice as large.

1 MR. MOSSINGHOFF: Have you thought
2 about breaking these in half, or is this
3 going to --

4 CHAIRMAN RIVETTE: That's a good
5 point.

6 MR. LOVE: I know that's under
7 consideration -- we talk about this -- as to
8 how large do we want a TC to become before it
9 gets unmanageable.

10 MR. MOSSINGHOFF: It really does
11 stick out.

12 MR. LOVE: About four years ago,
13 2700 was split into 2100 and 2600, because
14 that was a rapidly-growing area, and we split
15 it up into 2100 and 2600. It gets to a
16 critical mass, and then it splits.

17 CHAIRMAN RIVETTE: Do you have
18 criteria that you're looking at as to when
19 you find it's time to split them?

20 MR. LOVE: We don't have any
21 specified criteria, no.

22 CHAIRMAN RIVETTE: Okay.

1 MR. LOVE: Okay, "Patent Pendency"
2 -- there you can see the average first action
3 pendency for '06, and the average total
4 pendency by TC. The target for FY'06 -- the
5 average pendency to first action, 22 months,
6 and we achieved 22.6. That's the only goal
7 we didn't make this past year. But of the
8 overall total pendency, the target was 31.3,
9 and we achieved 31.1. So we came under that
10 goal. And you can see, there's some
11 difference in where the TCs are in terms of
12 individual first action pendency and total
13 pendency -- the highest being in 2100, which
14 is 44 months.

15 CHAIRMAN RIVETTE: Right -- so,
16 why?

17 MR. LOVE: It's because -- you
18 know, we talk about average increase in
19 filings, but it's so much more in those
20 areas, in 2100 and 2600. And it's just
21 trying to keep up hiring the people to keep
22 up with it, and, you know, chasing the

1 rabbit.

2 CHAIRMAN RIVETTE: How many
3 examiners have we got in 2100 and 2600?

4 MR. LOVE: Paul, do you know?

5 MR. SEWELL: (off mike) 700.

6 MR. LOVE: Okay, we'll have that
7 information in the next -- coming up.

8 CHAIRMAN RIVETTE: Okay.

9 MR. LOVE: But in 2100, end of year
10 staff was 908; in 2600, 925; 2800 is 1045.

11 CHAIRMAN RIVETTE: 908 in 2100?
12 2600? Oh, you've got it in the back. I'm
13 sorry.

14 MR. LOVE: It's in the next slide.

15 CHAIRMAN RIVETTE: Gee, I hate
16 that.

17 MR. LOVE: Well, thank you.

18 MR. BUDENS: Kevin?

19 CHAIRMAN RIVETTE: Yes.

20 MR. BUDENS: I think an interesting
21 point on this slide though -- we were looking
22 at it a year ago, too -- is that you look at

1 the average total pendency, and it looks
2 gigantic.

3 CHAIRMAN RIVETTE: Yes.

4 MR. BUDENS: But it's being driven
5 by the pendency to first action. If you look
6 at those numbers, we average in a year,
7 across the corps -- once we pick up an
8 action, it's done in nine to 13 months. It's
9 how long it sits around before we pick it up
10 that's really the issue that's driving that
11 total pendency number.

12 MR. PATTON: I have a question: for
13 like 2100, which is the highest first action
14 pendency -- this is the average. What might
15 be the top 10 percent number for the longest
16 pendency action. I mean, you have some
17 numbers like -- what are more the longer
18 pendencies? 40 months?

19 MR. LOVE: Paul?

20 MR. SEWELL: The encryption area is
21 running at 40 months.

22 MR. PATTON: 40 months?

1 COMMISSIONER DOLL: We actually
2 have that number, and we'd be willing to
3 share it. What we call it is an "inventory."
4 What we've done is -- pendency is an
5 interesting number. Pendency is: we take the
6 work that we did in a particular quarter, and
7 then look back and see when those
8 applications were filed, to get what the
9 average pendency is. Examiners don't always
10 pick up the oldest case first. They mix and
11 match. If they're searching a particular
12 technology, they might take some of the newer
13 cases with one of the very old ones. So it's
14 a mix. But the inventory that we did, is we
15 took the total number of cases pending in a
16 particular art area, and divided that by the
17 fire-power of that art unit; the average
18 amount of work that they do per month --
19 divided it. The higher numbers were in
20 business methods -- 3620 -- we have in the
21 finance area, where right now, if we did
22 nothing, it would be 130 months to first

1 action. Now, we've doubled the number of art
2 units there last year. We're going to double
3 the number of art units again this year.
4 We've hired over 50 people in that area. So
5 are if we do nothing. And I didn't realize
6 we hadn't put that number in here, but it's a
7 much more shocking graph to show what the
8 really high pendency areas are, and what some
9 of the really big numbers are. And we can
10 share that. I apologize that it's not in
11 here.

12 MR. PATTON: There's a lot of
13 things I've been working that's so high above
14 the average, I was just curious.

15 COMMISSIONER DOLL: And the average
16 is an average for the entire tech center.
17 And you get like 3600, where you've got some
18 art areas -- what's the lowest one you have,
19 Don?

20 MR. HAJEC: 14, 15 months.

21 COMMISSIONER DOLL: 14, 15 months
22 -- he's also got business methods, that can

1 be 130. So that average number is really --
2 it's fairly useless.

3 MR. MOSSINGHOFF: 10 years?

4 MR. LOVE: That's not actual
5 pendency. John was saying that that's if you
6 look at it today, based on the manpower and
7 the inventory, that if we did nothing it
8 would take 13 years to get there. But
9 obviously we don't do nothing; we staff up,
10 we balance dockets and transfer cases. But
11 if you look at the actual pendency in
12 business methods -- yes, it's probably around
13 33; right now it's probably about 34 months
14 to first action. In other words, if you got
15 an action in a business method case today
16 from the examiner, it was probably filed 33
17 to 36 months ago.

18 MR. MOSSINGHOFF: We used to report
19 the oldest case. And, in fact, we did --
20 among other reasons -- because Randy Tagmyer
21 would then call the -- we're about to report
22 you with the oldest case, and you have to do

1 some work between now and tomorrow morning.

2 CHAIRMAN RIVETTE: Really?

3 MR. MOSSINGHOFF: Really. Yeah.

4 CHAIRMAN RIVETTE: What is the
5 oldest case? Do we know?

6 MR. LOVE: Well, that date is
7 available. We don't tabulate it on a regular
8 basis. You know, it's like anything else --
9 that's a misleading number, too.

10 MR. MOSSINGHOFF: It wasn't
11 misleading to guy who got the call from Randy
12 Tagmyer.

13 CHAIRMAN RIVETTE: Misleading and
14 motivating.

15 MR. LOVE: I mean, all that says is
16 you have one case that's at this date. And
17 could have been something, for example, a
18 missing parts case that they've just got a
19 serial number on it. It was lost -- of
20 course, we don't lose them anymore, but --

21 CHAIRMAN RIVETTE: That's what it
22 meant, Gerry. It meant that that case would

1 be done in a day.

2 MR. MOSSINGHOFF: But it didn't do
3 you much good for -- Yes, every week we used
4 to report that: who had the oldest case.
5 Have we had enough fun on this one?

6 (Laughter)

7 CHAIRMAN RIVETTE: I'm not done
8 having fun. Other offices around the world
9 -- have we compared data? Have we got a
10 chart: here is approximately where EPO, JPO,
11 Germany? Have we ever done that?

12 COMMISSIONER DOLL: We do have that
13 number also. With the deferred examination
14 in Japan, it's really not a fair comparison
15 -- with the high drop-out rate that they
16 have, it's a bad comparison. And even in the
17 EPO, I think we're actually better. We can
18 supply that number. I just don't have it.

19 CHAIRMAN RIVETTE: I think we
20 should take a look at it. And if you know
21 the drop-out rate or deferred, and stuff --
22 that may go to a couple of the other

1 initiatives.

2 COMMISSIONER DOLL: Exactly.

3 CHAIRMAN RIVETTE: And I think we
4 should have those numbers -- with caveats.

5 COMMISSIONER DOLL: And we do have
6 the drop- out.

7 CHAIRMAN RIVETTE: But put it on a
8 one- pager.

9 COMMISSIONER DOLL: Deferred is
10 interesting, because the argument against
11 deferred was that it just promotes people
12 filing anything, because then they just put
13 their mark in the sand, and then they drop
14 out. And I think Japan right now has a 30 to
15 a 40 percent drop-out rate from their
16 deferred. We'd be thrilled if we had a 10
17 percent drop-out rate.

18 CHAIRMAN RIVETTE: I'd just be
19 interested in those numbers.

20 COMMISSIONER DOLL: And we have
21 those. I just didn't bring them.

22 MS. NORTON: Yes, I think that's --

1 I mean, I know that there's a problem with
2 the submarine patent issue with those, but I
3 think if you're only talking a couple years
4 to defer, you have a lot of companies that
5 would love those two years to save up the
6 money for prosecution costs, or that go
7 bankrupt or have other things come up. And I
8 think that might help. And certainly in
9 other countries, like Japan, there's
10 precedence for it.

11 CHAIRMAN RIVETTE: I'd just be
12 interested in seeing what they look like.

13 MS. NORTON: I was going to say
14 it's also good because then it's the patent
15 application owner who's making the decision,
16 which is going to be a lot easier to get
17 through.

18 MR. MOSSINGHOFF: I would say that
19 the issues involving a deferred system --
20 which, again, was recommended 50 years ago by
21 this Johnson Presidential commission; it
22 recommended a lot of things that were good

1 ideas and have been enacted since then. That
2 should be, I think, handled separately from
3 the so-called suite, or menu of things which
4 are a super-exam, and a petit exam and all
5 the rest. Those are very controversial, and
6 nobody important has -- you know, there's no
7 commission, there's no recommendation to kind
8 of latch onto. Whereas deferred -- one,
9 you've got a recommendation; two, it's been
10 done internationally. And so I think in
11 terms of us considering it, we ought to
12 probably consider two separate things. One
13 is: deferred -- which is pretty well-defined,
14 even though the AIPLA has been opposed to
15 it, it's pretty well defined, and you've got
16 a high-level Presidential commission
17 recommending it, and the Japanese are doing
18 it -- versus the whole suite of products,
19 which is probably a 20-year effort to bring
20 about. So I think -- my recommendation would
21 be: we consider those two as very separate
22 ideas.

1 CHAIRMAN RIVETTE: I'd be
2 interested in seeing the numbers all stacked
3 up on the same page.

4 MR. MOSSINGHOFF: Yes, I mean, we
5 could look at them. But it seems to me that
6 the one becomes Herculean political task to
7 bring about; the others, a lot less so.

8 CHAIRMAN RIVETTE: Okay. John?
9 I'm done playing.

10 MR. LOVE: Okay. (Slide.) Next,
11 page two. This summarizes the hires and
12 attritions by TC over the past few years.
13 You know, the hiring goal in '06 was 1,000.
14 At mid-year we actually -- informally, if you
15 will -- raised it up to 1,200, and we did --
16 well, we fell seven short of that raised
17 goal.

18 COMMISSIONER DOLL: For UPRs, for
19 UPRDs, we exceeded.

20 MS. NORTON: UPRs --

21 MS. RYAN: But he remembers.

22 That's good.

1 MR. PATTON: And the "D" is
2 "design" -- right?

3 COMMISSIONER DOLL: Right. And for
4 '07, we're again -- the target is to hire
5 1,200 examiners?

6 CHAIRMAN RIVETTE: Do you think
7 you'll make it?

8 MR. LOVE: Yes. It's a big effort,
9 but we have quite a bit of resources devoted
10 to it, and we've already been going out to
11 colleges and job fairs. It's a terrific
12 effort, but I think we'll make it again.

13 MR. MOSSINGHOFF: What was the goal
14 on attrits for '06?

15 CHAIRMAN RIVETTE: Yes.

16 MR. LOVE: Yes, I'm going to go
17 down that path, too, in a couple minutes.
18 Well, I think what was modeled -- I don't
19 believe we had a goal. Well, I'll kick that
20 up to --

21 COMMISSIONER DOLL: We modeled 10
22 percent.

1 CHAIRMAN RIVETTE: And you made --

2 COMMISSIONER DOLL: 10.6.

3 CHAIRMAN RIVETTE: 10.6. How do I
4 read this chart? Just walk me through it for
5 a cycle.

6 MR. LOVE: We'll start with the top
7 one. It would be fiscal year '04, end-year
8 staff. That would be September 30th, how
9 many examiners were on board -- plus it
10 includes examiners, SPEs and academy
11 trainers. So that's the end-of-year number.

12 CHAIRMAN RIVETTE: So what we don't
13 have here is we don't have goals for the
14 year, and we don't have percentage or
15 attritions. Is that right?

16 MR. LOVE: Right.

17 CHAIRMAN RIVETTE: Right -- okay.

18 MR. LOVE: Although I believe we
19 sent out a package that did have. For the
20 '06 hiring goal, we split that up. The
21 initial 1,000 was split up; like, for
22 example, 1600 was allocated 75 slots; 1700,

1 35; and then we grouped the three electrical
2 TCs together: 690 in 3600 and 3700. The next
3 line there would be how many we actually
4 hired in each TC for '06. The next line
5 would be the FY'06 attrits, and the total of
6 that would be 510 for the corps. And the
7 next line, '06 end-of-year staff would be,
8 then, the net gain, and the number of bodies
9 on board as of September -- well, the number
10 of bodies on board as of September 30th this
11 year.

12 CHAIRMAN RIVETTE: Well, it's not a
13 net gain, it's just the raw number -- right?

14 MR. LOVE: Right. That's correct.
15 And then the next line would give you the
16 percent of hires in '06 as a percentage of
17 your end- of-year staff in '05.

18 CHAIRMAN RIVETTE: So, in that
19 number you've also got the attrits? So you
20 went down by approximately 10.6, but you
21 hired into it, so that you've actually got an
22 up-tick of 19?

1 COMMISSIONER DOLL: Well, no, I
2 think that 19 percent just means you hired 96
3 people in '06, and that's 19 percent of your
4 504. In other words, at the end of '05, your
5 staff was 504.

6 CHAIRMAN RIVETTE: Right.

7 COMMISSIONER DOLL: And you hired
8 96, and that's 19 percent of the 504.

9 CHAIRMAN RIVETTE: 96 can't be.
10 Because you lost --

11 COMMISSIONER DOLL: It's not a net
12 increase. It's just the number of hires as a
13 percent of you end-of-year staff. In other
14 words, I had 504 people at the end of '05,
15 and --

16 CHAIRMAN RIVETTE: And 545, which
17 is a 19 percent increase -- right?

18 COMMISSIONER DOLL: No.

19 CHAIRMAN RIVETTE: That's what I'm
20 saying -- yes.

21 MR. GRANT: Well, your question, I
22 think, is what's the relevance of this not

1 including the attrits.

2 COMMISSIONER DOLL: Well, we could
3 -- I mean, maybe we need another line that
4 says --

5 MR. GRANT: How many junior people
6 you have.

7 CHAIRMAN RIVETTE: Right -- that's
8 what I'm looking at. That might be the
9 relevance.

10 COMMISSIONER DOLL: We could put a
11 line in there that gave you your net increase
12 over your '05 staff, because that's what you
13 might be looking for: what's your net
14 increase -- which would be more like 10
15 percent.

16 CHAIRMAN RIVETTE: Because I think
17 Max's point is well taken, which is: how many
18 young examiners have you got in these units?
19 And if we keep saying that basically it's
20 just staffed by young people, that will
21 probably be an indicator that we needed to do
22 something. Because you're going to have that

1 for awhile, hiring 1,200 people.

2 COMMISSIONER DOLL: One of the
3 things that we can share is the attrits from
4 first year, second year, third year. Those
5 are our three highest years of attrition, is
6 in those first three years. If we keep
7 somebody four to five years, we generally
8 keep them for the long haul. And our
9 attrition rate in the first year can average
10 15, 17, 19 percent, that we lose of our
11 first-year hires. Second year, it drops down
12 to 10 to 15; and third year it drops down a
13 little bit more. So the vast majority of our
14 losses are those first three years. That's
15 the highest percentage. And we can share
16 that data. I thought we had sent that out.

17 CHAIRMAN RIVETTE: You did. I was
18 just looking at this. Again, have we
19 benchmarked at all against other offices?

20 COMMISSIONER DOLL: Not against
21 other offices, because the other offices
22 really won't share that kind of data. They

1 also don't share quality data, so it's hard
2 to benchmark against JPO and EPO. And we're
3 having a difficult time benchmarking against
4 industry, because there's nobody like us that
5 has this many people, that hires this many.
6 But we looked at it government-wide.

7 CHAIRMAN RIVETTE: What about IBM?

8 COMMISSIONER DOLL: What?

9 CHAIRMAN RIVETTE: IBM.

10 COMMISSIONER DOLL: In the IT
11 industry, according to the Bureau of Labor
12 Statistics, it's over 20 percent attrition
13 rate for IT-specific people. You guys seem
14 to be very mobile. When you look at the
15 government-wide, the Federal government last
16 year, it was 15.3 percent was the total
17 attrition rate. So we actually exceeded
18 that. But when you look at high-tech
19 companies that hire large numbers of people,
20 the attrition rates seem to be higher than
21 what we're having. So we're not satisfied
22 with that, and we're always going to try to

1 drive it lower, but it looks like we're being
2 very competitive.

3 MR. GRANT: The real question is
4 what's your peer group?

5 COMMISSIONER DOLL: Yes, you're
6 absolutely right.

7 MR. GRANT: And I don't know how to
8 get there right now, in the next five
9 minutes.

10 COMMISSIONER DOLL: And it's unfair
11 to compare us to the EPO, because they make
12 much more money, they have different
13 requirements. It's almost the job of choice
14 in Europe to work at the EPO, whereas in the
15 United States, in this area, patent attorneys
16 seem to make a lot more than examiners, so we
17 tend to be a farm club -- which is one of the
18 reasons we'd thought about doing a remote
19 office. Because if we got to the West --

20 MR. GRANT: I continue to think
21 that's a fabulous idea. To me the only
22 question is: what needs to be done to make

1 that happen?

2 CHAIRMAN RIVETTE: I was in China
3 meeting with the commissioner over there, and
4 he and I were talking, Gerry -- and I said,
5 "So, what's your attrit rate?" And he said 3
6 percent. Of course they can't move.

7 COMMISSIONER DOLL: "You will not
8 quit."

9 CHAIRMAN RIVETTE: So maybe we get
10 the same sort of --

11 COMMISSIONER DOLL: You'd have to
12 bring that to the bargaining unit, I think.

13 CHAIRMAN RIVETTE: I think that
14 might be an issue at that point.

15 MR. PATTON: John, just a note --
16 are there statistics, in terms of we're
17 talking about another patent office somewhere
18 in the United States, of where most of the
19 patents are coming from, by state?

20 COMMISSIONER DOLL: We do that data
21 every year. We do it by university, we do it
22 by area, we do it by state.

1 MR. PATTON: California, just off
2 the top of your head?

3 COMMISSIONER DOLL: California's
4 very high. I don't remember -- Greg, do you
5 know the numbers?

6 MR. MORSE: I can find it. It's in
7 the annual report.

8 CHAIRMAN RIVETTE: Doug, half of
9 them are yours.

10 MR. PATTON: Pardon me?

11 CHAIRMAN RIVETTE: Doug, half of
12 them are yours.

13 COMMISSIONER DOLL: The other half
14 are IBM's.

15 MR. MOSSINGHOFF: Well, that also,
16 though -- that second office -- raises the
17 issue, I think immediately, of: do they
18 examine across the board, or do they
19 specialize. One of the great luxuries of a
20 big office like the U.S. is that each
21 examiner can examine in a very narrow field
22 of technology and become very good in that

1 field, and not be good in a lot of other
2 fields. And it's why the U.S. government, I
3 think, still takes the position that if a
4 foreign country wants to set up a patent
5 system -- and it's a very small country,
6 Bangladesh being a classic example -- the
7 U.S. government actually discouraged it on
8 the theory that they'd have one mechanical,
9 one electrical and one chemical examiner, and
10 they would each of them -- however brilliant
11 -- would do a terrible job of examining. You
12 can't examine across all fields. So -- has
13 that matured at all? The idea of how you
14 would handle a small branch office?

15 COMMISSIONER DOLL: We have a
16 business case that investigates both
17 possibilities: the possibility of having a
18 cross-section that we would never allow an
19 examiner to examine things that they weren't
20 well-versed in, or that wasn't their art
21 area. So if we did have a regional office,
22 we could have a cross-section of examiners,

1 but they might not be able to examine every
2 technology that's filed. We would always
3 file that with the examiner that was most
4 qualified. We'd also thought about doing
5 regional offices, where you might do Silicon
6 Valley, and just do a particular segment of
7 what we examine. You might do the Boston
8 area and do biotech. And that's all part of
9 the business case.

10 MR. LOVE: I'd like to add,
11 actually -- in the age of electronic files,
12 it's really not a problem because where you
13 examine is really irrelevant. You just give
14 it a docket in a certain area, and it doesn't
15 matter.

16 MR. MOSSINGHOFF: I hope there's an
17 appreciation for the fact that you don't have
18 a really small office that does a good job
19 across the board.

20 COMMISSIONER DOLL: Right.

21 MR. MOSSINGHOFF: I think that's
22 fundamental.

1 COMMISSIONER DOLL: You're
2 absolutely right, Gerry. We totally agree.

3 CHAIRMAN RIVETTE: So you're going
4 to specialize in the offices.

5 MS. NORTON: I think that's also
6 got to help examiners with examining if
7 they're very, very familiar with an area of
8 law. It should help them when they're
9 examining.

10 MR. MOSSINGHOFF: Like
11 bird-feeders. That's right -- the 20.4 hours
12 means a lot less, because if a person (off
13 mike), if the guy or gal ever picked up to
14 examine, that's not enough time.

15 MS. NORTON: As opposed to the (off
16 mike).

17 MR. GRANT: But, Gerry, is your
18 point that you should have the remote office
19 that specializes in a specific art unit? Or
20 is your point: you can specialize in whatever
21 you want. You just pick where you live, and
22 we'll just send you electronically your

1 docket -- in Boise or Colorado rather than
2 across the street, if that's where you're
3 living. And so you may have widely dispersed
4 people, in terms of technical specialty, in a
5 remote office.

6 MR. MOSSINGHOFF: I don't know.
7 John?

8 COMMISSIONER DOLL: We've looked at
9 going both ways.

10 MR. MOSSINGHOFF: You're talking
11 about a physical office in Denver -- that's
12 the one I keep hearing.

13 COMMISSIONER DOLL: Well, west of
14 the Mississippi is what we would like to do.
15 We haven't selected a site.

16 MR. MOSSINGHOFF: Well, you're
17 talking about a physical office, not just
18 somebody's living in Denver.

19 MR. GRANT: Correct. Right. But
20 my point is: rather than saying, okay we're
21 now going to now take the 2600 art unit, and
22 that's going to Silicon Valley. Rather it

1 would be: well we've got a Silicon Valley
2 facility, and people from our art units would
3 be there. It wouldn't really matter. It's
4 just a question of who wants to live out
5 there.

6 MR. LOVE: That's correct. Or --
7 it could be either way.

8 CHAIRMAN RIVETTE: So it's really
9 an extension, what you're saying. It's just
10 a remote office.

11 MR. LOVE: You wouldn't necessarily
12 know where your application was examined.
13 It's all electronic.

14 MR. MOSSINGHOFF: Would they work
15 out of the office or out of their home?

16 COMMISSIONER DOLL: The vision is
17 both. We've got, you know, different
18 programs going right now. And Jon's vision
19 is that you hire the best, you do the best
20 training you can, you retain them, then let
21 them work wherever they want to work. We
22 have a great patents hoteling program where

1 people can work at home up to 39 hours a week
2 right now, only having to come in the office
3 one hour a week. We're thinking about
4 getting rid of that coming into the office
5 one hour a week, so that people could live in
6 Michigan or Kentucky or California --
7 wherever they want to live. Because as John
8 Love said, when you're living in an
9 electronic world, it doesn't matter where you
10 are.

11 MR. MOSSINGHOFF: Why would you
12 have an office, then?

13 COMMISSIONER DOLL: There are some
14 people that just can't work at home, because
15 of the golf clubs in the corner, or the car
16 in the garage. They need that discipline, or
17 they're social animals -- which I don't
18 understand. They actually like being around
19 people. They actually want to come into the
20 office.

21 MR. MOSSINGHOFF: Spoken like a
22 true humanist.

1 COMMISSIONER DOLL: That's my warm
2 and fuzzy side.

3 MS. FAINT: There's also a
4 collaborative side to it. As examiners, we
5 need to interact with other examiners, and we
6 don't have all the electronic tools to do
7 that.

8 CHAIRMAN RIVETTE: That's one of
9 the things I think we're going to have to, at
10 some point, talk about is: do we have
11 internal wikis so that we can start spreading
12 the collaborative ideas around. Because
13 exactly what you're saying is, I think,
14 something that's got to be dealt with as we
15 move more and more towards this. I think we
16 need it now, to be honest with you.

17 COMMISSIONER DOLL: We met
18 yesterday. We're signing a contract in the
19 next couple weeks to do a pilot program in
20 the training academy, and in an art unit, to
21 actually set up wikis for art-specific areas.
22 So we'll be moving in that direction very

1 quickly.

2 MS. RYAN: What is a wiki?

3 MR. PATTON: What's a wiki?

4 MS. RYAN: Ahh -- I asked first.

5 Then I can tell you.

6 CHAIRMAN RIVETTE: Well, have you
7 seen the -- like Wikipedia?

8 MS. RYAN: Oh, yes -- okay. I do
9 know that.

10 CHAIRMAN RIVETTE: It's a
11 collaborative way to get and disseminate
12 knowledge from large groups. And it's
13 self-regulating. So you can have a long
14 thread which says -- I see this prior art as
15 really great on this claim, and this issue.
16 And then you could have three other guys say,
17 "You gotta be outta your mind." And then
18 somebody else can say, "Well, yeah, actually
19 you're right -- but if you use it here -- ."
20 So, in other words, we're going to start to
21 hopefully get some of the ideas behind why
22 people make these decisions and be able to

1 propagate them throughout the corps.

2 MR. PATTON: For patent examiners,
3 do they have someone that they can -- that
4 they know -- how do I put this? Let's say
5 there is some background statistic that
6 patent examiners can log in: "I've done like
7 300 of software architecture patents;" "I've
8 done 400 hardware-related software." Do you
9 send patents to people and build their
10 expertise after they have it? Or if
11 someone's new, can they access like an hour
12 of someone's time to say: hey, I need some
13 help. You're the senior person. What
14 happens?

15 COMMISSIONER DOLL: There's art
16 recognized experts, where if you have a
17 particular question -- you know, "Sam down at
18 the end of the corner, he's the expert on azo
19 dyes. He's worked in them for years. So I
20 have that in one of my computer printer
21 cartridges." So you go down and talk to him.
22 But that's actually what we're trying to do

1 with the wiki. Examiners, for years, have
2 had what's called "unofficial digests," where
3 they have a drawer of patents that show that
4 you can't patent life forms, or that a
5 chimeric antibody doesn't have enablement.
6 And that's what we're looking to do through
7 the wiki: make that electronic, rather than
8 having it as a file in your lower desk
9 drawer, it's actually on-line where everybody
10 can access that. Examiners also have always
11 had their own case file for case law that's
12 pertinent to a particular area of technology.
13 That would then be open and accessible to
14 anybody who wanted to dial in to that. That
15 would also involve -- like I said, Sam at the
16 end of the hall who is an expert in a
17 particular art area; or you've got a
18 transgenic animal expert over here. And
19 those things would be listed so you would
20 know where to go.

21 CHAIRMAN RIVETTE: You also see
22 their names as they enter; you know -- that

1 guy, I really need to talk to him, because it
2 was really close to what I'm doing. So it
3 may not be the ultimate expert, but he may
4 have run across --

5 MR. PATTON: So you can do that.
6 If you have 20.5 hours, can you tell someone,
7 "I'm going to give you half an hour of my
8 time to talk with me and advise me?"

9 COMMISSIONER DOLL: We give primary
10 examiners other time when they train junior
11 examiners. So if you're training a junior
12 examiner, when you're working with that
13 junior examiner, you're not on production
14 time. If I go down the hall to you and ask
15 about a particular marketing process, a
16 business method process, and you sit down and
17 work with me, you're eligible to claim other
18 time for that time that you spend with me
19 helping me.

20 MR. PATTON: But that doesn't take
21 away from that person's 20.5 hours?

22 COMMISSIONER DOLL: The 20.5 hours

1 is based on the time that they're on the
2 clock, production time. "Other time" is
3 where you're doing things that are not
4 examining-related that actually subtracts
5 from your 80 hours of production time.

6 MR. PATTON: A complex process.

7 COMMISSIONER DOLL: Yes.

8 MR. BUDENS: And you haven't heard
9 the half of it.

10 CHAIRMAN RIVETTE: Robert was
11 restraining himself.

12 MR. MOSSINGHOFF: I think you're
13 right -- if you go to somebody else, they can
14 take some time off from their production
15 time. But you don't either gain or lose any
16 time. You have the same production time for
17 yourself.

18 COMMISSIONER DOLL: Yes.

19 MR. MOSSINGHOFF: You just get help
20 from a more senior examiner who tells you,
21 "Yeah, there's this, this and this." So it's
22 not as complicated as it could be. You could

1 make it doubly complicated. It's only singly
2 complicated.

3 MR. BUDENS: I think it's even more
4 complicated than that, though. Because, as
5 John pointed out, are you assigned to train a
6 junior examiner? If you come to me as a
7 junior examiner and I'm assigned to train you
8 -- yes, I can get some of that time. If you
9 just come down the hall and ask me a question
10 because you found out that I'm an expert in
11 widgets, the odds of me getting time for
12 sitting down and answering your questions is
13 pretty darn small. The other thing I hope
14 this group keeps in mind all through these
15 conversations as we talk about things like
16 bringing wikis on, and other databases and
17 other tools is: it's a good thing to keep
18 providing us with better ways and more ways
19 of getting information. But if you don't at
20 some point realize that you're going to have
21 to give us some time to look at that
22 information and analyze it, and make the best

1 use of it -- you know, examiners only have,
2 right now, 20.4 hours. You give me 10 more
3 databases to search and you don't give me any
4 more time to look at them and look at the
5 data, you're not going to get the search out
6 of them. They're only 20.4 hours I have.
7 And so we can think and talk in this group
8 about bringing more of these tools on line,
9 bringing better processes and stuff. But if
10 we don't also have an ability for the
11 examiner to have the time to use them,
12 they're not going to be effectively used.
13 And I think that's something we have to keep
14 in the back of our minds.

15 MR. PATTON: Let me ask the
16 question -- I'll just use, like, our software
17 department: if I had 10 people with limited
18 -- let's say five years' experience doing
19 software, letting them do it autonomously,
20 it's the worst danger in the world in
21 creating some new software system. If the
22 head senior software guy, and at least a

1 couple more person, other people, are there
2 directing them -- because the worst thing
3 that I've seen in technology is when you let
4 incredibly talented inexperienced people do
5 whatever they want without a lot of
6 direction. Even when you have very
7 experienced people doing it without
8 direction, it could even be worse, because
9 there's higher diversity. Is there -- you
10 said that you don't get -- someone goes down
11 the hall, that person that they ask questions
12 of -- say it's not like a junior, it's two
13 senior examiners, but I know that you are the
14 guru of widgets. And I know if I could only
15 talk with him for a half an hour it's going
16 to save me a lot. Is there a structure like
17 that where, just like in business, like the
18 top software guy runs it. He has a middle
19 person that interacts, and then none of the
20 lower-end people are free will? Or highly
21 directed? Or not.

22 COMMISSIONER DOLL: All office

1 actions that go out are signed by an examiner
2 that has a certain degree of signatory
3 authority. Junior examiners don't send
4 office actions on their own. They have to be
5 reviewed and signed off on by somebody who
6 has signatory authority. And we have two
7 levels of signatory authority: partial
8 signatory authority, where an examiner is
9 allowed to sign restriction requirements,
10 first actions on the merits, and second
11 action on finals; and then we have our
12 primary examiners that can independently sign
13 any office action, or review the work of a
14 junior examiner and sign off on it.

15 MR. PATTON: So you have that.

16 COMMISSIONER DOLL: Yes.

17 MR. PATTON: Okay.

18 COMMISSIONER DOLL: I guess I could
19 have just said "yes."

20 MR. PATTON: Okay -- thanks. Thank
21 you.

22 MR. MOSSINGHOFF: And when a

1 primary examiner is doing that, that doesn't
2 count against the primary examiner's
3 production time -- right?

4 COMMISSIONER DOLL: You're correct.
5 Yes.

6 MR. PATTON: Thank you.

7 CHAIRMAN RIVETTE: Never thought
8 that one would take so long, huh?

9 MR. LOVE: You never know.

10 (Slide.) Okay, so moving on to some of the
11 important initiatives that we started in '06
12 -- the electronic filing, switching over to
13 the new EFS web system was tremendously
14 popular and successful. The number of cases
15 that are being filed electronically continues
16 to increase.

17 CHAIRMAN RIVETTE: Are you
18 requiring electronic filing at any point?

19 COMMISSIONER DOLL: No.

20 CHAIRMAN RIVETTE: Are you thinking
21 about that?

22 COMMISSIONER DOLL: That's a tough

1 road. What we'd like to do is build a system
2 that's so well accepted that it becomes
3 almost viral, where it just infects the
4 community. And we seem to be getting great
5 growth right now. What John was getting
6 ready to say was that we started in March at
7 2.2 percent electronically. We ended the
8 year at almost 30 percent of the
9 applications' being filed electronically --
10 which averaged 14.2 percent over the entire
11 year. It's catching on and growing. Law
12 firms are really buying into it. So we're
13 hoping that much like what Trademarks did,
14 it's sort of infectious -- and Trademarks is
15 now at over 90 percent. They're at 94
16 percent. We're hoping the Patent system does
17 the same. But we hadn't really thought about
18 -- we're really nice and warm and fuzzy.
19 There's none of this Draconian "we're going
20 to make you file electronically."

21 CHAIRMAN RIVETTE: Yes, but then
22 you can actually run other programs against

1 it to look for potential quality problems
2 fast and up front, which could give some real
3 benefits.

4 MS. RYAN: I think some companies
5 are going to mandate it. So I agree with
6 John that this has been wildly popular. I
7 lived through the days when you got all --
8 not you, but the office got the black eyes.
9 And I know within J&J there's this serious
10 discussion about: it is not an option. You
11 just do it that way.

12 MS. NORTON: That's my sense, as
13 well is: it's bad to make them do it, but if
14 you just give them the option, pretty soon
15 that's going to be the status quo for a large
16 percentage. And then you don't have to fight
17 with the small inventors and everyone about
18 mandating something.

19 COMMISSIONER DOLL: We had a tough
20 week last week because things were going
21 really well, the system slowed down and we
22 weren't sure exactly why. We had rolled out

1 some improvements and it really dramatically
2 slowed the system down. One of our largest
3 electronic filers called and said, "We're
4 going to quit filing electronically unless
5 you straighten the system out." So we put a
6 tiger team together and we straightened it
7 out. And for the past week it's been a
8 dramatic improvement in performance. So
9 we're very concerned about losing major
10 filers because the system slows down, so
11 we're doing a much better job of monitoring
12 that.

13 MS. NORTON: And my sense is that
14 there are some glitches --

15 COMMISSIONER DOLL: Yes.

16 MS. NORTON: -- and some slow
17 periods during the day. But my sense is
18 that's all going to get worked out over the
19 next couple years. It's just going to take a
20 little bit of time.

21 MR. MOSSINGHOFF: It's a pure and
22 simple PDF system, isn't it?

1 COMMISSIONER DOLL: Yes. It's
2 interesting, because I was in Chicago
3 recently and I was talking to an attorney.
4 And what he said was: "I no longer have an
5 anxiety attack when my paralegal or secretary
6 goes home at the end of the day because I
7 know at eight o'clock at night I can file.
8 It's that simple."

9 MS. NORTON: Or you don't worry
10 about the person picking up your package to
11 drop it off at the Patent Office.

12 CHAIRMAN RIVETTE: Why don't you
13 tell them the situation you got this week.

14 COMMISSIONER DOLL: Yes, that was
15 interesting.

16 CHAIRMAN RIVETTE: You think!?

17 COMMISSIONER DOLL: We sent out
18 some international mail that was mailed from
19 the office October 26th and 27th, was in a
20 truck on its way to JFK to be mailed. The
21 truck was in an accident and burned. We lost
22 about 500 pieces of international mail -- and

1 we're not sure how many --

2 CHAIRMAN RIVETTE: Look at Gerry.

3 COMMISSIONER DOLL: Well, they were
4 all international, Gerry.

5 MR. MOSSINGHOFF: The hell with
6 them, right?

7 COMMISSIONER DOLL: The sad part is
8 we're not sure what was on that truck at this
9 point in time because it was a U.S. Postal
10 Service truck. It wasn't one of our trucks.
11 They said 500 pieces of mail were lost. They
12 don't know how many of them were ours. So --
13 it will be fun. But that could help
14 pendency, because then --

15 MS. NORTON: And you don't need
16 statutory approval for that.

17 CHAIRMAN RIVETTE: Okay.

18 MR. LOVE: Okay, the next
19 initiative was the pre-appeal brief
20 conference that was started in '05, and we
21 continued it and extended it in '06.

22 CHAIRMAN RIVETTE: Why don't you

1 explain that one.

2 MR. LOVE: Yes -- it's a new
3 procedure that allowed applicants, prior to
4 filing an appeal brief, to basically ask for
5 reconsideration of the final rejection. The
6 submission will be limited to, I believe,
7 five pages or less. It's a quick check.
8 Once that request was filed we'd have a
9 conference with the examiner and a quality
10 assurance specialist, or other manger, and
11 the SPE to take a look at the case -- take a
12 look at the main argument from the applicant
13 -- and just make a decision as to whether or
14 not we should proceed with the appeal, or if
15 the final rejection had merit. So it's a
16 quick check, short of filing an entire appeal
17 brief. And actually in the beginning --
18 well, for the 5,600 conferences that have
19 been conducted, for the last three months of
20 '06 we did end up proceeding with 65 percent
21 of the cases. But prior to that -- for
22 example, for the life of the program, only 55

1 percent were forwarded. So there was a
2 higher percentage in the earlier part of the
3 program -- I think it was down around 40 --
4 where we only proceeded with 40 percent. So
5 it did identify an issue, problem, in the
6 office with respect to the final rejections.
7 But I guess the good news is: hopefully,
8 we're learning from that and we're making
9 better finals, so that -- ironically, the
10 success of the program would be that we would
11 forward more to the Board. That's basically
12 the way it works. Now, in addition to this,
13 last year we established at least one
14 position in each one of the TCs called an
15 "appeals conference specialist." Their sole
16 role is to participate in both pre-appeal
17 brief conferences and appeal brief
18 conferences as an independent party, and to
19 make a call on whether or not the case should
20 proceed to the Board of Appeals. We've given
21 them training, and we are going to give them
22 training from the Board in terms of what

1 makes a good examiner's answer; what weak
2 points are, what strong points are. And that
3 program has been implemented and is also
4 going along with this one.

5 CHAIRMAN RIVETTE: So you guys are
6 happy with this. Okay.

7 MS. NORTON: (off mike) public has
8 really liked it.

9 CHAIRMAN RIVETTE: Do you like it?

10 MS. NORTON: Yes -- it's great.

11 MS. RYAN: Yes, I've heard very
12 good things about it.

13 MS. NORTON: Especially since it
14 usually takes -- it has taken in the past a
15 couple years sometimes to get an appeal
16 heard, or a written appeal answered. And
17 this way you get a very early decision.

18 MR. MOSSINGHOFF: John, what is the
19 documentation of that? Let's assume that the
20 decision was not to go to the Board; to allow
21 the case, to have it be granted the patent,
22 and then you have a prosecution history after

1 that. What do you see with respect to the
2 pre- appeal brief conferences?

3 MR. LOVE: There's a paper and a
4 record that is mailed describing the outcome
5 of the conference.

6 MR. MOSSINGHOFF: And it has the
7 names of the people involved?

8 MR. LOVE: I think it does.

9 MS. NORTON: Yes, I think it
10 usually has the three people involved.

11 MR. MOSSINGHOFF: Fully documented?
12 Good.

13 MS. RYAN: I just had a question.
14 You say 65 percent of the time you decided to
15 proceed to the Board. Do you have a
16 statistic on whether the applicant continued?
17 Of that 65 percent, did the applicant drop
18 out?

19 MR. LOVE: Oh, I'm not sure.

20 MS. RYAN: My data point of one --
21 I used it as a -- I wanted to use the system
22 -- it was a case that if you folded at the

1 Board and sent it back and agreed with the
2 applicant, that was it. But you ruled
3 against us and it was sent to the Board, but
4 we abandoned the case. So I imagine other
5 people will do that. It was a marginal case,
6 and I used it to help my management make a
7 decision.

8 MS. NORTON: Yes, I think that
9 happens quite a bit, as well.

10 MS. RYAN: So that would mean that
11 of the 65, they don't all proceed to the
12 Board.

13 MS. NORTON: Yes, exactly.

14 MR. LOVE: Okay, moving on to the
15 training academy: we decided to take a new
16 look at how we were going to train all our
17 new examiners. The old model of one-on-one
18 training didn't seem to be able to do the job
19 for us, especially in the electrical areas
20 where the number of primaries is low to begin
21 with, and the hiring was large. It just
22 wasn't enough resources to do a one-on-one

1 traditional type of training, so we developed
2 the training academy, which is kind of like a
3 college experience where they're isolated,
4 and for an eight month period they're given
5 intensive training as a group. Each class
6 would be, typically, 128 examiners and that
7 would, I think, broken up into eight groups,
8 and they would be given a trainer and a
9 technical assistant at some point along the
10 way. We are continuing that effort -- well,
11 right now, the first class graduated in
12 September, I believe. And so we're doing an
13 evaluation of how well that went, in terms of
14 how well they're being able to be assimilated
15 into the corps; what skills level they have
16 after going through this program. We were
17 planning on continuing this process for the
18 1,200 that we're going to hire in '07.

19 MR. MOSSINGHOFF: John, do they
20 actually do examination during that?

21 MR. LOVE: Yes, they do -- I think
22 between two and three months they're assigned

1 actual applications. Now, they start out
2 doing it in a team environment, and then as
3 they go along they'll be doing it on their
4 own. The preliminary results from the
5 students: they love it. They love being in a
6 group of people. That's how they're used to
7 learning. And they love the team examination
8 part of it where they're working with other
9 people. And then we kind of wean them on to
10 where they're going to be looking at this
11 independently -- with, of course mentors.
12 When they get into the TCs they'll be
13 assigned mentors or primary examiners to
14 oversee their work at that point.

15 MS. NORTON: Because it's an
16 eight-month program, are you running into any
17 problems where they go through all the
18 training for eight months and then quit when
19 they actually start?

20 MR. LOVE: The attrition rate has
21 been very low in these classes. People leave
22 for a lot of different reasons. Some people

1 just can't pick it up and weren't meant to be
2 examiners. And we understand that. Some
3 have other opportunities come up. Others
4 have family issues. So there's a lot of
5 different reasons for attrition. But I
6 believe it was less than six or eight in this
7 first class, which is very low.

8 CHAIRMAN RIVETTE: China's got an
9 academy that they just set up over the last
10 two years. They're training 800 a year.
11 Have we benchmarked against that? I mean, we
12 may not be able to. I just thought it would
13 be interesting to at least see how they're
14 approaching the same problem?

15 COMMISSIONER DOLL: I think John
16 has already talked to them. But they started
17 after we did, so it would be an interesting
18 comparison to see how they're doing.

19 CHAIRMAN RIVETTE: We can talk
20 about that.

21 COMMISSIONER DOLL: That would be a
22 great idea, to see exactly what their

1 curriculum is, and their agenda is.

2 CHAIRMAN RIVETTE: Because they
3 said they'd share that with me when I was
4 over there.

5 COMMISSIONER DOLL: And we're more
6 than willing to share anything we have, also.

7 CHAIRMAN RIVETTE: Have you seen
8 their facility?

9 COMMISSIONER DOLL: No.

10 CHAIRMAN RIVETTE: They have twin
11 rooms that look like hotel rooms --

12 COMMISSIONER DOLL: They don't let
13 me out of town very often.

14 CHAIRMAN RIVETTE: You were in
15 Singapore.

16 MS. NORTON: Hey, John, do you have
17 statistics on how many applications? I'm
18 just wondering how much those new examiners
19 are helping with pendency. How many actual
20 applications do they take care of in those
21 eight months?

22 MR. LOVE: I don't have the numbers

1 with me right now, but we do keep track of
2 that, and it's compared to traditional
3 training methods.

4 MS. NORTON: Okay.

5 CHAIRMAN RIVETTE: Go ahead -- yes.
6 Absolutely.

7 MR. BUDENS: I can tell you that we
8 did some spot-checking from the point of view
9 of the examiner, how they were doing
10 throughout. They look like they didn't do
11 near the number of patent applications during
12 that eight months that an examiner would have
13 done going through our old training. I think
14 the examiners liked the training that they
15 got because it gave them a lot more
16 experience in the areas. What I don't think
17 it gave them -- in at least the first round
18 that has graduated -- was the actual hands-on
19 experience. Some of them had done, in their
20 months, a number of cases that traditional
21 examiners would have been doing in six months
22 in a by-week; you know, six cases or so. So

1 I think from my point of view I'm concerned a
2 little bit about how much hands-on experience
3 they're going to have going into the tech
4 centers, and then have the tech centers go:
5 "Hmm -- they had lots of training, but now
6 we're going to have to --"

7 CHAIRMAN RIVETTE: Train them
8 again.

9 MR. BUDENS: Right -- teach them
10 how to actually examine the applications. So
11 I was concerned. But I share the agency's
12 interest in the training academy. I'm not
13 against it at this point. We've got to do
14 something to train 1,200 examiners a year.
15 But I think, from our point of view, the jury
16 is still way out on the success of it.

17 CHAIRMAN RIVETTE: I think what I'd
18 like to know, coming back to this group, is:
19 what do we think the success rate was? What
20 was the productivity drop? And do they pick
21 it up afterwards?

22 MR. LOVE: You shouldn't focus on

1 productivity alone. I think there are
2 retention benefits with this type of
3 approach.

4 CHAIRMAN RIVETTE: But I think
5 there should be a pickup.

6 MR. LOVE: And you have to look at
7 it for more than just the initial nine
8 months. I think you need to look at it for a
9 two-year period.

10 MR. BUDENS: Yes, there I would
11 agree with John. We're way too early in this
12 process -- even just looking at the first
13 group to come out. And I know management has
14 done some adjustments in the subsequent
15 groups, in starting them into cases a little
16 earlier in the process, stuff like that. My
17 biggest concern with this is that we're
18 putting all of our apples in this cart, and I
19 think the jury's going to be out for a while
20 yet to see whether it's truly, a really
21 successful method of training them.

22 MS. NORTON: Has the office

1 considered a shorter amount of time
2 initially? Maybe a two-month training
3 period, letting them work for six months, and
4 then going back for two months?

5 MR. LOVE: Well, that's actually
6 close to the old model. We would have a
7 two-week what we called a PEIT session, and
8 then various modules throughout their first
9 year.

10 MS. NORTON: Oh, okay.

11 MR. LOVE: And what motivated us to
12 go to this model, though -- as I mentioned --
13 is the fact that -- the sheer volume of the
14 examiners, and the lack of experienced
15 mentors that were available in some of the
16 technology centers. So this approach is
17 something that we wanted to try out.

18 MS. NORTON: Well, it sounds like
19 you're talking to the examiners and keeping
20 good records on what they think is helpful.

21 MR. LOVE: And then they do an
22 evaluation, I believe, every two weeks under

1 modules that they're given -- and every week
2 now.

3 SPEAKER: (off mike)

4 MR. LOVE: And it's a learning
5 curve. We're into our sixth one, so we've
6 learned things from the first that we're
7 incorporating as we go into subsequent
8 sessions.

9 COMMISSIONER DOLL: And we've made
10 a lot of changes throughout the process. And
11 the idea is that they would go slower through
12 the class, but when they came out of that
13 class -- the vision has been very clear, and
14 I articulate this to every class and every
15 one of the trainers: when they're done in
16 that eight months, I want them to be able to
17 come out, pick up a case, read it, understand
18 it, go through the claims, formulate the
19 search, do the search, analyze the
20 references, and do a first office action
21 draft form. Now, that has two things: one is
22 that you're releasing an examiner that has a

1 much higher skill set. Even though they were
2 not as productive during those first eight
3 months, as Kevin said, they hit the ground
4 running faster. That's what we're looking
5 for. What that does is takes a big training
6 load off of the primary examiners that are
7 now in the tech center so that they can do
8 other supervisory work and more training.
9 And the jury is out. We're not sure exactly
10 if this is successful or not. But we put a
11 lot of resources, a lot of people into it,
12 and sunk a lot of money because we think this
13 is the answer and we have to make it work.
14 And we'll keep modifying and making changes
15 until it is successful, because it has to
16 work.

17 MR. LOVE: Lastly, we have asked
18 for -- we have a contractor who's come in and
19 looking and the operation, and giving us some
20 advice on how it should be administratively
21 set up; things like adult education
22 techniques and so forth. So we're in the

1 process of evaluating that. And that's the
2 end. Thank you very much.

3 CHAIRMAN RIVETTE: Well good.
4 Thank you. Do you want to take five minutes?

5 COMMISSIONER DOLL: That would be
6 great.

7 CHAIRMAN RIVETTE: Let's take five
8 minutes.

9 (Recess)

10 CHAIRMAN RIVETTE: Back on the
11 record. Okay, let's start up again.

12 MR. KAMEN: I go away for one hour,
13 and you guys take a break.

14 CHAIRMAN RIVETTE: Yes, that's
15 exactly right, Dean. Nothing got done.

16 MR. KAMEN: The last time I talked
17 to you I was in New Hampshire. I'm now in a
18 car on the way to Manhattan to be a guest on
19 Stephen Colbert's Report tonight.

20 CHAIRMAN RIVETTE: Are you really?!
21 Good for you.

22 MR. KAMEN: We'll try to make the

1 point that intellectual property is the
2 future.

3 MR. BUDENS: The gift to the next
4 generation.

5 MR. KAMEN: I like it. I'd
6 trademark that, except I might have some
7 conflicting evidence.

8 CHAIRMAN RIVETTE: The gift that
9 just keeps giving.

10 MR. KAMEN: Yep.

11 CHAIRMAN RIVETTE: Okay -- John, do
12 you want to kind of go through these
13 strategic initiatives?

14 COMMISSIONER DOLL: Yes.

15 CHAIRMAN RIVETTE: We are going to
16 end at five -- if not before. I mean, you
17 don't have to take the whole time.

18 COMMISSIONER DOLL: I'm done. Any
19 questions?

20 STRATEGIC PLAN INITIATIVES

21 COMMISSIONER DOLL: I would like
22 this to be interactive. If you have any

1 questions, stop me at any time. I'm going to
2 go through the strategic plan, and I'm going
3 to do it at a fairly high level, but I'm
4 willing to drill down and give you as
5 detailed answers as you'd like to have, or go
6 into more detail on any part of it. (Slide.)
7 But we're starting the strategic plan by
8 saying what we would like to do is improve
9 quality. Quality is our number one concern.
10 At the same time, what we'd like to do is
11 somehow gain efficiencies in the system, or
12 work on the backlog and reduce pendency
13 because that's what we're hearing on the
14 outside that we think is really important to
15 patentees. So the first thing that we're
16 thinking about doing with quality is actually
17 improving the examiner search; giving the
18 examiner some kind of tool; giving them some
19 help so that they do a better job. As I said
20 earlier, the number one error that we have is
21 over new art that the examiner did not
22 consider. I think if you look at the cases

1 that are litigated, I think the vast majority
2 of times that the examiner had the best prior
3 art in front of them they made the right
4 decision. I think the examiners are doing a
5 good job when they have that art. So what we
6 would like to do is increase their chances of
7 having the best prior art. Search strategy
8 is one of those areas where we're going to
9 try to beef up our internal staff to help
10 examiners come up, formulate a better search,
11 and to get the prior art in that case. We're
12 going to do that with in-group or
13 in-technology center search experts. We're
14 also looking at different search systems, as
15 I said earlier also. We're looking at
16 universities and technology-specific areas
17 where someone might have a particular search
18 engine to search for amino acids or proteins,
19 or they might have graphic design where we're
20 searching for design, or we're searching for
21 mechanical applications. And we're willing
22 to look at any of that. And we have teams

1 that are going to move in those directions.
2 The other thing about quality that's
3 interesting is that really would like to
4 develop a meaningful quality metric. Because
5 it's interesting: when our quality numbers
6 are bad and we're up there in that 6, 7
7 percent error rate, people look at us and
8 say, "You're bad by your own numbers. I
9 mean, just look at how bad you are. You
10 admit you're bad." But when the numbers get
11 very good, and we're measuring the same way
12 today that we've measure for 30 years, and we
13 come in at 3.5 percent, people say: "Well,
14 your measures suck. You're just not doing a
15 very good job. Your quality is much worse
16 than that."

17 CHAIRMAN RIVETTE: Do you ever feel
18 it's a Catch-22 issue? Is that what you're
19 telling us?

20 COMMISSIONER DOLL: Did I say that?
21 I can't win? But one of the things that we
22 would really like to do also is have some

1 town hall sessions, some meetings where we
2 could actually focus on: what do you expect?
3 What should our quality be? The average
4 examiner has 20.4 hours. You've paid \$1,000.
5 What can you reasonably expect to get in that
6 amount of time, and for that amount of money?
7 What can you expect? What should you expect.
8 So we go back to the suite of products again,
9 where we think we could give you different
10 levels of certainty on that presumption of
11 validity. That's one of the driving forces.
12 (Slide.) External validation -- one of the
13 things that I would love to do was to set up
14 some kind of a panel that was external to the
15 U.S. PTO where they did a quality review the
16 same way we did a quality review, so they
17 could say: yes, we were at 3.5 percent also
18 on the cases that we reviewed, within a set
19 quality metric. So we could say we are doing
20 a good job. And I know there's a lot of
21 conflict of interest questions there on how
22 you would do that. But there's ways that

1 we're willing to discuss; a
2 quasi-governmental organization that would do
3 nothing but quality review. You also have
4 the option of contracting it out to an
5 independent firm that would check our
6 quality. One of the options that I like
7 would be where we would ask the bar to put
8 attorneys on sabbatical; allow them to come
9 into the office and just do nothing but
10 quality review on a rotating -- you're
11 looking at me funny, Lisa.

12 MS. NORTON: (Laughs)

13 COMMISSIONER DOLL: You must be a
14 partner. (Laughter) But give up some of the
15 resources; send your prosecutors in. Let
16 them do the QR with us, by the standards that
17 we've established, that we've agreed on, are
18 good quality metrics, and see how they come
19 out; see exactly what our quality is.

20 CHAIRMAN RIVETTE: She said she's
21 going to sign up.

22 COMMISSIONER DOLL: I want to make

1 her an examiner. There's no doubt about
2 that.

3 CHAIRMAN RIVETTE: Second career
4 here.

5 COMMISSIONER DOLL: This is just a
6 way of us to look at the way we're measuring
7 quality. Because we're very serious out
8 about handing out a quality product. But it
9 has to be within the confines that we have at
10 this point in time: the time, the money and
11 what should you reasonably expect. (Slide.)
12 When you look at what we examine, though, we
13 could use a lot of help from you. Because
14 some of the inventions that come in here are
15 absolutely phenomenal. You look at the
16 recent Nobel prize for medicine, where Dr.
17 Fire had interference RNA; a phenomenal
18 invention that was filed in tech center 1600.
19 But then you look, and you look across at
20 what we get. And I don't have to look very
21 far to find a bathroom reservation system --
22 that I'm personally against, because that was

1 based on how much you paid for your seat.
2 But when I want to go, or I gotta go, because
3 I paid \$49 for my fare, I don't want to stand
4 in line. But then you look at other ones,
5 where you have intergalactic space flight,
6 with anti-matter, that was filed by a Park
7 Avenue law firm -- a New York City law firm;
8 you look at -- oh, reincarnation. And the
9 claim read something about "reincarnation
10 through the gifts of a loving couple." That
11 was filed by a patent attorney. At some
12 point in time I think the bar needs to look
13 across the table and say, "Close your
14 checkbook. I'm not filing it." Because we
15 don't have the option --

16 MR. KAMEN: What do you have
17 against loving couples?

18 COMMISSIONER DOLL: There's a lot
19 of things I could say, Dean, but --

20 MR. BUDENS: Good old Dean, he
21 always cuts to the chase.

22 COMMISSIONER DOLL: But what I'd

1 like to see is -- as Jon Dudas has talked
2 about a lot -- better quality coming in.
3 When I was an examiner I had an attorney that
4 used to call me and say, "John, I need a
5 reference that shows this," because somebody
6 was trying to file an application. And he
7 says, "I just don't want to file it. It
8 doesn't make any sense. It's too
9 elementary." And I think that kind of a
10 partnership, where we actually should
11 monitor, and I think the bar could help.
12 Now, there's not a great deal of applications
13 like that, but for every one of those
14 applications that I find that really is
15 silly, it's difficult for the examiner to
16 examine; it's hard as hell to find
17 reincarnation prior art. And then we get
18 criticized because we're spending a huge
19 amount of time on what I consider to be a
20 silly application, as compared to a real
21 patent application. So possibly -- I guess
22 there's a recurring theme here, and that's my

1 suite of products. Let them come in, let
2 them get the lowest level of protection. It
3 makes them happy. They can hang something on
4 the wall. And then we can move on to the
5 applications that deserve a real level of
6 examination.

7 MS. NORTON: John, how many -- I
8 mean, I know this is hard to say, but if you
9 had to characterize frivolous applications,
10 what percentage are you getting?

11 COMMISSIONER DOLL: It's a low
12 percentage; it's a small number.

13 CHAIRMAN RIVETTE: Under 10? Above
14 10?

15 COMMISSIONER DOLL: Oh, absolutely
16 above 10. It's in the thousands.

17 CHAIRMAN RIVETTE: No, I mean
18 percentage.

19 COMMISSIONER DOLL: Oh, no -- it's
20 probably not 10 percent. But, you know, we
21 were looking at doing claims, or
22 continuations -- the Notice of Proposed

1 Rulemaking -- for claims we were hoping to
2 get a 5 percent efficiency gain out of that.
3 We were hoping to reduce the total number of
4 applications that was filed by 5 percent.
5 That's a huge number of applications. And if
6 we could reduce it any at all, it helps us
7 move on to those applications that were filed
8 that really were important. That lets us get
9 to them faster. It's interesting -- because
10 I didn't mean to launch into this -- but the
11 difference between allowing one continuation
12 and allowing two continuations, as a matter
13 of right, is 140 experienced examiners a
14 year. That's the difference. That's a huge
15 difference. And that's what we were looking
16 at. I was looking at it from an operational
17 point of view: how much could I save, and how
18 many other examiners didn't I have to hire to
19 come in to take care of that work that those
20 140 examiners would do. So that was some of
21 the logic behind where we were. But then it
22 goes on to the suite of products also, which

1 I think is probably the biggest thing that we
2 can do for quality. When it comes to issuing
3 a quality patent what we'd like to do -- the
4 idea that we have -- is to let applicant
5 elect and then pay for whatever they would
6 like; whether you just want something to hang
7 on the wall; you'd like a little more
8 examination to get venture capital; maybe
9 it's just a 102 search; maybe it's just a
10 patentability report, where we just give you
11 a quick review -- always with the option of
12 coming through for regular examination. But
13 what we call the bulletproof patent, or the
14 platinum-plated product, where you come in --
15 and you've paid \$30,000, or \$50,000 to have a
16 team of two, three or four examiners -- an
17 expert on practice, an expert on the
18 technology, an expert on the law -- review
19 that application and really kick the tires
20 for a couple hundred hours, not just for 20
21 hours, so that when you left the Patent
22 Office you had a product that had an

1 extremely high certainty that that
2 presumption of validity was going to
3 withstand a challenge in court. And those
4 are some of the ideas that we had for just
5 moving on towards quality. (Slide.) The next
6 issue that I was going to talk about was the
7 automation efforts -- and these aren't in any
8 particular order. This is actually a talk
9 that I gave in Galveston, Texas. So that's
10 what I'm working from. But enhancing
11 automation -- one of the best things we could
12 do for examiners was move to a fully
13 electronic patent file wrapper, where what we
14 have right now is an image. You can't search
15 an image. You can't go back and look for
16 antecedent basis.

17 CHAIRMAN RIVETTE: Well, wait a
18 minute. I thought it was a PDF. And a PDF
19 can have all searchable text in it. We don't
20 require that it be searchable?

21 COMMISSIONER DOLL: No.

22 CHAIRMAN RIVETTE: Why?

1 COMMISSIONER DOLL: What we're
2 doing is we were trying to move to an
3 electronic system that would get people
4 hooked on electronic filing. A lot of the
5 PDFs do have searchable text behind them.
6 Most do, some don't. We're looking at taking
7 that text right now, and mining it and
8 processing that. And we're going to move in
9 a very slow, measured fashion to try to get
10 to that point. The other thing that we're
11 trying to do right now is that we do an
12 18-month publication. And at 18 months what
13 we do is we take the text and we put it in a
14 fully text-searchable XML tag format. What
15 we're doing right now is we're moving that to
16 the front end so that examiners will have
17 full text searchable, and that will allow
18 them to do antecedent basis searching, if you
19 have claim to look through. It allows better
20 for a 102-E search as to whether or not
21 you're working with (off mike). One of the
22 biggest problems we have in the Office of

1 Quality Review -- when I was in 1600, the
2 number one error that we had was ODPs that
3 examiners missed; an obviousness double
4 patenting rejection. Because they couldn't
5 do an effective search. What an examiner has
6 to do right now is do a name search. So you
7 go in PALM, and you put in an inventor's
8 name, and you get a list of all the
9 applications that were filed by that
10 particular inventor. From that list you have
11 to go into IFW and call up every one of those
12 sets of claims and see if those claims
13 interfere or overlap.

14 MR. PATTON: What is IFW?

15 COMMISSIONER DOLL: "Image File
16 Wrapper" -- that's where we are right now;
17 the applications that we have right now are
18 pure images. So what the examiner has to do
19 is then go through each one of those
20 applications. Well, if you have a prolific
21 inventor, that's a lot of work. When we move
22 to PFW, which is a Patent File Wrapper, a

1 fully-text-searchable file wrapper, what the
2 examiners can then do is just search through
3 the claims for certain terms or expressions
4 that would show overlap. That would make
5 that job a lot easier if you could limit it
6 by inventors.

7 CHAIRMAN RIVETTE: John -- I would
8 suggest that you run as hard as possible to a
9 fully electronic based one. I would probably
10 suggest not going through -- I mean, run as
11 hard as possible. Because one of the things
12 -- the old Manion Napier stuff used to have a
13 natural language search. So you'd take the
14 whole darned claim and stick it in there and
15 see what it comes up with.

16 COMMISSIONER DOLL: Yes.

17 CHAIRMAN RIVETTE: Those are the
18 sort of things, the tools, that I'm thinking
19 would really help start weeding out some of
20 the efficiency problems. Because then you
21 could actually do what you're talking about,
22 which is go back against other prior filings

1 quickly. And if you set the right parameters
2 in natural language, you'll pick up most of
3 the other ones, and then they can make a
4 decision off of that --

5 COMMISSIONER DOLL: Right.

6 CHAIRMAN RIVETTE: -- instead of
7 having to read everything. So my gut is to
8 go to the electronic version of this thing.
9 I would push as far as fast.

10 MR. WESTERGARD: Is this a
11 question, John, of imposing an obligation on
12 an applicant that you're not sure they're
13 ready for? Or is it an issue of Patent
14 Office resources? Because why not simply
15 impose that as a requirement for electronic
16 filing?

17 COMMISSIONER DOLL: We've never
18 done very well with electronic filing,
19 because what we did is we went out and told
20 applicant what we wanted, and didn't make it
21 mandatory. We wanted XML tag documents
22 coming in. Well, it was voluntary; we had

1 1.5, 2 percent filing rates. And what we did
2 was move to the PDF to get the electronic
3 filing rates up. Because there is an
4 efficiency gain there. But back to what
5 Kevin said: we are running as hard as we can.
6 We set \$30 million aside in the budget to go
7 back, and what we started with was 500 cases
8 a week to see if RTIS could go in; to see if
9 they could go in up front and create the
10 PG-pub document that is fully searchable.
11 And then we went to 1,000. And I think real
12 soon we're going to be up to steady state
13 with what is currently being filed. And then
14 we're going to go back and start to capture
15 the backlog. And we've got about 350,000
16 cases in prosecution right now. We've got a
17 700,000-case backlog. And we will be going
18 back and capturing them. But I think it's --
19 SPEAKER: You've also got a pilot
20 of art units going, with the text search
21 tools, where we have scanned the back files.
22 They are working toward that.

1 COMMISSIONER DOLL: Right. We're
2 focusing on those, where every case filed in
3 those art units is scanned; is put into that
4 text searchable file immediately so that we
5 can get results from that. And I think it's
6 a one-year or two-year project to capture the
7 entire back file, where we then do have the
8 fully-tagged, text-searchable document.

9 CHAIRMAN RIVETTE: I think it's
10 critical. Because otherwise all of these
11 things -- it's a manual process.

12 COMMISSIONER DOLL: Understood.
13 But to go back to what you said, we're
14 looking at that also. We're looking with the
15 CIO right now to develop a program where,
16 when there is text behind that PDF, to
17 actually take that and incorporate that.

18 CHAIRMAN RIVETTE: Absolutely.

19 COMMISSIONER DOLL: So that we
20 don't have to pay a contractor to go back
21 from the image --

22 CHAIRMAN RIVETTE: You can create a

1 PDF with the background text.

2 COMMISSIONER DOLL: And the vast
3 majority do have it, if you use word or
4 WordPerfect. So we are going to start to
5 capture that, also. So, great idea, and
6 where we're actually moving.

7 CHAIRMAN RIVETTE: Great idea,
8 we're already doing it.

9 COMMISSIONER DOLL: Well, we're
10 moving about as fast as we can. (Slide.)
11 E-filing -- we talked about e-filing. We
12 have a substantial savings there. There's
13 also a quality component to when you e-file:
14 nothing's lost, nothing is misplaced, nothing
15 is scanned improperly. A lot of the problems
16 that we have right now is because of poor
17 scanning, where you have an intricate
18 electronic diagram, or you have a design, or
19 you have a table --

20 CHAIRMAN RIVETTE: Are you guys
21 working at all with the image recognition
22 software?

1 MR. KAMEN: John?

2 CHAIRMAN RIVETTE: Dean, I'm
3 wondering if they're working with the image
4 recognition software, which has progressed
5 substantially in the last three years, so
6 that you can actually look at images and --
7 you know, different mechanical, different
8 chemical, all of those in the drawings. It
9 would be nice to be able to just let that go,
10 kind of like a fingerprint scan, and say,
11 "What do you come up with that's close?"

12 COMMISSIONER DOLL: And that's part
13 of the search system that I talked about in
14 our initiative where we're actually going to
15 go and look at search systems, and they're
16 moving towards working with designs, and
17 they're working with some of the plant people
18 and the electrical people for the circuitry
19 that they examine.

20 CHAIRMAN RIVETTE: Because
21 obviously it's not just circuitry, it's
22 mechanical -- I mean there's a lot of stuff

1 that comes in where you cannot do a word
2 search.

3 COMMISSIONER DOLL: Right. And
4 that's one of the things that they will be
5 looking at. And we've actually moved fairly
6 fast on the design part of that. So it's
7 working fairly well.

8 CHAIRMAN RIVETTE: Because I think
9 there's a lot of efficiencies to be gained
10 from a fully electronic system that can
11 actually do a lot of the searching and give
12 the examiner a much better first cut.

13 COMMISSIONER DOLL: Right.

14 CHAIRMAN RIVETTE: Because I think
15 you're right: once they've got the first cut
16 -- and if it's a good first cut -- they know
17 what to do with it.

18 COMMISSIONER DOLL: There's a
19 tremendous number of advantages for the
20 patent file wrapper, and we're trying to
21 capture those. And we've got a fairly
22 aggressive program. We're working with the

1 CIO, we're working towards a fully electronic
2 patent file wrapper, where it comes in the
3 front door, it's automatically assimilated
4 into a usable form where you take the text,
5 you post it, you build automatically that
6 PG-pub document, so we don't have to pay
7 somebody to create that PG-pub document;
8 working where every amendment comes in, the
9 amendment would automatically be entered into
10 the application because they'd be tagged
11 fields and it would be very easy to replace
12 the claims, replace part of the specs.

13 CHAIRMAN RIVETTE: Well, you could
14 also then go back over it and take --
15 structurally you could take the CFR, Title
16 35, and the MPEP, and run all of those
17 parameters against it every time it changes.
18 Because one of the problems I've always seen
19 is you get three exams down the road and the
20 examiner changed, and "we forget to put this
21 in," and then suddenly we're going to go
22 litigate it. You've never seen that, I know.

1 And it's nothing more than: "We just forgot."
2 And now we've got a litigation that's going
3 to go on forever because of it. Whereas I
4 think we could truly improve quality in a
5 very measurable way if we could take and do
6 the antecedent check; if we could do this
7 stuff right here. And if we've got terms
8 that we know are ambiguous, we could pop them
9 out of the claims. You know: "These terms
10 are typically ambiguous." We could then look
11 them up, and we could look them up against
12 the specification. I think at that stage you
13 suddenly get a lot higher measurable quality
14 against a structural problem.

15 COMMISSIONER DOLL: Right. With
16 the fully electronic file wrapper one of the
17 things that we're working with right now is
18 called "plus searching," where a machine will
19 take the terms from a claim, they'll compare
20 that to the literature, they'll compare that
21 to the prior patents, and then do an analysis
22 as to how close that claim is to some of the

1 prior art. So that when the examiner gets
2 the case, there's already been a rough cut,
3 first search, done on the prior art; the
4 literature, or whether it would be patent
5 literature.

6 MS. NORTON: Does that search, does
7 that look for similar terms?

8 COMMISSIONER DOLL: Yes, it does a
9 term comparison. One of the other things
10 that we're working on right now --

11 CHAIRMAN RIVETTE: Does that have a
12 lexicon in it, though?

13 COMMISSIONER DOLL: It will have a
14 thesaurus.

15 CHAIRMAN RIVETTE: Yes, that's what
16 I'm saying -- okay.

17 COMMISSIONER DOLL: One of the
18 things that we're working on right now, we're
19 proposing a new rule, where we're going to
20 consider requiring everything that comes in
21 that is not text, to come in in a
22 computer-readable format -- much like we do

1 in biotechnology, when you have a protein
2 sequence or a DNA sequence, we require you to
3 submit it in paper, but also submit it in a
4 computer-readable format so we can
5 automatically do the database searching for
6 that. People right now -- we do an
7 incredibly poor job, because we have an
8 applicant that creates chemical formal using
9 ChemDraw. And then they dumb it down. They
10 photograph it. They put it on the page, and
11 then they send it in. And then when we
12 publish it, we go back in and we create --

13 CHAIRMAN RIVETTE: Try to create --
14 exactly.

15 COMMISSIONER DOLL: So if we
16 require large tables -- anything that isn't
17 pure text -- to come in on a computer
18 readable format, that would be much easier
19 for us to use in our database for our
20 examiners to search with the ChemDraw, and to
21 publish. Because what we'd ultimately like
22 to do is to get to push-button publication.

1 CHAIRMAN RIVETTE: Oh, exactly.
2 That would solve some of those problems,
3 also.

4 COMMISSIONER DOLL: Right. Right
5 now we're running at about 140 to 160 days
6 from the time an examiner decides an
7 application is allowable until you get your
8 patent. And it was over 200. And one of the
9 things that we had done last year was we
10 reduced it from over 200 to down to about
11 160.

12 CHAIRMAN RIVETTE: IBM talked to
13 you about that.

14 COMMISSIONER DOLL: Oh, yes. And
15 they actually were one of the companies that
16 brought it to our attention. But it's
17 unbelievable to me that it takes almost as
18 long to print a patent as it does to examine
19 a patent. Because Robert talked a little
20 while ago about the average being between
21 nine and 13 months to examine an application.
22 You know, corps-wide, it's about 10 months.

1 And it's pretty steady, the average, across
2 the corps: once we pick it up, 10 months
3 later we've either issued it, or it's been
4 abandoned, or you've refilled that
5 application. But a lot of the things that
6 we'd like to do is that push-button
7 publication so that you can know exactly when
8 you're going to get your patent, and it can
9 be one day, two days after you pay that issue
10 fee. You pay your fee, we send you a galley
11 proof. You look at it. You go, "Yes, the
12 information is correct" -- because we spend a
13 huge amount of resources proofreading these
14 patents to make sure that they're 99.996
15 accurate. I'm going to let you tell me: is
16 this what you want published?

17 CHAIRMAN RIVETTE: Oh, I agree.

18 COMMISSIONER DOLL: And then you
19 come back and you say, "Yes. Here's my issue
20 fee." We'll give you your patent the next
21 day. Not a problem. Some of the electronic
22 things we're looking at. (Slide.) Retention

1 is one of those issues that is extremely
2 important to us -- and Jon Dudas has spent a
3 great deal of time working with us on that.
4 And I'll talk a little bit about regional
5 offices. Because the idea that we have is to
6 take a regional office. And we think what
7 we're going to get -- and I started to go
8 down this path earlier but I didn't finish --
9 is that I think we're going to get a much
10 bigger pool of candidates, and a better pool
11 of candidates. Because right now we recruit
12 -- we recruit nationwide, but we really don't
13 do well except east of the Mississippi. We
14 just don't get that many people from the
15 California schools that want to come here and
16 live on the East Coast. So if we did have a
17 regional office we think we'd have a much
18 better pool to select from --

19 MS. NORTON: You'd get all your
20 people from D.C. moving to Denver.

21 COMMISSIONER DOLL: And that's a
22 possibility. And it's interesting, because

1 we've talked to a couple places, and we
2 actually visited Denver. And Denver says,
3 "Well, California people won't move to D.C.,
4 but they will move to Denver."

5 CHAIRMAN RIVETTE: Oh, they'll move
6 to Denver.

7 COMMISSIONER DOLL: So that opens
8 up a whole new pool of potential applicants
9 for examiners. So that works out really well
10 for us. It's a great retention tool. One of
11 the other things that we're thinking about is
12 a local regional office, where examiners who
13 don't want to commute from Gaithersburg, or
14 Harpers Ferry or Winchester -- they don't
15 want to commute in here to Alexandria, but
16 they really can't work at home. And there's
17 a large number of people that either choose
18 not to work at home, or they simply can't
19 work at home because they have a spouse
20 there, they have kids there -- they can't do
21 it. So we're looking at the GSA Regional
22 Centers, where they could commute to that

1 center. We'd have the full suite of products
2 there that they could then examine from that
3 location. And we think that might be a great
4 retention tool also.

5 MS. NORTON: Yes, that's a great
6 idea.

7 COMMISSIONER DOLL: One of the
8 things that we're doing right now is that
9 we're developing a business case. Because
10 what we have to do in this arena is first be
11 able to go down to the Secretary of Commerce,
12 and then go to OMB and go to Members of
13 Congress and say: it makes sense to have a
14 regional office because -- here's the
15 business case as to why we should do it.
16 Once they buy into that, then the political
17 fight starts as to whether it's Senator Byrd,
18 or whether it's Senator Hatch, or which state
19 it's going to wind up in. From my
20 perspective, I don't think it makes sense to
21 go to Delaware, or to go to West Virginia.
22 But, again, moving somewhere west of the

1 Mississippi, over a thousand miles away,
2 would create a lot of opportunity. So that's
3 what we're trying -- yes, Robert?

4 MR. BUDENS: What's your timeframe
5 on this, John, at this point? When are you
6 going to select a city, and build the first
7 office? And how big is it going to be? You
8 know -- are you envisioning?

9 COMMISSIONER DOLL: My plan was to
10 actually try to do something in '07. That's
11 been slipping. It's taken longer to build
12 the business case than I thought it should.
13 Before we actually do a site selection -- and
14 we've done some preliminary studies into site
15 selections. We've got a contractor that
16 specializes in that -- a GSA contractor that
17 will tell you where you should go for these
18 criteria. We thought we'd better first get
19 buy-in from the Secretary of Commerce, OMB,
20 and Congress on that: "Hey, this is a good
21 idea." Once you say it's a good idea to do
22 this, then making the selection becomes an

1 awful lot easier. And that's the path that
2 we're going. I would love to, by the end of
3 this year, have everybody buy into the
4 business case, do the site selection -- which
5 is actually a fairly quick process -- and
6 then move towards setting up an office there.
7 The idea would probably be: just transfer
8 enough examiners out there for a shell, and
9 then hire 128 people out there, in a training
10 academy environment; train them. They would
11 then stay there. We'll hire another class,
12 then go to 256.

13 MS. NORTON: Is your vision that
14 you would have ultimately several of these
15 around the country?

16 COMMISSIONER DOLL: That's in the
17 business plan, because it could just be one,
18 or it could be -- as we said earlier -- one
19 in Silicon Valley, one where there's heavy
20 biotech -- and we've gotten a lot of
21 interest. We've got a letter from the
22 Governor of Idaho, the Governor of Texas, the

1 Governor of Colorado -- we visited when we
2 were there. We've gotten letters from
3 Delaware, from Pennsylvania. I got an offer
4 for tickets for the All-Star Game if I wanted
5 to come. I probably shouldn't do that. But
6 there's been a lot of interest. But what we
7 thought we'd do is be prudent -- and Jon was
8 correct when he made the call: before you get
9 into the political fight, establish that it
10 is a good idea, and then go to the Hill and
11 try to gain support.

12 CHAIRMAN RIVETTE: Robert -- what
13 do the examiners think? Have they heard
14 about this?

15 MR. BUDENS: Yes.

16 CHAIRMAN RIVETTE: Are they
17 enthusiastic?

18 MR. BUDENS: Yes, the word's going
19 out. I don't think -- I mean, I think a lot
20 of people are interested in seeing how it
21 turns out. As with most cases between
22 management and the examiners, the devil is in

1 the details.

2 CHAIRMAN RIVETTE: Right -- but as
3 a general concept.

4 MR. BUDENS: But I think a lot of
5 the examiners are looking forward to seeing
6 what comes out of this. And I think Lisa
7 probably hit it on the nose: we'll probably
8 have a fight to see who -- how many are
9 leaving here.

10 MS. NORTON: They'll sell they're
11 house here and buy a mansion out in --

12 MR. BUDENS: I threatened John
13 myself, if it happened, if he really wanted
14 to get rid of me -- because I have family out
15 in Denver. I think that strengthened his
16 commitment.

17 COMMISSIONER DOLL: After we came
18 back from Denver it was amazing, because the
19 word spread like wildfire throughout the
20 campus. And within a day, I had one
21 director, four SPEs and 17 examiners say,
22 "Sign me up, Coach. I'm on the way." They

1 went home and their wife said, "If they open
2 an office, we're going." There's no doubt
3 about it. So there is a lot of interest.
4 It's an extremely expensive proposition,
5 though, to pick people up and move them if we
6 were going to move 200. But, again, what we
7 would like to do is we're finalizing the
8 business case. I would like to share it with
9 you, because I really would like to have you
10 kick it around and make sure that when we do
11 show it to the Secretary or Commerce, or to
12 Members of Congress, that they just can't
13 say: no it's not a good plan. "Yes, this
14 makes sense. You ought to go ahead." So I
15 would like to share that, and hopefully I can
16 do that in the next week or so. Jon's gone
17 next week, so it will probably be a week or
18 so after that.

19 MS. NORTON: Now, is the reason
20 this is expensive because of the OMB
21 procedures for moving people?

22 COMMISSIONER DOLL: Yes.

1 MS. NORTON: Can you get some sort
2 of waiver? Or --

3 MR. KAMEN: What is an OMB
4 procedure?

5 MS. NORTON: Oh, I'm sorry -- OMB,
6 Office of Management and Budget. I don't
7 even know what the real name is for a lot of
8 these. Well, you can probably tell it
9 better, John. But they require certain
10 things to happen when Federal employees move,
11 which can be very, very expensive.

12 COMMISSIONER DOLL: And we're
13 looking into that.

14 MR. KAMEN: But they're hiring new
15 people, they're not moving.

16 CHAIRMAN RIVETTE: But you've got
17 to move some of them.

18 MS. NORTON: -- to train.

19 MR. KAMEN: And you can't do it
20 like any business does? You figure out what
21 it actually costs to move, and you reimburse
22 them for that?

1 MS. NORTON: Of course not.

2 COMMISSIONER DOLL: We may well
3 have to pay, you know, selling costs for
4 their home here. We may have to pay for
5 trips out there for them to look for new
6 housing. We may have to pay closing costs
7 out there. We may have to pay realtor's
8 fees. We're looking at possibly how much
9 money do we have, and how much can we spend.
10 And that's why I thought we'd send just
11 possibly a seed group out that could start
12 the training there. We are also looking into
13 people who are extremely interesting in
14 going, if maybe they would voluntarily move
15 -- if we could do that. I don't know if
16 that's legal.

17 MS. NORTON: Well, it seems like if
18 you could get something -- you know, Congress
19 could provide you some sort of waiver, that
20 if people voluntarily sign up to go and
21 they're qualified --

22 COMMISSIONER DOLL: That you

1 wouldn't have to pay. That's an option, and
2 we will be looking into that.

3 The other part of this, though --

4 MR. KAMEN: (off mike) --

5 CHAIRMAN RIVETTE: Dean? Go ahead.

6 MR. KAMEN: If he's (off mike)

7 talking about are smart enough to realize
8 what a huge opportunity it would be to have a
9 place there, maybe they could offer up funds
10 to offset your one-time cost for building an
11 operation, and let them sort of bid on it,
12 the way they do for being an Olympic host
13 city.

14 COMMISSIONER DOLL: And I'm not
15 sure, because I'm not an expert, and Jim
16 Toupin's not here -- oh, there is Jim --

17 MR. TOUPIN: I was hiding.

18 COMMISSIONER DOLL: I think there
19 are some problems -- to put it up for bid I
20 think may be a problem -- right, Jim?

21 MR. TOUPIN: I think so.

22 CHAIRMAN RIVETTE: All you've got

1 to do is let them put their trademark on
2 yours.

3 MS. NORTON: Just put it on e-Bay
4 and see what happens.

5 MR. BUDENS: Just put the great
6 seal of California --

7 CHAIRMAN RIVETTE: Exactly.

8 COMMISSIONER DOLL: One of the
9 other options that we talked about, and that
10 we'd like to do also is to partner with
11 universities. Because what we do right now
12 is we hire examiners that are engineers and
13 scientists. They know nothing about patent
14 law. We bring them in here and fully train
15 them. The idea that we had was to partner
16 with a university -- and we've talked to five
17 different universities right now -- about
18 possibly having a minor in IP, where you have
19 an electrical engineer who actually has
20 studied intellectual property as a minor. We
21 could bring them in at a higher rate. We had
22 talked also about doing a co-op program,

1 where much like an engineering co-op, where
2 you could take your engineering courses; you
3 could actually come here and work for a month
4 or two months, and then go back to the
5 university next quarter and go back and
6 forth.

7 CHAIRMAN RIVETTE: Did you talk to
8 University of Santa Clara?

9 COMMISSIONER DOLL: No, we haven't.

10 CHAIRMAN RIVETTE: Because they did
11 that with Intel, and Intel actually ran
12 almost 35 percent of all of their engineers
13 kind of a co-op course at Santa Clara for IP.

14 COMMISSIONER DOLL: Okay.

15 CHAIRMAN RIVETTE: God -- 20 years
16 ago. I just wondered -- they may have some
17 ideas on how that's done, and why. And you
18 can talk to Intel, too.

19 MS. NORTON: John, are you also
20 looking at law schools?

21 COMMISSIONER DOLL: Yes -- and we
22 actually talked a lot to William and Mary,

1 because William and Mary used to have an LLM
2 program in intellectual property, where they
3 actually taught intensive courses on
4 prosecution techniques. They dropped the
5 program, and we went back and talked to them.
6 And they wanted a huge amount of money to
7 restart the program. So we're still talking
8 to them, but it's a huge start-up. We've got
9 some really successful talks going right now
10 with North Carolina, who's extremely
11 interested in doing a pilot program on
12 intellectual property.

13 MS. NORTON: But it seems like if
14 you could provide the course materials, and
15 it's all the same -- it's just another class;
16 maybe patent practitioner, pick up and teach.

17 COMMISSIONER DOLL: Right.

18 CHAIRMAN RIVETTE: (off mike) Have
19 you thought about --

20 MR. KAMEN: Speak up, please?

21 CHAIRMAN RIVETTE: Franklin Pierce
22 -- it's up in your neck of the woods.

1 They've got an LLM in IP, and they're turning
2 out what appear to be pretty good graduates.
3 That might be one. I think Gerry's on the
4 Board.

5 COMMISSIONER DOLL: We'll touch
6 base. But that's the idea -- get people that
7 would come in, that would hit the ground
8 running, that would understand, where we
9 didn't have to train them from ground zero.
10 And so that's just sort of a high level of
11 what we would like to do.

12 CHAIRMAN RIVETTE: Can we send Dean
13 back?

14 COMMISSIONER DOLL: I heard he was
15 untrainable. Are you there, Dean?

16 MR. KAMEN: Yes, I am.

17 COMMISSIONER DOLL: Am I dead meat?

18 MR. KAMEN: No, no, no.

19 CHAIRMAN RIVETTE: Oh, he is
20 untrainable.

21 MS. NORTON: I think, John, these
22 are all great ideas. They're things that you

1 can tap into markets that you haven't been
2 able to get before. So I think it's great
3 that the PTO is looking at this.

4 COMMISSIONER DOLL: One of the
5 things that we'd like to do that Kevin's
6 talked about a lot is actually have some of
7 you help us with these. If you're interested
8 in any of these -- we gave you all of the
9 initiative papers -- and if there's something
10 that you would like to help us on, that you
11 would like to champion, I would love to see
12 somebody step up and say, "I want number 14.
13 I will make that happen. I will work with
14 you and I will deliver a product on that."
15 Or "I will go out and contact Franklin
16 Pierce," or "I'll go out and talk to Santa
17 Clara University." That's what we're looking
18 for from PPAC. That's what we haven't had in
19 the past, is that active participation, where
20 all of a sudden now the PTO has nine experts
21 out there in the field that are willing to go
22 out and help us and actually make a

1 difference, and deliver products to us.

2 MS. NORTON: I think that's
3 probably something we could talk about,
4 because between all of us, I'm sure we have
5 some good contacts.

6 CHAIRMAN RIVETTE: I can talk to
7 Santa Clara and Intel. So let's talk about
8 that afterwards.

9 COMMISSIONER DOLL: Okay, great.
10 That's the high level view. I didn't go into
11 every initiative; I just tried to hit them at
12 a high level. And I have 16 minutes.

13 CHAIRMAN RIVETTE: I think we're
14 good.

15 CLOSING REMARKS

16 CHAIRMAN RIVETTE: So, we've been
17 through a different type of process. People
18 like it? They don't like it? What do you
19 feel about today?

20 MR. PATTON: Well, it's my first
21 time. I'm very excited. I think, on one
22 side, I'm incredibly excited about

1 opportunities, and on the other side it's
2 kind of like cold water in your face: the
3 huge complexity and difficulty. You know,
4 being basically an inventor at heart, I think
5 everything is solvable -- and quickly; and
6 there's a way to do it. And I realize, the
7 more I work in politics, that is not the
8 case. It's a very long, long process. But I
9 still can't believe that. I still adhere to
10 the value that there's got to be ways of not
11 taking 10 years to do --

12 CHAIRMAN RIVETTE: I'm with you.
13 We can't afford 10 years.

14 MR. PATTON: Yes -- that's exactly
15 it. That's exactly it. So I think this is
16 very exciting. And what's fun about it is we
17 get to define a little bit on our own what
18 the best contribution could be for each of
19 us.

20 MR. GRANT: I, for one, really
21 missed going through the rule packages.

22 CHAIRMAN RIVETTE: Okay -- next

1 time we're doing the rule packages.

2 MR. GRANT: I can set you up.

3 CHAIRMAN RIVETTE: But do you like
4 it enough that we'll do it again next time?
5 Does the format work for you? Or not?

6 MS. NORTON: I think it's very
7 good. I really enjoyed having Judge Rader
8 here. It was very interesting to get his
9 input.

10 CHAIRMAN RIVETTE: So next time
11 we're going to figure out, by consensus, who
12 we want next. Because I think -- I mean, the
13 body's good enough, the people --

14 MR. KAMEN: Louder?

15 CHAIRMAN RIVETTE: I said the
16 body's good enough, the people are good
17 enough -- the committee is good enough, Dean
18 -- that we should be able to get good quality
19 people like Randy to provide their views to
20 us at lunch. And I think we should all put
21 people's hats in the ring and see who do we
22 want next.

1 MR. KAMEN: I liked your original
2 idea this morning of bringing in people from
3 like the patent office in China, of --
4 because for one thing, besides being
5 interesting and we learning from them, we
6 might be able to talk to them -- negotiate
7 with them in some way to figure out what it
8 is that we can do that, while we're fixing
9 our own system, use it as leverage to make
10 them more responsive to us, which would then
11 get back to having our business community,
12 and our leadership and Congress be more
13 interested in helping, if we were not just
14 getting rid of the lemons in our system, but
15 again making lemonade out of getting better
16 compliance and conformity internationally.

17 CHAIRMAN RIVETTE: Yep.

18 MR. KAMEN: Is it someone beyond
19 the scope or useability of us as advisors?

20 CHAIRMAN RIVETTE: I don't think so

21 --

22 MR. KAMEN: To bring in and

1 interact with senior people in other patent
2 offices?

3 CHAIRMAN RIVETTE: I don't think
4 so, Dean. I talked to you and Jon Dudas. I
5 think it's doable. I've actually had
6 conversations with the Chinese commissioner.
7 He's actually looking at potentially trying
8 to set up a PPAC for China now. So -- I
9 think it's doable, Dean. I just think now is
10 the time to work on the next one.

11 MR. KAMEN: Yes.

12 CHAIRMAN RIVETTE: So -- but if
13 this works for people, than I'd say let's do
14 it again like this. John, I want to thank
15 you very much for having the materials out
16 beforehand. I think that was great -- so we
17 actually had discussions, and got to be able
18 to have an interactive period today.

19 So, thank you very much for coming.
20 I'll declare the session closed if
21 everybody's okay with it. Okay -- we're done
22 10 minutes early.

1 (Whereupon, at 4:50, the
2 PROCEEDINGS were adjourned.)

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