

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Tuesday, May 10, 2022

1 PARTICIPANTS:

2 Patent Public Advisory Committee (PPAC) Members:

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

2 (1:00 p.m.)

3 MR. CALTRIDER: Good afternoon. I'm
4 Steve Caltrider, Chair of PPAC. I would like to
5 welcome everyone to this meeting. This is the
6 first meeting reflecting our new format.
7 Objective of the new format are two-fold. First,
8 to allow more full-scale discussion on a single
9 topic. Today we are discussing and focusing on
10 the PTAB. Second is intended to be more user
11 friendly for PPAC Members, for USPTO leadership
12 and staff, and members of the public joining in
13 the meeting. The short format should minimize the
14 Zoom fatigue. I welcome any feedback on the short
15 session. Please send those to the PPAC email
16 address. I will now call the meeting to order.
17 Let's start with introductions from PPAC members.
18 Tracy?

19 MS. DURKIN: Sure. Thanks, Steve. I'm
20 Tracy Durkin, and I am the Chair of the PQuIP
21 Subcommittee of the PPAC.

22 MR. SEARS: Hi, I'm Jeff Sears. I am

1 Chair of the PPAC Finance Subcommittee. Happy to
2 be here today.

3 MR. CHAN: Hi, everyone. I'm Jeremiah
4 Chan. I chair the Legislative and Policy
5 Subcommittee for PPAC. Happy to be here, too.

6 MR. CALTRIDER: Judge Braden, you may be
7 on mute.

8 MS. BRADEN: Thank you, Steve. I'm
9 sorry. Hi, I'm Susan Braden. I am a former
10 federal judge, and I am Chair of the Artificial
11 Intelligence and IT Committee. It's my second
12 year in PPAC, and I'm delighted to be here with
13 all of you.

14 MR. BROWN: Hello, I'm Dan Brown, and
15 I'm the Chair of the Innovation Expansion
16 Subcommittee, second year in PPAC.

17 MR. DUAN: Hi there, I'm Charles Duan.
18 I am the Vice Chair of the Legislative and Policy
19 Subcommittee and delighted to be on PPAC as well.

20 MS. HARRISON: Hello, everyone. I'm
21 Suzanne Harrison, and I'm the Vice Chair of the
22 Innovation Expansion Committee.

1 MS. NEBEL: Hi. I'm Heidi Nebel. I'm
2 the Vice Chair of the PQuIP Subcommittee.

3 MS. DUDA: Hi. I'm Kathy Duda. I'm the
4 POPA Union Representative.

5 MS. FAINT: And I am Cathy Faint. I'm
6 the Vice President NTEU 245 and a PPAC Member.

7 MR. CALTRIDER: Thank you. The first
8 order of business is we welcome Kathi Vidal, Under
9 Secretary of Commerce for Intellectual Property
10 and Director of USPTO. We are absolutely thrilled
11 that you're here and hitting the ground running.
12 We really look forward to working with you and
13 serving the USPTO to advance American innovation.
14 But before I hand it over to you in terms of the
15 Agenda, I also want to take a moment to thank Drew
16 Hirshfeld. Drew has done a remarkable job serving
17 as Interim Leader which culminates (phonetic) with
18 long years of service with USPTO and leaves the
19 Patent Office and Patent System much better
20 because of his leadership. I'm not asked to vote
21 on IP Hall of Fame, but if I did vote, Drew would
22 get my vote for sure. Thank you for your service.

1 I'm not sure of your timeline or if this will be
2 your last PPAC Meeting tonight. I certainly hope
3 you'll join us for at least one more in June. I
4 will now turn the floor over to Kathi, the USPTO
5 Executive Team, for introductions and opening
6 comments from Kathi.

7 MS. VIDAL: Thank you. I -- I
8 appreciate that, Steve, and I would echo
9 everything you said about Drew. He's just done
10 such a great job. It's difficult, even as great
11 as this organization is, it's difficult when you
12 don't have the political leadership positions; and
13 I just, I can't thank him enough for everything
14 that he's done. I'm also really excited about the
15 PPAC new format. I love the idea that the PPAC is
16 going to have shorter meetings where we can dive
17 in more deeply on important issues; and we've
18 certainly got a lot to accomplish, and I'm really
19 looking forward to working with the PPAC in order
20 to make that happen. In terms of the vision and
21 what we're looking to do here at the USPTO, we're
22 looking to incentivize more innovation

1 inclusively, including from underrepresented
2 communities but also from our larger organizations
3 and innovation ecosystems. We're looking to do
4 that, especially in key technology areas, whether
5 it be climate change or AI or solving some other
6 world problems. And then course, after we
7 incentivize that innovation, we want to make sure
8 that everybody has access to protect it because
9 that's really the way that we're going to all
10 benefit from the innovation. And then, then
11 bringing the innovation to impact, so really
12 looking forward to working with you on all of
13 that. I know that, in addition to that, it's
14 overarching goals. We've got a lot of important,
15 more technical issues that we need to address in
16 the law, and it's going to take everybody's great
17 minds to think through the issues and make sure
18 that we're making the most-sound decisions as we
19 go along. I'm excited to be here today as we
20 focus on the PTAB and making patents more robust
21 and reliable. That certainly is something that we
22 took up from day one and that we've been working

1 on. We, as I think everybody knows, we updated
2 our Director Review Process, and that's an interim
3 process that we're using. We provided additional
4 information so that the systems we're using will
5 be transparent, and we provided an opportunity to
6 provide comments now. We're also going to issue
7 an RFC on that, and I plan, where we can't
8 announce those things in advance, not only so that
9 we can dialogue. You know, I can dialogue with
10 the PPAC and with other leadership here at the
11 USPTO, with others within the USPTO, on these
12 things and make sure that we're asking the right
13 questions and thinking creatively about all of
14 this, but so that other members of the public can
15 provide their input as well. And certainly, once
16 we shape that RFC, we'll get comments on that from
17 the public before we do anything more formal.

18 I also like the idea that we're focused
19 on the PTAB and, again, robust and reliable
20 patents because I think it's critically important
21 that we close the loop in terms of our feedback
22 loop for our patent ecosystem, that we have great

1 dialogue between the examiners and the PTAB,
2 between those individuals, and judges and
3 constituents, etcetera, to make sure that we're
4 issuing the strongest and robust patents and that
5 we're maintaining them. And so, I do want to
6 announce today that we are starting to work on
7 some training with AIPLA and IPO, really targeted
8 at helping examiners understand the full impact of
9 the decisions they're making and the records
10 they're creating and how that plays out over the
11 life of a patent. So that would be whether it's
12 at the PTAB, whether that be in litigation, and
13 how those patents are used in litigation and how
14 they're used to protect innovation from especially
15 small to medium size enterprises. So I'm very
16 excited that we're working on that. It's one of
17 many initiatives that I'm looking forward to
18 rolling out in the near term. So thank you all
19 and thanks for hosting this today.

20 MR. CALTRIDER: Thank you, Kathi. Lots
21 to unpack there and we look forward to working
22 with you throughout the year. I will now hand

1 things over to Tracy and Heidi, the Chair and Vice
2 Chair of the PQuIP Subcommittee.

3 MS. DURKIN: Great. Thanks, Steve. So,
4 Director Vidal just gave us a perfect segue into
5 our next topic. And as you can see, the focus of
6 today's meeting is really on our new subcommittee
7 in the PPAC, which we're calling the PQuIP, which
8 is a combination of patents, quality,
9 international, and PTAB; and it is in recognition
10 of the long-term goals that both the office and
11 the PPAC have had to eliminate the gaps between
12 the patents function and the function of the PTAB,
13 in reality and also in the eyes of the public.
14 And so with that, we have two really interesting
15 presentations today that have been gathering some
16 information that will be useful to that exercise.
17 And I think our first presentation is going to be
18 from the patents area, and Andy, should I turn it
19 over to you to introduce that?

20 MR. FAILE: Thank you, Tracy, and I will
21 turn it over to Robin to introduce.

22 MS. EVANS: Thanks, Andy, and thanks,

1 Tracy. Up first, we will have our external
2 quality service, and this is really a look on
3 perceptions on what our external stakeholders
4 think about the quality that they're receiving in
5 their office actions from patents. So with that,
6 I will turn it over to Marty so he can go through
7 some of the key findings.

8 MR. RATER: Thank you, Robin. So yeah,
9 go ahead, reach up to the very first slide. We've
10 just got a couple slides. We wanted to show you
11 some of the key findings. A little bit of
12 background on this survey. This is one of the
13 many surveys we do. It's one of many ways we
14 measure quality. This particular survey is a
15 semi-annual survey that we do. We have an
16 external survey research firm conduct this survey
17 for us. We focus on high-volume filers for this
18 particular survey. And there's a couple of
19 reasons to do that. Tracy mentioned long-term
20 goals. This survey was really designed for
21 longitudinal type studies where we want people
22 that are interacting with the office on a daily

1 basis. So just to kind of give you an idea of
2 this survey frame, these are agents, attorneys,
3 and vendors that have six or more filings in a
4 year. And when we ask them to evaluate quality,
5 we're asking them to evaluate quality over a
6 three-month period. And that kind of translates
7 into about 20 to 30 office actions over that
8 period. So it's a good data set for us, because
9 it speaks of -- a really snapshot of about 30,000
10 office actions or kind of exchange in the folks at
11 this time. And we mentioned longitudinal, so
12 there's, you know, this is the one key number we
13 do kind of track out of this. You've probably
14 seen this slide from me probably several times. I
15 know Drew's used it many times. We ask our
16 customers to rate quality, is it good, excellent,
17 fair, poor, very poor. And over time, this just
18 shows you, the green line is the percent of our
19 customers that say, at that particular three-month
20 period, the body of work I reviewed was good or
21 excellent. The blue line at the bottom is those
22 that say poor or very poor. Not shown there are

1 the percent of customers that say quality is fair.
2 So what do we do with this? So we look at this in
3 multiple ways, right? We look at those folks
4 ideally that love 100 percent of our high-volume
5 filers here to be saying quality is good or
6 excellent. But we all have services. There's
7 multiple touch points. Everybody's got different
8 things that go into their matrix, and that this is
9 a matrix of what is quality.

10 But a couple key things to point out
11 here. So obviously, you'll look on the left side.
12 Back in the day, we only had one customer that was
13 saying quality is good or excellent for every
14 single customer that said quality was poor or very
15 poor. Whereas, in today's environment, the most
16 recent survey, which we concluded in March, shows
17 62 percent of our customers say quality is good or
18 excellent; and that's times as many customers that
19 say quality is poor or very poor. And that's a
20 lot healthier environment, you can imagine, to
21 operate in.

22 The other key thing to really point out

1 here is we've got two decent numbers there, decent
2 in terms of the longevity and how we've done this.
3 We've administered this survey about 35 times now.
4 The last two surveys, you see a 65 percent, you
5 see a 62 percent. Only three out of those 35
6 administrations have we received and achieved a
7 level of 60 percent or greater. You'll see
8 earlier, back in 2019, we had a 61 percent mark.
9 That coincided with our patent eligibility
10 guidance released in January of 2019. So some
11 strong indications here of where we're going. The
12 other important thing not really shown here, but
13 it is an effect of it, is we also ask customers,
14 we know, right? Historic happens. I might need
15 to see continued improvement before I'm willing to
16 give you that rating of good or excellent. I
17 might be riding in the fair group. We also ask
18 our customers whether, regardless of what level
19 you're currently at, are you seeing quality
20 improving, declining or staying the same. For
21 about the last three survey waves, we have about
22 twice as many customers say quality is improving

1 as declining. So that's another positive
2 indication out of this survey.

3 Go to the next slide? We asked about
4 probably 25 to unique questions on this survey.
5 Again, it's a snapshot.

6 But we asked how often were the
7 rejections you received recently in terms of
8 correctness. We also asked about consistency. We
9 also asked about clarity. We wanted to point this
10 out because this has a couple of telling things.
11 If you notice the 103 rejections there, it's the
12 second bar, about 54 percent of our customers say
13 we're correct most or all of the time, 41 percent
14 some or some of the time, and then 5 percent say
15 rarely. 103 rejections seem to correlate the best
16 with our overall ratings, and that's not
17 surprising given the fact that about 75 percent of
18 our finals and non-finals contain a 103 rejection
19 versus maybe 35 percent containing a 102
20 rejection.

21 Over there on the far right, that's one
22 of our pain points. It's a pain point we've been

1 looking at for a while. Nearly 20 percent of our
2 customers say we're rarely correct in our 101
3 arena. Only 40 percent say we're correct most or
4 all of the time.

5 The other thing we take about this data,
6 we use this data for is to calibrate with our
7 internal quality review system. So this is where
8 we'll look at. If we look at our internal
9 measures, we do a significant amount of quality
10 reviews, probably 40,000 office actions are
11 reviewed in a given year. Some of our internal
12 indications think that or show that when we make a
13 102 rejection or we make a 103 rejection, we feel
14 we're following all the compliance and the
15 statutes accordingly about 85, 90 percent of the
16 time. So we don't see this disjoint internally
17 that our customers are telling us exist between
18 102 and 103 rejections. So we'll explore that a
19 little bit, and that's kind of our focus for the
20 coming years, and there's been a focus to try to
21 identify what that difference is in terms of the
22 customer perceptions, in the 102s and 103s and

1 then how we can adapt that to our internal review
2 system to try to identify those leading
3 indicators.

4 Finally, we'll go to the next slide and
5 talk about longitudinal data. We see things. A
6 lot of times, it's just little hiccups here and
7 there, and then what can we observe over time.
8 This is one data point we've been tracking over
9 time and has really started to show there's a
10 significant difference in how people react. And
11 it's how well customers feel our examiners address
12 response to office actions. And you'll see those
13 horizontal blue bars down there? 20 percent of
14 our customers feel that we do it to, only a small
15 extent of the time. About 46 percent of our
16 customers feel we do it to a moderate extent, and
17 then 34 percent of our customers feel we do it to
18 a large extent of the time. So why is that
19 important? Because then you look at the vertical
20 box there. If you'll notice on the left, you've
21 only got one red bar. 19 percent of our customers
22 that were in that bucket felt quality was poor or

1 very poor overall. If we can get our customers,
2 not sure all of this is plausible, but other
3 customers that feel we do a good job responding to
4 office actions or to the applicants' arguments,
5 even to a moderate extent or a large extent, 0
6 percent of those customers felt quality was poor
7 or very poor. And you get over there on the far
8 right, if we want to get to a number of 80, 85
9 percent saying good or excellent, we need to make
10 sure that we're responding to applicant arguments
11 to a large extent of the time.

12 So that is actually one area we're
13 exploring this fiscal year. We've actually put
14 one of these measures in our first line managers,
15 are speed in their performance ratings this year
16 and that's the data point we thought we wanted to
17 share with you today. I think that concludes what
18 I wanted to share. We've got time for questions.
19 I'll be happy to entertain them.

20 MS. DURKIN: Great. I'll ask one
21 question while we see if there are any others.
22 Was there any information you care to share in

1 terms of Tech Center or technology areas as being
2 more or less satisfactory?

3 MR. RATER: So we do monitor, we do ask
4 these respondents which technology area they
5 interacted with the most. And I think, at the end
6 of the day, because we're talking such high-volume
7 customers here, we don't see much difference; and
8 I think a lot of our customers are really talking
9 about an organizational boundary. You know,
10 sometimes they could be in technologies and it's
11 spread so much. I think our internal quality
12 review findings do a little bit better job of
13 diving into the technology differences. This
14 survey doesn't seem to detect that. I think if we
15 do go out, and it's one of the things we're
16 exploring, asking customers and asking our mixed
17 media what industry they were more likely to
18 dabble in over that three-month period, that will
19 give us some insights; and that's another thing
20 we're actually looking to explore. No, no super
21 answer right now for you.

22 MR. CALTRIDER: I'd like to ask a

1 question or comment on Slide 8 and ask a question
2 on Slide 7. I don't know if you're able to pull
3 them back up. Comment on Slide 8 is to applaud
4 the office in your efforts to respond to an
5 office, or an applicant's response to an office
6 action to give it appropriate consideration to a
7 large extent, I think, is incredibly important; so
8 I'm pleased not only with the data but also the
9 steps you indicated the office taking to do that
10 because that's being listened, heard, and fully
11 addressed, the prosecution is obviously, a
12 fundamental tenant and quality. And I certainly,
13 the data bears that out, and I'm pleased with the
14 office's efforts to shift that more into the large
15 extent category. On Slide 7, I'm curious on
16 Section 101, and I just don't recall the data from
17 earlier surveys, is the 19 percent trending up or
18 down, particularly since the guidance and what,
19 where are we on the 19 percent with Section 101
20 kind of the trend line?

21 MR. RATER: So this is, all of these
22 numbers have held pretty steady over the last two

1 or three years, even since the guidance, right? I
2 think once the guidance, we went down to maybe 40
3 percent dissatisfied or feeling it was rarely
4 correct down to that 20 percent and that's where
5 it's kind of leveled out. I think when we do look
6 at the comments and we see what folks are
7 indicating, I think those are the ones that have
8 either had such a bad experience over that
9 five-year timeframe, they want to see continued
10 improvements before they're willing to give us
11 that next mark, or they are making comments on
12 things that maybe are outside the hands of the
13 actual examiners. Right? This is where they're
14 talking more about the law and the policies that,
15 you know, they're not holding, it's just a general
16 dissatisfaction if you will. That's where the
17 101s have kind of been. One of the things we are
18 exploring and, again, this is where this survey
19 kind of fails us a little bit. This is a totality
20 and when, you know, how many of these customers
21 actually had a 101, I'd say only about 7 percent
22 of our finals and non-finals these days, how many

1 101s did they actually have in that body of work
2 over that three-month period to evaluate when they
3 probably had 30 or 40 103s to evaluate. So we're
4 looking at how we can get to more of that
5 transactional level to really speak to that.

6 MR. CALTRIDER: Thank you.

7 MR. DUAN: If I could ask a question?
8 First of all, as Steve said, this is a really
9 great data. I applaud the office for undertaking
10 these efforts to really dig into what's been going
11 on. I think it's really great that you're making
12 these efforts. So you mentioned that this was a
13 survey of high-volume patent applicants or patent
14 attorneys. I'm wondering if there's been any
15 interest or effort in surveying other populations?
16 In particular, I'd be curious about sort of more
17 low-volume applicants and also, many folks who
18 aren't applying for patents at all but, otherwise,
19 have reasons to read patents. For example,
20 scientists or litigators. I would imagine that
21 the high-volume applicants are probably fairly
22 familiar with patent practice and may have certain

1 advantages in being able to understand file
2 histories and rejections and such that others may
3 not, and I'd be curious if there would be
4 differences in results if those reviews were to be
5 undertaken. Obviously, there would be more
6 difficult surveys to undertake for fairly obvious
7 reasons, but I'm curious if you've looked into
8 trying to do that.

9 MR. RATER: So yes. So a couple of
10 things to unpack there. So absolutely, right?
11 They're less frequent and they're what we've seen
12 is obviously, then that becomes a little bit more
13 transactional. Did I get -- what didn't meet my
14 expectations? Did I get what -- and then you've
15 got to kind of tease out what barriers did we --
16 up until that interaction, what barriers, right.
17 This survey, I think you hit it right on the head,
18 is to get just things that we can take maybe a
19 little bit easier readily to the examiners and say
20 ok, let's take this. We do do other surveys.
21 Like, we'll do surveys of our pro se applicants,
22 right? What is their experience in that process,

1 and how do those interactions work, and what can
2 we do there? Now in terms of focusing on maybe
3 even the folks that are maybe using our products,
4 at the end of the line or not actively engaged in
5 the patent system or maybe even prior to becoming
6 those customers, I think those are things that
7 we're looking at as we explore these
8 underrepresented, underserved and other, you know,
9 areas to look at; and that's what we're kind of
10 looking at. How do we collect that data, right?
11 How do we identify? A lot of times, we don't
12 identify with a customer until they've actually
13 filed. Well, what about those customers'
14 perception, our potential customers? And so we'll
15 work through like our Chief Economist's office and
16 the other units throughout, you know, just USPTO,
17 not just even patents that are exploring these
18 different things and have a couple surveys on
19 that. Yeah. Happy to have those discussions, too
20 down the road.

21 SPEAKER: I have a question. Applicants
22 just (inaudible) in terms of quality but when

1 looking and measuring quality, how much of it is
2 do you believe is related to say timeliness versus
3 people agreeing on issues of obviousness, or
4 (inaudible), et cetera?

5 MR. RATER: Fantastic question. So one
6 of the (inaudible) holes when we started this
7 survey back in 2006 because we wanted everybody
8 just to be thinking quality, right? Focus on
9 quality, tell us what it is. Okay. You know,
10 we've learned over time, we start seeing more and
11 more comments about timeliness. We see more
12 questions about value, other things. So we are,
13 actually, I mentioned we do this with an external
14 contractor. There's actually a little bit of
15 hurdles whenever you choose significant questions
16 here and we do that. One of the things we're
17 exploring and, hopefully, if not the next survey,
18 but a future survey early next, you know, calendar
19 year is to explore some additional constructs in
20 this survey so that we can start measuring that.
21 How much of this is being driven by just our
22 response to amendments, how much of that, so we

1 can start seeing that. Because we really do know
2 it's a challenge of optimizing everything, right?
3 So I think we do need to ask those other questions
4 so that we can determine where do we need to
5 optimize. And for different groups, that
6 optimization may be different. So great question
7 on timeliness and that is one of our future areas
8 of exploration. Internally, when we do our
9 internal quality reviews, we do try to time that
10 with some of our pendency measures to see what
11 overlap; and end of the day, right, everybody
12 wants it better, faster, and cheaper. Where is
13 that proper level to be?

14 MR. BROWN: What is the correlation
15 between improvement and timeliness with the
16 improvement and the overall quality? I mean, it
17 looks really very good obviously, or is not even
18 correlated?

19 MR. RATER: We do think just the general
20 health of the environment and that's, so that's
21 another great point is how do we measure these
22 other factors that are going on and control for

1 --

2 MS. DURKIN: I'm going to just jump in
3 for a second because we need to move on, Dan, and
4 that -- do you have another?

5 MR. BROWN: No problem.

6 MS. DURKIN: Okay. We do have one
7 question from the public and, Martin, I don't know
8 if you're the right person to answer it or not,
9 but there was a question about what is the
10 percentage of pro se applicants to the general
11 application pool or applicants represented by
12 counsel?

13 MR. RATER: It stayed pretty steady,
14 about 3 percent, and it's been holding steady;
15 about 3 percent of our filings are pro se
16 applicants.

17 MS. DURKIN: Great, thanks. Well, I
18 think we need to move on because we've got another
19 topic to cover today, Martin. Thank you very
20 much, and thank you, patents, for that
21 information. This survey's always a, always a fun
22 one to get if you're a practitioner; and it's nice

1 to know that the data is actually being looked at
2 so closely.

3 We're now going to turn to the PTAB, and
4 again, we have some survey results that's going to
5 be presented to us. This is not an ongoing survey
6 but a brand new survey that was commissioned by
7 the office; and just to orient everyone before we
8 get started, I just want to note that this is
9 again an ex parte prosecution survey even though
10 it's being conducted by the PTAB and has to do
11 with appeals to the PTAB by applicants. So with
12 that, I'm going to turn it over to Chief Judge
13 Boalick and let him introduce who is going to make
14 this presentation.

15 MR. BOALICK: All right, well, thank
16 you, Tracy and appreciate the introduction. Yes,
17 so we've actually got three things to present to
18 everybody, the first being this survey of patent
19 examination for, about PTAB's work in our ex
20 parte. We also have an update on our Pro Bono
21 Program and our LEAP Program; but to kick things
22 off, we're going to start out with Janet Gongola

1 and Lead Judge Dave McKone and Judge Jeff Fredman,
2 who will talk about the survey of the examining
3 floor. So I will turn it over to Janet.

4 MS. GONGOLA: Thank you.

5 MR. BOALICK: And if you could, advance
6 the slide to, I think, Slide 4, I believe.

7 MS. GONGOLA: Thank you very much,
8 Scott, and good afternoon, everyone. It's a
9 pleasure to be with you today. I just want to
10 give a little background on the PTAB survey of
11 patents, and then I'll turn it over to my
12 colleagues the Judge Dave McKone and Judge Jeff
13 Fredman to give the detail. As background, we
14 conducted this survey of patent management with
15 the hope of learning more about the quality,
16 efficiency, and effectiveness of our PTAB
17 Division. We are looking at the feedback from the
18 survey to figure out ways in which our judges can
19 strengthen their decisions, any detail that's
20 missing. Additionally, we are looking at the
21 results of this survey to identify training
22 opportunities for both judges as well as patent

1 examiners. As you can see, we did an earlier
2 survey where our patent survey PTAB judges on the
3 very same types of information. So the survey
4 we're talking about with you all today is a
5 reciprocal survey so that we can have this good
6 communication channel between both examiners and
7 the PTAB. At this point, I'll turn things over to
8 Lead Judge McKone to talk to you about the
9 questions and the results.

10 MR. MCKONE: Thank you. Can you hear me
11 okay?

12 MS. GONGOLA: Yes, Dave, good.

13 MR. MCKONE: Okay.

14 MS. GONGOLA: And we see the slides
15 fine.

16 MR. MCKONE: Yeah. Great. Next slide
17 please? All right, so and Janet gave a good
18 background as to how we got here. So the PTAB
19 Survey of Patents that we conducted in 2021, the
20 goal was to engage patents management and
21 listening to their views on PTAB appeals
22 decisions. So this just deals with the ex parte

1 appeals and not with anything post grant. The
2 people that we surveyed were people of patents
3 management, the Supervisory Patents Examiners,
4 SPEs, and Quality Assurance Specialists, QASs, and
5 other patents management. So we did not survey
6 the examiners directly. Rather, we surveyed those
7 who supervise the examiners. And we had about 124
8 responses to this survey. And that was
9 administered in the summer of 2021.

10 Next slide please? All right, so we had
11 about, in addition to background questions and
12 demographics, we had about 12 substantive
13 questions. I'm not going to go through all of
14 those here. I'm going to go through it, what is
15 considered the most pertinent. So the first is
16 the overall measure of how PTAB is doing appeals
17 decisions. We asked overall how satisfied are you
18 with PTAB decisions. And here, the highest bar
19 was satisfied; and if you look at, comparing -- if
20 you discount the neither satisfied and
21 dissatisfied, and neutral responses, we have about
22 6.4 satisfied or very satisfied responses to every

1 dissatisfied response. We think that is a good
2 indication that, in general, the patent management
3 is happy with the decisions that were rendered.

4 Next slide please? So we got into a
5 little bit more detailed questions on specifics
6 from our ex parte decisions, and I'll go through a
7 few of those. For example, we asked whether the
8 Board's fact finding and legal conclusions were
9 explained adequately. In general, the, you know,
10 respondents found that usually or always we
11 explained the facts and laws adequately. So about
12 two-thirds of responses were that way. So we had
13 very few rarely. Although we did have about a
14 third of the responses that said we sometimes
15 explained the facts and the law adequately. So we
16 take from this, in a general manner, we're doing a
17 good job. However, there is some room for
18 improvement in our explanations of facts and the
19 law.

20 Next slide please? We also asked do our
21 decisions provide enough explanation for you to
22 understand why a rejection's affirmed or reversed?

1 Similar responses here, so about two-thirds were
2 usually or always provide enough explanation.
3 Very few rarely. However, about a third, or a
4 little less than a third said sometimes. So
5 again, we're doing a good job explaining why a
6 rejection's affirmed or reversed; however, there
7 is some room for improvement as well.

8 Next slide please? We asked do you
9 understand the reasoning in our decision. Similar
10 responses here. About two-thirds said usually or
11 always, and about one-third said sometime. So in
12 general, our reasoning is understandable; but
13 there is room for improvement as well.

14 Next slide please? Then we asked about
15 the amount, the length and details of our
16 decisions; and here, the respondents indicated
17 that, for the most part, our decisions are about
18 the right length and about the right level of
19 detail. A few responded that we could add more
20 details or length. Very few said we're saying too
21 much. But in general, it was like our length in
22 detail was about where it ought to be from a

1 patent perspective.

2 Next slide? So with this, in this
3 question, we got a little bit of a different
4 result. So we asked do the decisions provide
5 clear guidance in how to continue prosecution. So
6 we were guided by watching what happened after our
7 decision. Here, the biggest bar, about 40
8 percent, was sometimes with some, with probably
9 more on the usually or always side, but still some
10 saying rarely or never. We did also, as part of
11 this survey, have questions that they're allowed
12 for narrative responses, in general, giving us
13 some indication of where they thought we could
14 improve. And here, we did have some responses
15 that centered around new rounds of rejection, and
16 that being a possible point of confusion or lack
17 of clarity. So looking at this chart in
18 conjunction with some of those responses, one area
19 we think that we can improve is providing better
20 guidance on new grounds of rejection.

21 Next slide please? So to summarize the,
22 what we do with our next step, we've established a

1 task force of judges to just look at our
2 decisions, identify where we could improve or
3 enhance or expand our decisions, especially
4 looking to provide better guidance post appeal
5 next steps, such as new grounds of rejection. We
6 expected the result of this -- as a result, we
7 provide training to the judges on best practices
8 and some additional training on new grounds of
9 rejection.

10 New slide please? Also, another one of
11 the questions that we asked is to allow for a
12 narrative response as we asked what training could
13 PTAB provide to the examining court. In here,
14 several of the responses centered around things,
15 advice that we could give to essentially improve
16 examiner answers, things like what the judges
17 would like to see in examiner answers, how judges
18 approach their decisions. And also, we already
19 have some training on drafting examiner answers;
20 and we have sent the results of this survey back
21 into the committee that's preparing their
22 training, and we are providing, we're developing

1 updated and streamlined training on drafting
2 examiner answers. In near term, we would look to
3 prevent that, too, the PSEs and the QASs as more
4 of a long term goal to hopefully prevent, present
5 that to the examiners. Also, as I mentioned,
6 we're working on training for the judges on new
7 grounds of rejection. We would eventually like to
8 work with patent to see if there's anything we can
9 take from that training that might also be
10 applicable for the examining corps, but that would
11 be future development.

12 Next slide please? So the take-away
13 from the survey? In general, the patent
14 management is satisfied with the PTAB decision. I
15 will note there were not significant differences
16 across the Technology Center so there wasn't, for
17 example, a different level of satisfaction for our
18 mechanical decisions compared to our electrical
19 decisions for example. We have identified ideas
20 for possible improvement. We've established a
21 task force to investigate how we can improve our
22 decision content. We are developing training to

1 provide to the examiners and the judges on things
2 like new grounds of rejection and, for the
3 examiners, training on the field process and
4 examiner answers. And also, since we've gotten
5 some of the input from inside the patent office,
6 we think it makes sense, at some point, to survey
7 the public to identify where the public thinks the
8 PTAB has opportunities for improvement and growth.
9 And with that, I'm happy to take questions.

10 MS. DURKIN: Thank you, David, and you
11 said this was across all Technology Centers? So
12 for example, Group 2900, the Design Group, was
13 included as well?

14 MR. MCKONE: Yes, it was included.
15 Yeah.

16 MS. DURKIN: Okay.

17 MR. DUAN: Hi there. Oh, go ahead.

18 MS. DURKIN: No, go ahead.

19 MR. DUAN: Oh, okay. Yeah, so I had two
20 questions on this one. The first was I recall
21 that on the survey form there was a question about
22 whether examiners had changed their behavior in

1 response to -- in response to appeal decisions.
2 I'm wondering if you have data on the response to
3 that question? The second was, I don't think you
4 did it on this survey, but if you would be
5 interested or plan on trying to break down some of
6 these answers by types of rejection, I'm curious
7 whether the Board is performing better on certain
8 types of rejections than others, say 103 versus
9 112 or such.

10 MR. MCKONE: As to your first question,
11 yes, we asked have you changed your behavior based
12 on something you've learned from a decision.
13 About half of the respondents said sometimes; and
14 then about a quarter of the respondents were on
15 either side of that, usually or always or rarely
16 or never. So it was a fairly even distribution
17 around the sometimes answers. So at least some of
18 these patent supervisors are taking into account
19 what we're saying and learning something from it.
20 And as to the second question, what was that
21 again? Whether we're --

22 MR. DUAN: This is --

1 MR. MCKONE: We don't have --

2 MR. DUAN: Sorry, go ahead.

3 MR. MCKONE: We don't have this broken
4 down by type of rejection, but I think that is
5 certainly something that may be useful that we'll,
6 we can take a look at in the future.

7 MR. FREDMAN: The type of rejection
8 would be a great idea; and by the way, about 3
9 percent of the survey respondents is 5,900
10 (phonetic).

11 MS. DURKIN: Did you say 3 percent, Mr.
12 Fredman?

13 MR. FREDMAN: Yes, about 3 percent. I
14 don't know what fraction of examiners but
15 (inaudible).

16 MS. DURKIN: It's probably about right.

17 MR. BROWN: Well, I have a quick
18 question about what's the percentage of ex parte
19 reviews that you see in a year? I mean, of
20 patents issued or patents applied for?

21 MR. FREDMAN: Well, for review, I mean,
22 we do thousands of appeals.

1 MR. BROWN: Yes.

2 MR. FREDMAN: Is that what you're
3 asking?

4 MR. BROWN: Yes. There's thousands of
5 ex parte appeals that came with the body of the
6 services.

7 MR. FREDMAN: Right. I don't know how
8 many, we're getting a fraction of all the
9 supervisors. So it's whatever fraction have seen.

10 MR. BROWN: Oh, okay.

11 MR. FREDMAN: But so yeah, it probably
12 was 142 that we expected to get over a thousand, a
13 significant fraction of the ex parte appeals.

14 MR. BROWN: Okay.

15 MR. CALTRIDER: Can you comment briefly
16 on the net promoter score? Some may not be
17 familiar with it but it -- my recollection of how
18 that methodology works a 48's a -- would be
19 considered a pretty impressive score. Is that
20 correct?

21 MR. MCKONE: That's my understanding and
22 I will confess, I mean I'm not a statistician, but

1 I did learn about the net score from some of the
2 others, from Mr. Rater.

3 MR. CALTRIDER: He might want to comment
4 on that because he probably knows that better than
5 we do. Actually, I'll do this in a minute, but
6 yeah, are there any questions?

7 MR. MCKONE: It is my understanding that
8 that is a good net promoter score, that is a good
9 indication that we're, that our decisions are well
10 received by the patent management.

11 MR. RATER: Yeah, Steve, we've done a
12 little bit of research on that but, generally, 40
13 is a pretty healthy environment and get up to the
14 50, you're kind of in some best practices. We know
15 that we're a little bit different in terms of, you
16 know, net promoters are usually used when there's
17 some competition; but we've at least looked at
18 that and said this is a pretty healthy environment
19 in terms of things kind of working well, going
20 back to that optimization practice, when we're at
21 those levels of 40 to 50.

22 MR. CALTRIDER: Again, you make a good

1 point in terms of being a closed universe. It
2 does influence it. It certainly suggests that
3 moves in the right direction consistent with your
4 earlier data. Some of these lines are going in
5 the right place.

6 MS. VIDAL: Yeah, this is Kathi. I just
7 want to thank everybody for the work that went
8 into this. I think this is really good data.
9 It's good to benchmark off of it as we think about
10 ways that we can improve; and hopefully, these
11 numbers will just get better and better as we go.
12 I like the idea of breaking it down by type of
13 rejection. I think that was a fantastic idea. I
14 also think it would be great to break it down
15 between 2900 and the rest of Patents, because we
16 may see different trends when it comes to the
17 design patents versus utility patents so just,
18 we'd love to see more data.

19 MS. DURKIN: Great.

20 MR. HIRSHFELD: This is Drew. If I may
21 also chime into Dan Brown's question. I don't
22 have the number off the top of my head about the

1 percentage, but there's you know, 350,000
2 applications annually allowed, right? So the
3 numbers of actual appeals are very small. We can
4 get those exact numbers, which we have got folks
5 who are -- so we'll probably have that pulled
6 very, very shortly, maybe even by the end of this
7 meeting.

8 MS. DURKIN: Great. Okay, thank you,
9 Drew.

10 MR. BROWN: I understand that our
11 appeals are a very small amount. I was just
12 wondering how big is the data set you know?
13 Essentially, you said that and now I do remember
14 that it wasn't all the supervisors that this was
15 -- a small part of them, so.

16 MS. DURKIN: Okay, we probably should
17 move on because we still have two other topics to
18 cover. And let's see, who is up next? Okay, I'll
19 give it back to you, Janet.

20 MS. GONGOLA: Yes, thank you very much,
21 Tracy. The next topic that we want to share with
22 you is information about our PTAB Pro Bono

1 Program. Lead Judge Stacey White and our PTAB
2 Detail Lead, Brandy Zukanovich, have worked
3 tirelessly to develop this program. So they will
4 share the details of our initiative with you.
5 Over to you, Judge White.

6 MS. WHITE: Thank you, Vice Chief
7 Gongola. Good afternoon. We are very excited to
8 tell you about this new program here at PTAB.
9 Several years ago, the office began working with a
10 network of pro bono organizations to provide pro
11 bono assistance to under-resourced inventors
12 seeking to obtain patents. The PTAB is proud to
13 say that we are expanding upon that effort through
14 the creation of a PTAB Pro Bono Program. We are
15 working in collaboration with the PTAB Bar
16 Association as our single nationwide clearinghouse
17 to provide pro bono legal assistance to
18 under-resourced inventors. Initially, the program
19 scope will be limited to ex parte appeals. We are
20 planning to handle approximately 10 pro bono ex
21 parte appeals in the first year, and then the plan
22 is to expand the program in both size and scope

1 over time. AI trials are in the vision to be part
2 of the program's later expansions. The first
3 phase of the program was launched March 24th of
4 this year at the PTAB Bar Association Conference.
5 Currently, the PTAB Bar Association is taking
6 volunteers in an effort to have a full bench of
7 volunteer practitioners in place with a program
8 opens its doors to applications from inventors.

9 So then, we'll move on to tell you a
10 little bit more about the eligibility with the
11 program. So the next slide? So the program will
12 be open to inventors in the U.S. who are domiciled
13 in the U.S. And these are the criteria that the
14 PTAB Bar Association will be checking for as part
15 of its processing. These inventors need to be of
16 limited financial resources. We're using the
17 Federal poverty guidelines to determine what
18 limited financial resources mean, and we're
19 setting the limit right now at 300 percent of the
20 Federal poverty guidelines. In the application,
21 in the file for the application that you wish to
22 seek assistance for, you need to have a certain

1 case of micro entity status, you need to not
2 otherwise be represented by a practitioner for
3 your PTAB proceedings; so this is not a situation
4 where you can fire your lawyer in hopes of
5 attaining assistance. If you already have
6 assistance from a practitioner, then you would not
7 be eligible. The innovator would need to request
8 assistance within one month of the date of the
9 office action that the inventor seeks to appeal
10 and be able to pay all USPTO fees and any
11 ancillary costs associated with the appeal. So
12 the inventor should talk to their counsel to get a
13 good idea of what those fees and costs would be at
14 the beginning stages of the program. In order to
15 be eligible, you need to complete a two-part video
16 training system online, so this is all going to be
17 available on the PTAB website. So one part will
18 be about the Pro-Bono Program itself and the
19 application process, and then the second part is
20 an overview of the ex parte appeal process so that
21 the inventor understands what the process is going
22 to be, the timeline of events, and how things

1 proceed in front of the PTAB.

2 Next slide. Similarly, the PTB Bar
3 Association will be looking for certain
4 qualifications for the volunteers that will be
5 assisting in this program. First, the volunteer
6 must be a U.S. licensed attorney or patent agent,
7 have experience in the technology area and the
8 proceeding type, provide their own malpractice
9 insurance, of course agree to accept no fees for
10 their services, and to provide a representation
11 agreement so that the scope of their
12 representation is clear from the very beginning so
13 that the inventor has a great idea of what to
14 expect and what will and will not be covered by
15 this program.

16 Next slide. Now I'd like to pass on to
17 you Brandy Zukanovich, our Detail Lead, to finish
18 off.

19 MS. ZUKANOVICH: Thank you, Lead Judge
20 White. So the PTAB Bar Association is serving as
21 the nationwide clearinghouse, so they will be
22 performing the matching placement of inventors

1 with attorneys or patent practitioner volunteers.
2 So they will review the applications for
3 completeness, as they will do the screening to
4 make sure that they meet all of the eligible
5 criteria both on the inventor side as well as on
6 the volunteer patent practitioner side. They will
7 also, as the clearinghouse, contact the applicant,
8 inventor prior to matching attempt to make sure
9 that this is, in fact, a true inventor asking for
10 help. They will also send out all of the requests
11 for volunteers' services via an email, and this
12 placement is going to occur within a month of when
13 they determine that the application is valid.

14 Next slide please? So we talked about
15 that this program is already open to our volunteer
16 pat practitioners now, and we are going to be
17 launching this to inventors on June 1st. I've
18 below included a link to our website, which is a
19 little long, which also can be reached if you go
20 to www.uspto.com/ptabprobono. And now I will be
21 happy to open it up to any questions.

22 MS. HARRISON: Brandy, this is Suzanne.

1 I have a quick question. It's a clarification
2 question please? So I was looking up the Federal
3 poverty guidelines, and the way that they're
4 stated is for an individual and then additional
5 members of a family. When you're talking about
6 inventors, are you talking about them as a
7 corporate entity or as an individual? So which
8 number should they be using?

9 MS. ZUKANOVICH: Currently, the program
10 is only open to solo investors, so as an
11 individual at this time. Further questions?

12 MR. CALTRIDER: Yeah. Question and
13 comment for me, first, I think this is a very,
14 very important program. It really goes back to
15 the inclusive innovation. I think if we want to
16 broaden the reach of the patent system and make it
17 available to underrepresented groups, part of this
18 Pro Bono Program is to complement that. One of
19 the questions I have is one month within an office
20 action, how does a per se applicant, or how does
21 an applicant know about the program if they're
22 uninformed. Does the office action make reference

1 to it? Or how would they know?

2 MS. WHITE: Well, we are currently in
3 the stage of trying to promote and publicize the
4 program far and wide to get the information out
5 there so that these inventors know about its
6 existence; and as far as whether this will be
7 something included in an office action, that is
8 something that's being discussed as a later
9 expansion of the program, to get some form
10 language that's not something that we have at this
11 time but it's under discussion, so that we can
12 have as many avenues as possible to let these
13 inventors know about the existence of the program.

14 MR. CALTRIDER: Thank you.

15 MS. VIDAL: And Steve, this is Kathi. I
16 would echo your comments. This is part of a
17 larger initiative that we have to expand pro bono
18 across the board, so I'm super excited about this.
19 And we are also working with universities to
20 expand pro bono. We're working with our 21
21 regional groups that provide pro bono services to
22 make sure that we can expand it, and then working

1 with law firms, legal aid societies, with various
2 state agencies to see what we can do to provide
3 more access. So I completely agree with you.
4 It's terribly important for inclusive innovation.
5 And love all the ideas, because you're right. We
6 have to meet people where they are. We can't just
7 develop great processes that nobody knows about,
8 so really appreciate the input on that.

9 MS. DURKIN: Okay. All right, and the
10 last couple of minutes we have, we're going to
11 hear what's going on with PTAB LEAP Program,
12 speaking of other fabulous programs the office is
13 providing.

14 MS. GONGOLA: Well, today you all know
15 LEAP is near and dear to my heart, but I have
16 invited Lead Judge Amanda Wieker to talk about the
17 LEAP Program with you, share some new
18 developments, and as to both our pro bono efforts,
19 as well as the LEAP Program, I'm hoping we may be
20 able to rely on our PTAB Members and everyone in
21 attendance today to continue to help us spread the
22 word about these two programs that really are

1 designed to benefit the community. So over to
2 you, Judge Wieker.

3 MS. WIEKER: Thanks so much for having
4 me today. As a background bit of information,
5 LEAP was created to provide training and oral
6 advocacy opportunities for less experienced
7 advocates to gain practical experience in
8 proceedings before the Board. It was created in
9 2020 and, in November 2021, we expanded the
10 definition of a LEAP eligible practitioner. To
11 that end, a patent agent or an attorney will
12 qualify for LEAP if they have had three or fewer
13 substantive oral arguments in any federal tribunal
14 and that includes the PTAB. As you can see on the
15 slide, we have received over 125 requests since
16 the program was created; and those requests have
17 come from over 70 different firms and companies.
18 As I mentioned earlier, we offer numerous training
19 opportunities for these LEAP practitioners; and we
20 have several events that are going on this month.
21 Last week on May 6th, we held a webinar with
22 external counsel to discuss how to prepare for a

1 PTAB argument. This Friday, we will be holding a
2 mock argument in which 40 LEAP eligible
3 practitioners will argue a mock trial case to a
4 panel of APJs (phonetic). We're also lucky for
5 this mock argument series to have four sitting
6 ALJs from the ITC that will participate in our
7 panel to hear the mock argument. And then next
8 Friday, May 20th, we will be joined by four
9 external counsel who will join us in a webinar in
10 which they will argue the same fact patterns that
11 our LEAP practitioners will be arguing next
12 Friday. And this is created to give a glimpse of
13 how very experienced counsel might approach the
14 same facts and issues that our LEAP practitioners
15 face in their mock arguments. That May 20th event
16 is open to the public, and you can find, access
17 information through our website. We'll be happy
18 for members, the public, to join us as well. And
19 I'd also just like to mention that, just last
20 week, the ITC announced the creation of a similar
21 program to our LEAP program; and they're calling
22 it their next Advocate Program. We're looking

1 forward to working with the ITC judges to develop
2 some future training opportunities and development
3 opportunities that target both the LEAP and the
4 Next Advocate participants. And with that, I'd be
5 happy to answer any questions in the last moments
6 before we adjourn.

7 MS. DURKIN: Great. Thank you, Amanda.
8 Anyone have any questions? It's a great program,
9 continuing to be really successful.

10 MR. CALTRIDER: Yes, thank you for all
11 the presentations today and the forum discussion
12 on PTAB and quality. I started my comments today
13 indicating I'd love to have feedback on our new
14 format, to have shorter, deeper dives, and by
15 subject matter. Please, send those to the PPAC
16 email, which can be found on the website. This is
17 our first one, and we want to continue with
18 learning and get better throughout the year. So
19 unless there's any new business that we need to
20 deal with, I will call for a motion to adjourn.

21 MS. VIDAL: So moved.

22 MR. CALTRIDER: Very good. Thank you.

1 All those in favor? We'll say aye. Have a good
2 afternoon.

3 MS. VIDAL: Thank you all.

4 MR. RATER: Thank you.

5 (Whereupon, at 2:00 p.m., the
6 PROCEEDINGS were adjourned.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 COMMONWEALTH OF VIRGINIA

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

17

18 (Signature and Seal on File)

19 Notary Public, in and for the Commonwealth of
20 Virginia

21

22

