

Deputy Director of the USPTO Michelle K. Lee
Patent Public Advisory Committee (PPAC) Opening Remarks
May 22, 2014

Thank you, Louis, and good morning everyone!

Let me begin by saying I'm glad that the weather here is a little bit warmer than the last time PPAC met in February. The last-minute rescheduling we had to do then because of an approaching storm prevented me from joining you that time, but I'm very glad to be here with you now.

And thank you, Louis, for your leadership as chairman, and to all of you for your hard work and dedication in advising the USPTO.

I know firsthand the commitment of time and energy PPAC members offer. Your keen insights and invaluable guidance have been extremely helpful. Since the last PPAC meeting we have been very busy with many efforts and initiatives. These include the Cooperative Patent Classification (CPC) system; our 2014-2018 Strategic Plan; the USPTO-led White House Executive Actions; and examiner guidance on Subject Matter Eligibility.

As to CPC, we're about 17 months into implementation since our January 2013 launch, and we'll be done by this coming January.

And I'm sure you can appreciate that transitioning about 8,000 patent examiners into a new classification system is no small feat. It's required extensive patent examiner training, a total of approximately 20 hours per examiner. The training focuses on how to search and classify in CPC as well as technical subject training related to the nuances of a particular CPC field. In addition, on average, examiners receive about 120 hours of CPC on-the-job training.

This training is an important investment in quality. Not surprisingly, it has had a temporary impact on our examination output that, combined with a continued increase in filings, has resulted in a temporary increase in our new application backlog. We expect to reverse that trend in the next fiscal year, and of course we continue to hire more examiners to continue the downward trend beyond that.

Decreasing our backlog is a core objective of our 2014-2018 Strategic Plan. We published that plan in March, after a lot of thought and effort, and some great feedback from you and the public. We had, of course, been working diligently the last five years to achieve the goals of our 2010-2015 Strategic Plan. They included

- reducing our backlog and pendency;
- modernizing our IT systems;
- guiding to passage and implementing the Leahy-Smith *America Invents Act*; and

- securing sustainable funding.

Our progress is significant and quantifiable. The new strategic plan raises the bar. We will continue to enhance our human resources, retaining and hiring more talented examiners (including for our satellite offices) while continuing to ensure that the USPTO remains one of the Best Places to Work in the Federal Government[®]. In fact, each of us is inspired in that mission every day when we walk into the building and see that impressive banner I'm sure you didn't miss, hanging in the atrium.

Advancing the new strategic plan will ensure greater quality and transparency in our patent operations, coupled with continued and expanded engagement with our stakeholders and the public. That engagement has and will come in many forms, from multiple public events to outreach through our satellite offices in Dallas, Denver, Detroit, and Silicon Valley. We're particularly excited that our permanent Denver location will open this summer, and our Dallas and San Jose locations next year.

I should also discuss our focus on implementing executive actions promoted by the White House. You'll recall there were five announced last June (four of which were tasked to the USPTO), and three more this February. We've updated you regularly on our progress on the first four,

and of course stakeholder input—including PPAC’s—has guided us in that process.

While continuing to advance those executive actions, we are now also

- seeking input to refine our existing third-party submission program,
- exploring other ways for the public to submit prior art, and
- updating our guidance and training for examiners to more effectively use crowd-sourced prior art.

We have also been actively engaged with the House and Senate on their patent reform efforts, focusing in particular on increasing transparency, helping Main Street technology users, and streamlining patent litigation costs. You’ll hear more about that from Dana Colarulli.

And of course the Senate Judiciary Committee’s removal yesterday of proposed patent reform legislation from its schedule is indeed a setback, and will slow momentum toward bringing further legislative improvements to our nation’s patent system. But, as Chairman Leahy noted yesterday, it isn’t easy to craft legislation that effectively addresses the problem of abusive patent litigation while simultaneously protecting the interests of intellectual property owners and inventors.

But we've always known that was a challenge, and a challenge we weren't afraid to face.

The administration and the USPTO will not stop doing their part in curtailing abusive patent litigation and improving our patent system. As many of you know, besides the legislative efforts, we have been actively engaged on a series of executive actions to further improve patent quality, clarity and transparency, and will continue to move forward on those.

These efforts complement the commitments we've already made to building a better patent system in our new strategic plan. I mentioned that one action we've undertaken is revising examiner guidance related to prior art, and as you know we have also begun a legal refresher training initiative for examiners to improve clarity of patent claims, which directly aligns with the White House Executive Actions issued last June—in particular EA 2: Tightening Scrutiny of Functional Claiming.

To date we have provided our examiners and the public with three legal refresher training modules, and a fourth module will be rolled out to examiners within weeks. In addition to ensuring consistent examination practices, all the training modules feature strategies for examiners to clarify the prosecution record.

This improved clarity will provide numerous benefits, including a more complete prosecution record to assist the public in interpreting issued patent claims and understanding the boundaries of protection for the patented invention.

I'd like to now turn to recent examination guidance to facilitate determinations of subject matter eligibility of claims reciting or involving laws of nature, natural phenomena, and natural products. The guidance, of course, responds to the U.S. Supreme Court decisions in *Mayo* and *Myriad*, and was given to our examiners in March.

Two weeks ago we held a forum to provide individuals and organizations an opportunity to present their interpretation of the impact of Supreme Court precedent on the complex legal and technical issues involved in subject matter eligibility analyses.

We appreciate the feedback we received, and we continue to encourage feedback on that guidance, including through written submissions, as we consider and develop future iterations and improvements to our examination guidance materials.

Now I'd like to highlight two very important discussion topics on today's agenda, areas where we can make great progress in the coming months. The first topic is our Patent Quality Composite Measure. This discussion will be led by Deputy Commissioner Drew Hirshfeld.

In 2011, the USPTO adopted a new Composite Quality Metric to track quality indicators, and provided an additional metric representing the overall state of patent examination quality through a combination of those indicators. I believe this was a great demonstration of this agency's focus on quality. I've observed the metric as a member of PPAC and now, for the last year and a half, from the "inside," if you will.

With a few years of experience under our belts with the metric, it seemed a good time for me to ask our Patents team to work with all of you to fully examine the metric and determine what lessons can be learned and what changes might be needed.

The second topic I'd like to highlight is Optimal Pendency Levels. This discussion will be led by Deputy Commissioner Bruce Kisliuk. Our new strategic plan includes an objective to "Refine Optimal Patent Pendency." I have asked our Patents Leadership team to work with the public to examine our current pendency goals and determine if we are aiming at the right targets. You can play an important role in that process.

In addition to these two very topics we will also discuss:

- International initiatives and updates with Mark Powell, Deputy Commissioner for International Patent Cooperation;

- The USPTO's IP Attaché Program with Dominic Keating, Director of the IP Attaché Program;
- The Patent Trial and Appeal Board with Chief Judge Smith;
- Finances and budget with Chief Financial Officer Tony Scardino;
- Legislative issues with Director of the Office of Governmental Affairs Dana Colarulli;
- IT activities with Chief Information Officer John Owens and Patents End-to-End Portfolio Manager David Landrith;
- And finally, an update on our Call Centers from Associate Commissioner for Patent Information Management Debbie Stephens.

These are exciting times to work in the field of intellectual property. The USPTO has never been in a better position to effect positive change as it further empowers our nation's innovation economy.

I am excited to work with you—including those of you with whom I served on PPAC—in my role as Deputy Director

Thank you again for joining us today. We look forward to your comments and questions as we move through today's agenda.

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