UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Thursday, July 14, 2011
PARTICIPANTS:

PPAC Members:

DANIEL BENJAMIN BORSON, Chair
MARC ADLER
LOUIS FOREMAN
ESTER KEPPLINGER
MICHELLE LEE
STEVEN MILLER
WAYNE SOBON
MAUREEN TOOHEY

Also Present:

ROBERT BAHR
Associate Commissioner for Patent
Examination Policy

CHRISTIAN CHASE

DANA ROBERT COLARULLI
Director, Office of Governmental Affairs

JAMES DWYER
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ALBERT TRAMPOSCH
Administrator for Policy and External Affairs

Union Reps:

ROBERT BUDENS
POPA

CATHERINE FAINT
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CHAIRMAN BORSON: All right. Well, good morning, everyone. Welcome to the Patent Public Advisory Committee meeting today. My name is Ben Borson. I'm sitting in for Damon Matteo, who is unable to join us in person. I expect that he will be available on the telephone and we may be able to hear some of his comments.

Anyway, first of all, I'd like to welcome you all. The PPAC is a group of individuals that have many hats. We wear many hats. As we all know, while we're sitting on this committee we are wearing the heats of the public advisory committee, and any individual or client-related position is not something that we will do here. We actually represent the diverse members of the intellectual property community and the innovators throughout the country.

So with that I'd like to just remind everybody that we do have e-mail if you have any questions. This is a public meeting. Please
1. e-mail them to the PPAC. And do you happen to recall the e-mail address? Jennifer?

2. **MS. LO:** Yes.

3. **CHAIRMAN BORSON:** The e-mail address of PPAC?

4. **MS. LO:** Yes, it's up there.

5. **CHAIRMAN BORSON:** Oh, okay. Sorry.

6. Yeah. If you look up on the screen you'll see it's the quarterly meeting and the e-mail address is there. If you have any questions or comments, please e-mail them and we will take them when we receive them.

7. For those of us sitting around the table, we do have microphones. And when the red light is on that means your microphone is on. We appreciate the courtesy that when you're not speaking to have your microphone off so that spurious noise is not apparent.

8. Okay. Introductions. Again, my name is Ben Borson. I'm a member of the Patent Public Advisory Committee. And we'll just go around the table.
MS. REA: Hello. I'm Terry Rea and I'm the deputy director at the USPTO.

MR. SOBON: Wayne Sobon.

MS. TOOHEY: Maureen Toohey, member of PPAC.

MR. BUDENS: Robert Budens, member of PPAC.

MR. BAHR: Bob Bahr, acting associate commissioner for Patent Examination Policy.

MR. ADLER: Marc Adler, PPAC.

MR. FOREMAN: Louis Foreman, PPAC.

MS. KEPPLINGER: Ester Kepplinger, PPAC.

MR. MILLER: Steve Miller, PPAC.

MS. FOCARINO: Peggy Focarino, deputy commissioner for Patents.

MR. STOLL: Bob Stoll, commissioner for Patents.

CHAIRMAN BORSON: Very good. Thank you. Well, with no further ado, let's get started. We'll try to keep to our schedule. You all have the schedule in front of you. So we'll do what we can to keep to it.
So first of all I'd like to have Terry
Rea make some comments about the USPTO and
down basically where we're going.

MS. REA: Thank you, Ben. Thank you for
your leadership in PPAC today and we appreciate
everything you have done as well as your
colleagues.

I'd like to say that in the past decade
PPAC has actually offered the patent community its
down keen insights and invaluable guidance and over
time it has become part of the extended USPTO
family. We envision the collaboration between
PPAC and the USPTO to grow, mature, develop, and
for this to be a beneficial experience for all of
our stakeholders. We have a great deal of work
before us right now, especially in terms of our
impending -- I would like to think it's impending
-- patent reform legislation. We will all have a
great deal of work to do. And for all of the
talent and insight and expertise that we have with
the PPAC that should be well leveraged to assist
the USPTO to develop the rules and the guidance
that we need to implement the new legislation in as less awkward a fashion as possible.

   Change is always difficult and so we are going to try and make the transition as elegant and clear as possible. And I think that our PPAC colleagues will help us achieve that goal. Their cooperation is vital in terms of keeping the USPTO moving smoothly and efficiently. So what they do here today -- they're not here for the fame, the money and the glory -- they are here to actually help advance the ball, move it forward, and help the United States develop a bigger and better patent system than ever before. And so I do want to thank each of the PPAC members that are here in this room for all of your time and your interest because they do a great deal of work.

   I'd also like to take a moment to thank Bob Stoll and Peggy Focarino on our patent side for driving the effort to continually engage with the public, engage with PPAC, and to be responsive. Things are changing within our profession and I think we're going to be
leveraging and developing and perhaps trying to pull more from our PPAC colleagues than ever before. However, just because you -- for those of you on the web who are not on this room, you have access to those of us here in the USPTO as well as some of our PPAC members, and everybody is willing and interested in hearing your ideas.

Also, I'd like to mention leadership and the vision of my boss, Director Kappos. He actually is a very focused, consistent, fair leader, who is trying to drive the U.S. patent system to be the true gold standard. He is trying to advocate best practices, not just with our patent reform legislation but with every step, everything we're doing here right now within the USPTO. He's breaking down every one of our processes and steps to make everything the best that it can be, the most efficient that it can be. And he's attracting pretty awesome talent here in the USPTO.

We have some initiatives that I've mentioned before. The Green Tech Pilot Program is
a big one. Whenever I go outside the D.C. area in particular and I speak on it, there's always somebody in the audience who shakes my hand very, very, very vigorously and tells me make sure you keep the Green Patent Pilot Program. As a matter of fact, have it cease being a pilot program because everybody thinks that is one of our best initiatives. It's a way to accelerate patent applications for uses that are environmentally friendly, and I'm pleased to indicate that since the pilot program began in December 2009, we just issued our 350th patent. So the Green Patent Pilot Program has been extremely successful.

We've also just recently implemented across the board, across all our units or technical centers, our first action interview program. And that's where we're encouraging members of the public to engage with the patent examiner before the issuance of the first office action. It gives the examiner and the member of the public an opportunity to actually engage, target their discussion. The examiner will have
already issued to the applicant their first search
and actually a pre-first office action to give the
applicant an idea of where the examiner is headed.
It allows both the applicant and the examiner the
opportunity to communicate, focus the issues,
reach the target sooner so that you know that if
you have allowable subject matter in the
application it could be identified earlier. We
found this first action interview program to be
very successful and statistically there is far
less office actions, far less steps required. So
therefore, to those of you in the user community,
you won't necessarily get your patent far faster
because we don't take the applications out of
order. It's in the regular order, but you do
arrive at a meeting of the minds with the examiner
earlier and it makes the entire process more
efficient and less costly.

We're also in a significant retooling of
our IT infrastructure right now and that's an
ongoing effort. Ideally, we'll have additional
John Owens, will be able to, I guess, beef up our infrastructure, take us more into the 21st century, give our examiners more tools to do their job more efficiently, and just improve overall examination. Right now you know we have our patents dashboard and we hope that the members of the user community will actually look at that because I think that's very, very helpful. We're also streamlining how we publish our MPEP right now and we're hoping to have something implemented there sometime this fall and we're going to break it out and introduce and describe it to our members of the PPAC, but it's a tool where our examiners will have a more vibrant, interactive MPEP.

To those of you in the public, we'll try and give you more consistency as to when revisions will be made and I think that it's a win-win both for the examiner and the applicant once again. So we're still perfecting that system. But how we publish the MPEP will not be in the same arcane way that we have historically done it for the past
75 years or so.

Right now, the America Invents Act did take up an awful lot of our time. We're hoping that that bill does pass. We're optimistic that things will happen in a positive manner. I realize that there are no guarantees but the USPTO is ready, willing, and able to implement that act when it's actually signed.

So once again, let me thank the members of the PPAC around this table right now. I think that you guys do a great deal of work, a great deal of effort. We truly do appreciate everything that you've done and hopefully we will have a great meeting today. Thank you.

CHAIRMAN BORSON: Thank you very much, Peggy [sic].

I wanted to make sure for those members who have called in, they have an opportunity to introduce themselves. So Damon, if you are on the line, please say hello.

And Catherine. Catherine Faint.

MS. FAINT: Hello, I'm here.
CHAIRMAN BORSON: Oh, very good. Thank you. Would you like to explain what your role is in PPAC or who you represent?

MS. FAINT: I am vice president of NTEU 245. I'm an interlocutory attorney with the Trademark Trial Appeal Board and NTEU 245 represented the trademark examining attorney.

CHAIRMAN BORSON: Okay, thank you, Catherine. And I apologize to Terry. Thank you, Terry, for your comments.

All right. Very good. Does anyone have any questions or comments for Terry before we move ahead?

I'd like to just mention that we do have a microphone available for any member of the public that's sitting with us today. If you have any comments we have a microphone available. And if you do have a comment, please speak into the microphone. Well, thank you very much.

Next, then, I'd like to move onto the patent remarks. Bob Stoll, commissioner for Patents.
MR. STOLL: Thank you very much, Ben.

Good morning, everybody.

SPEAKERS: Good morning.

MR. STOLL: I first would like to apologize to my good friends on the West Coast.

My guess is it's probably about a quarter after 5:00 a.m. there. I think those that are listening are unbelievably dedicated to the machinations at the Patent and Trademark Office. I would hope that I could encourage my good friends on PPAC to maybe move this meeting a little bit later in the morning so our friends at the West Coast can be more awake during our discussions and participate to a greater extent.

Thank you, Ben, for stepping in for Damon at this meeting. Damon, if you are listening and still unable to speak, I hope you are reunited with your wallet and your briefcase and things get moving very quickly.

I think Terry did a great job in talking about a lot of the activities that we have been engaged in and we will be engaged in. The big
one, of course, the elephant in the room, is the implementation of what we expect to be a very comprehensive new patent act which will take a lot of effort. We will be very much engaging PPAC on these issues.

I'd first like to apologize. With everything moving so quickly here at the Patent and Trademark Office I don't think we've done as good a job as we should have getting information to you guys. The efforts that were done on the quality initiatives partnering with PPAC were fantastic. We're very appreciative of them. We'd like to duplicate those efforts as we move forward on implementing the new legislation and use the wealth of information and input from the members of PPAC in doing so. So I will be redoubling efforts for patents' side to be able to supply information in a more timely manner.

We are really engaged on significant improvements here. The patent end-to-end processing is moving forward. Jim Dwyer will be talking to you about that. Debbie -- I mean Terry
alluded to the efforts made in the MPEP. I think this is a seminal event for engaging the public and will eventually be very useful for everyone to be able to implement and understand and possibly suggest changes to the MPEP. Peggy will be talking about a lot of the operational efforts here at the Patent and Trademark Office, and I'm very interested in a productive meeting today and look forward to working with you as always. So thank you for your time.

CHAIRMAN BORSON: Well, thank you, Bob. I think that was an invitation for us to start the meeting at noon, which that's noon West Coast time.

MR. STOLL: I'll take it.

CHAIRMAN BORSON: Okay. Well, thank you very much, Bob.

You know, we on PPAC look forward -- we've enjoyed working with you and we believe that we have a very productive relationship and will continue to do so.

Okay, very good. I'd like to now
introduce Al Transhaw, excuse me, Tramposch, who will give us some remarks about the -- no, that's not -- yeah, that's it. Okay, sure.

Al, on harmonization, it's a big effort that's going on worldwide and so --

SPEAKER: Al's not here. Al's not here yet.

CHAIRMAN BORSON: Okay. Al is not here yet I'm informed. So should we go to you, Peggy?

MS. FOCARINO: I think Al's here.

CHAIRMAN BORSON: Oh, he is here. Okay.

Yeah, sorry. We are ahead of schedule a little bit which is fine by me.

So when Al comes up we will talk about the harmonization efforts. For those of you that are unaware, the U.S. Patent and Trademark Office has made major strides in working with other patent offices throughout the world to create a more harmonized patent system in the United States with the rest of the world and vice versa. So I think that -- Al, thank you for coming. We look forward to hearing your remarks.
MR. TRAMPOSCH: Thanks very much. As I think has been reported to the PPAC before, they've worked very hard to resuscitate the patent harmonization discussions and we organized a meeting in March of this year of the Asia-Pacific Patent cooperation forum. This was on the margins of the APEC cooperation meeting that was held in Washington. And the -- Nick Godici, who you all know, and a team put together a paper outlining the various harmonization issues that have been discussed over the past 25, 35 years -- I don't even remember anymore how long it's been -- presented it to that group and over two days that group discussed those issues without intending to come to any final decisions or even a finalist of issues. But the outcome of the meeting was there were very positive feelings towards reviving the harmonization discussions, taking them forward, and especially taking them global.

Now, because this was an Asia-Pacific meeting, of course, Europe was not involved except as an observer. WIPO was also an observer.
Immediately after the meeting, Dave and Bob Stoll went to Europe to visit a number of European capitals and meet with the heads of some European offices to try to move the discussions, the center of gravity of the discussions, closer to Europe, get the Europeans involved so that it would become more global.

Those discussions were very successful. Europe itself held a coordination committee -- a coordination meeting among the heads of offices of the members of the European Patent Office on the margins of its Administrative Council meeting at the end of June and then Dave and I went over to Munich just last week, I believe, to meet with five or six key heads of offices to discuss how to go forward. The meeting was convened by the European Patent Office, but the European Patent Office, as they make it clear and especially as their member states make it clear, they do not have any mandate to discuss harmonization. They don't have competence to negotiate harmonization. This is in the hands of the member states. But
they acted as a facilitator and convener of the meeting, and we also met with the heads of the German office and the German Administrative Justice, the U.K. office, French office, and the Danish office, as well as the Commissioner of the JPO.

The outcome of the meeting was that we would move forward very quickly with what was described as information gathering or fact finding on the remaining harmonization issues after patent reform is accomplished. All this is predicated on adoption of patent reform in the United States. And we will move forward with creating a table or a matrix of the remaining issues and how each of the trilateral regions deals with those harmonization issues that are remaining. And the heads of offices will meet once a team of experts has done its work. The team of experts will work over the summer, perhaps meet in September, and then we'll recommend when it's time for the heads of offices to meet again.

Meanwhile, a similar process is going
forward in the IP5. This was spearheaded by
Japan. That will include also China and Korea, of
course. The B+ process has not died. B+ will
meet in September to discuss how they can
contribute to this process. Dave is considering
whether and when it might be good to reconvene the
Asia-Pacific countries to perhaps join in this
process and fill out the matrix on their own
behalf. The value of the matrix approach is it's
very easy to bring in other countries. You just
basically give them the matrix and ask them to
fill it out. And the hope is once we have all
that information gathered that the requirements
for negotiation will become very clear. It will
become very clear which issues are very close to
being decided, which issues are very controversial
and need to have the heads of offices address them
directly.

So this process will go forward. The
USPTO will host the virtual communication among
the committee of experts over the next two months
and then we hope to complete the matrix at least
among the trilateral groups by the end of the year and have some real genuine forward movement.

CHAIRMAN BORSON: Thank you. Just a point of clarification if you might. Could you please define what the B+ process is?

MR. TRAMPOSCH: The B+ was originally called the Alexandria group. It was initiated by the USPTO as a result of the stalemate at WIPO between the industrialized countries and the developing countries where the developing countries basically refused to discuss harmonization and some of them still refuse to discuss harmonization in the context of WIPO.

It was called B+ because in WIPO Group B refers to the industrialized countries but not the central European countries, so the plus refers to the central European countries that are now members of the European union or the members of the European Patent Office. They worked from about 1995 to 1997, for a few years, came very close actually to an agreement. Had a good list of issues on a final paper that was very close to
agreement but they couldn't -- they couldn't pull it off. The grace period and 18-month publication were the real issues that stopped that process. So they moved over to discussing PCT issues for a couple of years with the hope that eventually they could get back to discussing harmonization. The idea was that if you get the industrialized countries together, you don't have the developing countries there, then they'll be able to come to an agreement. That was almost the case but not quite the case.

CHAIRMAN BORSON: Okay. And one other thing. Would you be so good as to summarize some of the issues that have been resolved or are approaching agreement and then those that are still outstanding for which there has not been much progress?

MR. TRAMPOSCH: There are a couple of issues that will clearly be resolved by patent harmonization, including the Hillmon Doctrine and best mode, although best mode is solved not by doing away
with any possibility of invalidating a patent based on that requirement.

We believe that first to file -- first and better to file is solved but we have to still convince Europe of that because when we call it first and better to file they think it still has vestiges of the first to invent system. So that will still be on the table for discussion but we feel like that's solved. We feel like the definition of prior art is more or less solved but our language in the statute, as you know, is in some ways unclear even to us. So that would be a basis of discussion as well, although we think that we're very close to harmonization on that.

The areas that we have to talk about would be things like the definition of novelty, the definition of non-obviousness, things like whether (inaudible) are used for novelty only or for novelty and non-obviousness, self-collision.

Bob, I couldn't read your lips.

MR. STOLL: Grace period.

MR. TRAMPOSCH: Grace period. Yes, the
key issue, of course, is the grace period. Yes.

How could I forget that, Bob? I thought it was so obvious I didn't need to mention it. Thanks very much.

The key issue will be the grace period and the question is if the U.S. has gone so far as to harmonize in patent reform on a number of the other key issues, then what is the incentive for other countries to adopt the grace period? And the incentive is that it really is a best practice. It's part of a really good 21st century patent system. There are a lot of countries, including European countries, that do want the grace period for their own benefit. There are one or two holdouts that we'll be talking with and working with but we were very gratified at this meeting last week that the idea of moving forward and having grace period on the table was fully accepted by the Europeans.

CHAIRMAN BORSON: Okay, thank you. Are there any other comments? Any questions from the PPAC members? From the public?
Okay. Well, I then wanted to move on a little bit and ask you what the efforts are that you believe that have been successful on the part of the United States in having some of the other -- some of our other partners moving more towards a common ground. We've obviously made major efforts in patent reform. Have other countries done similar things?

MR. TRAMPOSCH: I think the most significant thing that's happened recently is Japan has adopted a six-month open-ended grace period. They had a six month very restricted grace period but they revised their laws just a couple of months ago to adopt a six-month open-ended grace period, very similar to the one that we have, and they indicated that as part of a harmonization package they would be prepared to go to a 12-month grace period. So this is a very, very significant event.

The other -- the key thing that's happening in Europe are the discussions around the unitary patent which it used to be called the E.U.
Patent, which used to be called the community patent. This actually has been adopted by the Council of Ministers and the regulation is sitting with the European Parliament. If they approve it then that will go forward but it will also depend on a solution to the single court -- single patent court issue which is not as close to solution but the member states believe that they have a way of going forward and getting that done within the next 12 months or so.

CHAIRMAN BORSON: Okay. Then, you know, I hate to stay with you but this is a very important, very interesting area. In the event that harmonization talks proceed and you and other partners do reach some agreement, what will be the necessity on the part of the U.S. Legislature and Congress to follow through? And what sort of timing do you think would be appropriate or necessary?

MR. TRAMPOSCH: Those are all excellent questions, which is always the response when you don't have a really good answer to the questions.
That is something, of course, that is the second step. The first step is getting general agreement, first on the principles and then getting the technical language down and then deciding how to bring that forward. Of course, whether the legislature will need to get involved or not depends on what the actual provisions are. If it would require changes to our national laws then, of course, those would be proposed, and of course, that's a fairly long-term type of arrangement. In Europe, if they adopt a grace period it could require an amendment to the European Patent Convention, which usually takes a few years to accomplish and to get into effect.

The hope is always in these discussions that if agreement is reached it can be brought back to WIPO. That's politically difficult under the current circumstances but if we can go forward with the sequential processes of getting the B+ involved and then getting the APPC countries, of which many are developing countries, getting them onboard, it may be possible to bring this back to
WIPO for a diplomatic conference. That would be everyone's preference. If that's not possible then we'll have to look for an alternative at that time. Timeline, I think we're talking about a couple of years at least, best case.

CHAIRMAN BORSON: And do you expect that there will be a package of harmonization efforts and perhaps progress on these or do you think it would be more worthwhile to sort of take what you can get now and keep working?

MR. TRAMPOSCH: It's always been a process of take what you can get. If you go back to the 1991 Diplomatic Conference that was held by WIPO, that was a very comprehensive package, although even that didn't include everything. What's being discussed now is a subset of those issues, so it's something that will always be ongoing because there will always be need for more harmonization, both at the higher level but also on the implementation level which really makes a big difference as well. So it will be an ongoing process, although the adoption of a package that
would include the grace period would be a major step forward.

CHAIRMAN BORSON: Okay, thank you. Are there any further questions or any other individuals like to add a comment?

Okay. Well, in that case we are still ahead of schedule then, so why don't we move ahead then to get a legislative update? Dana Colarulli, director of Office of Governmental Affairs.

MR. COLARULLI: I'm happy to. Thanks. And good morning, everyone.

Well, to realize a lot of the harmonization that Al just talked about we need to pass legislation here in the U.S. And many of the core issues, I think it's fair to say, and Al was saying, are addressed in the current legislation. So I'm going to focus again during this session on the America Invents Act with the hope that we'll finish progress on this. Maybe by the next PPAC meeting they can focus on other IP issues that are very important. This has been the most significant and I think we're hearing the end of
the tunnel, I'm hoping. But let me just start
with the basic background and we'll go with where
the bill is today.

As everyone knows, the Senate passed
their version of patent reform in early March.
The House then passed its version in June. Both
bills include many of the key provisions that have
been discussed over the last five Congresses.
Exhaustively, importantly, the transition to first
inventor to file, the changes to inter partes re-
examination in creating a post-grant opposition
system, fee-setting authority, and funding
provisions among many others.

Now, the difference between the House
and the Senate bills, the Senate bill included a
revolving fund. From our analysis it really does
give us the confidence that in that Senate version
that PTO would be able to keep and be able to
access all the fees that it collects. The House
preferred a different approach to retain PTO
within the appropriations context. We worked with
leadership as they were brokering a deal. I think
we were very clear. We said we don't think this is a long-term solution, but if certain things are -- work appropriately, then it is a step forward. It does -- it would guarantee, if it guarantees, that all fees are appropriated and not subject to negative score affects in later years, if there was -- that was one issue. A second issue was if the treatment under a continuing resolution was the same as under the intent under regular appropriations, that's still a little unclear but that's the second thing that we think is important for us to have confidence that this is a step forward. Those are the two major issues.

We worked with the House. I'm not sure we got all the assurance we wanted from the House. We're continuing to work with the Senate to make sure that the Senate appropriators are reading and the Senate Judiciary Committee are reading the language the way that we're reading it to ensure that this is indeed a step forward. But I think that's really the biggest, largest focus for us right now.
If it works the way we think it's going
to work, it is a very good step forward. And
certainly within the -- over the next few years,
gives us the confidence that we'll have the
resources we need to continue improving patent
operations, continue addressing the backlog, all
the things we know have been working over the last
few years to fund those operations. So we've been
spending a lot of time on the funding provisions.

Bruce will start talking a little bit
about what we're thinking in terms of implementing
that. What that will mean for our financial
operations when we get to the CFO report. But I
wanted to address where we think it is. We're
still watching. We're hoping there will be some
additional assurances from the Senate as we move
through the process.

So I mentioned the funding. Again, the
difference, the House bill creates a reserve fund,
not a revolving fund. It keeps us within the
appropriations process and lays out a process for
accessing those funds. And one of the things we
approached the House leadership and we've been talking to Senate is what exactly is that process. We understand it's similar to a reprogramming process that's used elsewhere in appropriations bills. There's a 15-day notice essentially to access those fees that are deposited into the excess fund. But from our understanding those are available until expended upon that notice.

Significantly, the House bill also includes our percent increase on patent fees that we've included in the past two budget submissions, presidential budget submissions. It also includes language for us to restart our track one, essentially codifying the track one language.

And then the last big difference is the inclusion of a prior user defense in the House bill. And this was an issue that was debated a bit in the House, significant concerns raised by universities. A lot of work by Chairman Smith and the committee staff to make changes to satisfy those concerns, namely to essentially care out university patents and also move the bar back to
reduction to practice and commercialization, both of those two problems a year before filing. So that provision at the end acquired the support of the majority of the university community. Some still had some concerns but that provision was a new provision. A good policy, we think.

Additional I won't say lesser provisions but, you know, additional provisions that were added through the House process which we hadn't highlighted in past meetings, you know, the first line I'll say is it encourages PTO to continue doing some of the things it's already doing. We already have a pro bono initiative started working particularly with the University of Minnesota. Our ombudsman program is already up and running. This is further encouragement in particular to work with small businesses to address their concerns.

There are a number of studies and the next three bullets really are the studies. I believe there's about 11 studies, maybe nine of them PTO is responsible for, ranging from
deadlines from four months after the president
signs the bill to four years. So a number of
studies throughout the implementation on issues
such as prior user rights, issues on nonpracticing
entities, issues on the effect on small business
of the first inventor to file provisions among
other required studies.

The Weldon Amendment is language that
has been carried through USPTO's appropriations
language over the last -- since I think about 2004
is the first time I remember the discussion. And
it's now codified in this bill. And then the last
provision is the so-called MEDCO provision
codifying the rule that the PTO has already
translated into practice in the wake of District
Court litigation.

So, you know, last is outlook. The
Senate bill essentially is being -- is in a
holding pattern along with other progress in the
Senate on other legislative matters, really, until
there is some progress in the debt ceiling. So
it's possible that there may be action before the
August recess. We're hopeful that that will be the case. The Senate staff frankly doesn't know and is pushing for some agreement that as soon as the debt ceiling issue is resolved or at least there's some motion on the debt ceiling that that reform will be one of the first things taken up. That could happen before the August recess. It may happen after. It's just something we're watching day by day.

I think as we've approached the Senate floor there have been a few different options for taking up this bill. One has been whether the Senate could take up the bill on a unanimous consent basis with a few amendments. I think that's very unlikely. The next is whether the Senate would move towards closure to end debate on this measure. I think that's probably more likely. It's really going to be a question of when. I think the formal informal conference was certainly one of the options on the table but it is, I think, also probably unlikely at this point. I think as soon as possible I know that Chairman
Leahy would like this. They'll likely try to move towards closure, end debate, move this to the floor, and move the bill towards the president's desk. I think it's unlikely that they'll amend the bill and send it back to the House. If that does happen, for me the outlook for getting this done this Congress becomes very dim.

CHAIRMAN BORSON: Thank you. Wayne, do you have any comments or questions? Okay.

If I may, Dana, you mentioned that the House version has a number of studies that are written into it including obviously the one related to genetic information and biological testing. Could you explain in general terms, for example, how the House expects or would envision such studies being carried out, under whose authority, how would they be set up? And perhaps Bob, you might have a comment or two about that.

MR. COLARULLI: Well, each of the studies has its own language within the bill directing either the undersecretary for intellectual property here at the PTO to direct
the study. In a couple cases the GAO, the
Government Accounting Office. And there is
specific timelines and also a specific scope. So
we would be carrying those out the way we've done
many other studies, likely in some cases taking in
public comment, very important, to kind of build
the record. We'd be looking at PPAC to help us do
that as well. But I think, you know, otherwise it
will be case by case.

The one that worries me the most just in
terms of time is the prior user defense study.
That needs to be done within four months. I think
there is a good basis of research out there
already on prior user rights in other countries
but this would be a new study that we'd need to do
within a short period of time. But I think we're
already thinking about how we might move forward
on that study.

CHAIRMAN BORSON: Okay, thank you.

Well, in addition to the America Invents Act, are
there other legislative proposals that you have
seen that are in the works that you expect to see
or that are being proposed?

MR. COLARULLI: You know, there are.

I'd be remiss if I didn't mention the other few things. Certainly, counterfeiting -- anti-counterfeiting efforts are starting to get a lot of attention in both the House and the Senate.

In the Senate, Chairman Leahy has moved forward with his Protect IP Act that focuses particularly on online privacy. I think there will be some more activity on that in the next few months. The House has also talked about introducing its own anti-counterfeiting bill. That probably would not be limited to online counterfeiting but be broader than that. We're not clear what the contents of that would be yet but we're watching. We're watching that.

You know, the anti-counterfeiting I think is the one that will probably take the most IP attention and legislation over the next few months. Beyond that we're trying to do some additional thinking about proposals for The Hague and PLT to implement -- certainly the PLT, once
patent reform is enacted, is going to change the statute in some ways. We're going to have to review our PLT proposal that we sent up a couple Congresses ago and see if there are any changes that are necessary. But that's the next step for us. So I think between protect IP and PLT and Hague, those are two that are that are on our radar.

On Friday, the House Judiciary Committee is also holding a hearing on fashion design. We're not testifying at that hearing. Again, another issue that we're watching. An important issue for development of IP in that area, particularly fast moving area. There's been a number of proposals on fashion design in recent years that have been discussed but haven't really moved forward, so we'll be interested to see what happens at that committee hearing.

CHAIRMAN BORSON: Okay, then -- do you have a comment?

MR. MILLER: Yeah, I'd like to make a couple comments. One issue that I see with the
legislation that you didn't mention is that the director gets fee authority and that this body then will have a much larger responsibility to be looking at the overall fees that the office would charge. And on that, you know, I think this committee is willing to work with the executives in the Patent Office to make that happen quickly. I think we're going to have to have a process to do that given the limited amount of time that we call can spend on PTO matters and have that fairly well regulated. And maybe somebody could address that.

My second issue is that obviously some of these provisions kick in fairly quickly and will require new regulations and processes within the patent office. And I again think that this committee and the public would very much appreciate the opportunity to work with everyone in the office to help with those regulations to make sure they fit with what the public can best do for best practices. And I'm wondering what efforts have been made so far to begin thinking
about the new regulations that may come into
effect quickly under the new legislation.

CHAIRMAN BORSON: Terry?

MS. REA: Thank you, Steve. That is
actually an excellent question because that is why
we are waiting for America Invents Act to pass
with baited breath. We are doing what we can
right now to anticipate and plan. We've already
created a point person for all the changes in the
legislation. We realize that the fee setting is a
completely separate issue from a lot of the other
rules and regs that we will have to implement.
The time period based on the act right now is
indeed very short. It's going to be difficult to
get all the rulemaking done that we need to do
within a year and we're aware of that. And
unfortunately, what is going to likely result is
we like to be as transparent as possible and
solicit as much user input as possible.

However, if we have to implement
legislation within a year, that's going to be
difficult. So I think that to leverage the
talent, the knowledge, the experience that we have
with PPAC, we do anticipate working heavily and
closely with PPAC because you are a bit more
responsive and you're sort of part of the PTO
family as I indicated in my opening remarks. I
think once we find out if there is, you know, once
the legislation passes in the exact form in which
it will be, I think to triage all of the work that
we have to do along with PPAC would be prudent
because while you are limited to the amount of
time that you're allowed to spend on PPAC, to
maximize those hours it is very important. We're
well aware of that. And we've actually had
discussions where we're -- whatever projects you
have ongoing right now will be modified or changed
for the issue du jour, which might be breaking up
the issues on the new patent reform legislation
which each one of you have an expertise and work
with us and help, you know, sort of spearpoint it.
But at any rate, we have given it some
thought. We haven't actually started doing any
work yet. It would be premature for us to do so
right now because we don't know what the sausage
will look like. Thank you.

MR. COLARULLI: Well, to amplify it, I
think closely, robustly work with the PPAC, and
quickly. We're balancing two legislative intents
in this bill. One is to get a number of things
done within a year. And the other is to set fees
in a way that we have a lot of communication.
We've talked throughout the legislative debate
that this would take us, you know, a year to 18
months. Well, if it takes us 18 months we won't
implement within a year so we need to balance that
off. I think the only experience we have in the
past, and Bob can talk to this, is in the wake of
the AIPA. A significant but not as dramatic
change to U.S. law as this is. So we'll need to
work very closely.

MR. STOLL: Thanks very much, Dana. I'm
going to be more blunt than my friends over here.
I have seen lists of different pieces of the bill
that must be implemented, for example, within 10
days of signing, including track one. And there
are more than a handful of those provisions that need to be implemented within 10 days. There are, as Terry says, a little bit more time for fee setting but it's still a shortened period. I, by way of this comment we're in now, am asking PPAC to take a look at the bill as it currently is formulated over in the Senate and give us input as soon as possible. I don't think there is enough time to wait. We'll make the modifications based upon any changes that occur in the future but I really need your input and I need it now. So I don't agree with waiting. I would like you to please provide input on the version that is pending before the Senate now.

MR. ADLER: To whom?

MR. STOLL: To --

MR. ADLER: There's a point person but I don't know who that is.

MR. STOLL: To me.

MR. MILLER: Well, thanks. I think that's very helpful because I think, you know, this is the biggest change in the patent laws
since 1937. And all of us have a stake in this, practitioners as well as the office.

MR. STOLL: We need your input. I mean, and desperately because, you know, you guys are the ones practicing some of these. We need to know how you think we should be implementing each of these provisions. So we greatly appreciate your efforts here and we need it now.

CHAIRMAN BORSON: Wayne, please.

MR. SOBON: Connected but aside there's -- obviously the main focus right now has been to pass the legislation than to do the implementation. I would just recommend, you may already have this in your planning, but it's obviously been a very contentious debate and I think it behooves the office and I recommend that you really think about an engaged public relations explanation of the bill and its effects on the overall various user communities explaining and I think as much as possible based on statistics and facts and economics about why it does advance the intellectual property system in America. Because
I think that would be very important to both put that point of view out as well as, you know, maybe soothe some of the raw issues that have been raised during the debate itself. And I think it would be very beneficial for the office. So I recommend that. And I think we'd be happy to help in helping craft some of those messages and that sort of thing. So.

MS. REA: Thanks, Wayne. We're trying to -- we will try and communicate with the user community as much as possible and keep people informed but there are a lot of issues and a lot of moving parts. And so anything that PPAC can issue spot and let us know in advance, we'd appreciate it. Thanks.

CHAIRMAN BORSON: Any other questions or comments?

Then if I may just ask you what your sense is of what the Senate is likely to do, what are the touch points that are still being considered. You know, I understand that there could be several different processes occur but
what do you think are the key issues that are yet
to be resolved between the two bills?

MR. COLARULLI: I think there's very
little yet to be resolved between the two bills.
I think practically it's going to pass the Senate
almost as is. It's just a matter of when at this
point. Any change that's made at this point would
need to be sent back to the House and that's
additional legislative action. And it's, again,
it's unlikely in my mind that significant change
would happen before it goes back. Now, there
could be and we're seeing this good legislative
history, good discussion interpreting what the
provisions means. That's helpful to us. That's
helpful to the agency as we start going through
the implementation, particularly on the fee
issues.

MR. STOLL: I fully agree with Dana's
analysis from the contacts that I've been talking
to. Let me add in that I believe right now the
reason it hasn't passed the Senate already is the
debt ceiling issues which are holding everything
up. But I believe that the Senate may at some point realize they need to create jobs and they need to do something and may let this go anyway. But that I think is the issue right now.

MR. COLARULLI: Agreed and, you know, it'd be a great effort. Some efforts say let's separate patent reform from the debt ceiling issue. You know, yet another issue showing that Congress has not moved forward. I think, you know, there may or may not be progress here soon but to the extent that we separate this as a job creation initiative I think that makes sense. I think that's something that Congress can do in the short term; certainly something the president wants to do as well and has mentioned even in the course of the discussions about the debt ceiling.

MR. MILLER: And I also -- you didn't mention that yesterday the Appropriations Committee apparently had a markup for the CJS bill. Could you comment a little bit on what happened in that process and what the PTO is likely to see as their appropriation for the next
fiscal year?

MR. COLARULLI: Happy to. And Thanks, Steve. So the compromise that was reached by the House leadership or broken by the House leadership had two parts. One part went into the statute and we see that in the America Invents Act. The other part they committed, and this was somewhat -- using the word codified loosely -- codified in a letter that Hal Rogers sent. They committed to include language in future appropriations bills that would lay out the process for accessing the access fees. So the legislative language in our appropriations bill, the Commerce Justice and Science appropriations bill under which PTO falls, was circulated earlier this week. The report language for that bill was circulated also a couple days ago. The language I think from our perspective faithfully keeps to the compromise. We still have the same questions that I outlined before. What happens in the context of a continuing resolution? What happens with the actual process for accessing the fees? In fact,
one of the questions I have is if we're under a continuing resolution is the process for accessing the fees different as well? Again, this is a question we've asked staff. We've been talking to the Senate with. We're hoping there will be some more assurances there.

But the language on the face is consistent with what we understand the staff discussions to be. There was some additional language in the House report that we're still looking at, both requirements for PTO and for the Department of Commerce as a whole. One particularly interesting provision in the House report would require PTO to give notice before any PTO official, any Department of Commerce official traveled to China. There's another provision that speaks to the need to upgrade our national security filters. Things the defense agencies currently tell PTO that we need to flag for national security, we're looking at that as well.

One of the things adopted yesterday during the markup as an amendment to the Committee
report from Jeff Flake from Arizona was an amendment actually that would affirm that all fees collected by the PTO actually stay with the PTO. That's excellent. It's report language but it's further in congressional attempt in stating that the congressional intent is that PTO can access and use all the fees that it collects. So, you know, we're still looking at the House report to see what other gems might be there. The process is the House now has marked up their report. The full committee took up the report. The Senate has their own track. And they're going to come up with their own report language and potentially changes to the legislative language as well.

So it's the first step in the process. I think anyone who has watched this process for a number of years doesn't have a lot of faith this will be done before October 1st. I'm going to be subtle in saying that. We'll likely be under a continuing resolution. So we're already planning for that contingency. Even if the Senate starts their activity soon I think we still expect that
to be the case.

CHAIRMAN BORSON: Okay, well, thank you very much, Dana. Comment? Marc?

MR. ADLER: Regardless of how the legislation handle the Patent Office's ability to access the users' fees, the basic issue has always been that innovation and patents leads -- this is a belief we all have -- leads to jobs. And jobs are important politically as well as economically to, you know, independent inventers, small businesses, and large corporations, universities, everybody. But there's no real economic -- quantifiable economic studies that really show how big a problem the withholding of those fees are to the U.S. economy and how that's impaired our economy over the past let's say 10 years.

I've had some conversations with the USPTO's economic czar, Stu Graham, and I would just like to sort of suggest at this meeting that it would be -- the user community would like to cooperate with the PTO in any kind of a study that you could initiate to demonstrate the actual
specific relationship between what's done here and how people get good, high paying jobs. And I think if we could do that, even if it takes some period of time, it will be useful as evidence to rebut future attempts when they occur to dip into our fees.

So I just wanted to put that again out on the table. Stuart knows this. We've discussed it. And I just think that the various patent association organizations would be very willing and able to provide case studies or other information that might be of help.

CHAIRMAN BORSON: Thank you, Marc. I think that's a great idea. We'll follow through with that.

Ester, you had something?

MS. KEPPLINGER: Yeah, it's my recollection from internally in the PTO when I was here, when the Patent Office started collecting their own fees in like '93, in that period of time diversion started shortly after that. And as a consequence the PTO was unable to hire even at
replacement level. Kaz Kazinsky had gone back in like 2003, 2004, something like that, and took the model and ran it to show that had the PTO received those things and been able to hire, even at a replacement level, we would not have had a backlog of applications even at that point. So that's something that we might be able to dig up to put into that.

CHAIRMAN BORSON: You have that?

MS. KEPPLINGER: Yes.

CHAIRMAN BORSON: Is that something that is available to us?

MS. KEPPLINGER: Yes.

CHAIRMAN BORSON: Good.

MR. STOLL: We also need to study tying jobs to the issuance of the patent applications. And I am in full agreement with that. And we need a -- I mean, we need a seminal, uncontroversial clear study that is not biased, that is not ambiguous, that really will have the force of allowing us to make the arguments to the appropriators in future years.
CHAIRMAN BORSON: Great. Great. Any other comments? Questions? Ester, do you have anything more? Steve?

MR. MILLER: Yeah, I'll make a comment. I'm never one to shy away. And this is more for the public than for the PTO but I think this is a process where we as PPAC will try to keep you informed as the public as to what's happening within the appropriations process so that people can hopefully get upset and call their congressmen or whatever if fees start to be diverted. And I think that's a commitment that we as PPAC can certainly make to members of the public that in these meetings or in other forums where we foresee that maybe fees are being diverted we should let the public know about that so that users can voice their complaints and have that kind of data available. So hopefully we don't have this problem again.

MR. ADLER: Can I add to what Steve -- the whole process of the counting, the scoring, the appropriation process is pretty inside the
beltway kind of thing. Most people in the public
don't really understand this and so we really see
it as our job to try to help explain that to the
public so that they know who to call and when to
call to prevent this from happening.

MR. STOLL: I'll very quickly say good
luck with that because I've been here for almost
30 years and I don't know what scores and doesn't
score in some years. Our CFO will tell you that
that opinion seems to change from year to year.

MR. ADLER: We're not going to attempt
to explain it. We're just going to tell them
they're about to try to take our money.

CHAIRMAN BORSON: Okay. Is there
anything further on the legislative update?

Actually, I wanted to ask one final
question if I may. Maybe it's not a final one.
You've talked a lot about the current legislative
efforts, the future legislative efforts, Bill.
What has happened in the last year that the public
should know about?

MR. COLARULLI: Other IP legislation?
CHAIRMAN BORSON: Yes, that's correct.

MR. COLARULLI: Well, you know, in the last year the things that we've watched and we've seen go through is the Trademark Technical Corrections Bill. Maybe that's just over a year actually now. I'm losing track. I think, you know, that was important changes, a proposal that came up from us. It also included the Trademark Litigation Study which we engaged and we completed and circulated earlier this year. Actually, just over a year. We had a year to complete it.

You know, that's really the biggest one that got done. That, next to a historic first time ever supplemental appropriations of $129 million to the PTO last year that at least started to address the problem as part of our fee problem as we came out of -- as we were coming out of the economic depression. Those are the two most significant things I think that have affected the PTO. Whereas, we've engaged in a lot of discussions about other IP legislation and we're continuing to do so. I think those are the two
that had the biggest effect.

Important note is that the 129 million really I think was a one-time thing. And the long-term legislation to affect diversion, to affect fee withholding is really the best solution. What's in the Senate bill is a good step forward, as I said. But I think echoing some of the things that were already said, continuing efforts by the office and by the user community to make sure that folks know the importance of these fees is going to be essential.

CHAIRMAN BORSON: Okay. Very good.

Just to reiterate something that Steve said, the Committee is willing -- ready, willing, and able to help out in any ways that we can. And one thing that I'd like to propose to the PPAC is that we revisit the issue of increasing our web presence. We do have an ability to do that. Perhaps documents such as those studies that you were referring to, if they can be made available to the public we can post them on the website. We may be able to ask some assistance in producing
précis or summaries of them to make it very easily accessible to the public. I'm not sure that the public would want to read a full study but if there is some way that we can create a downloadable, easily readable, understandable, these are the key issues in front of us now, that could help us out.

Okay. Next? I guess we -- a break. A break. A break has been called for. Let's take a break.

We are scheduled from 9:25 to 9:35, so how about if we return at 9:35? That will give us plenty of a break. Very good. Thank you very much.

(Recess)

CHAIRMAN BORSON: All right. I would like to thank you all for getting back in time. I'd like to move ahead with our agenda, it now being 9:37.

Let's now talk about finance. So we've got Tony Scardino and Bruce Kisliuk, who is the deputy CFO. If you would be so kind.
MR. SCARDINO: Thank you. Since we met last a lot has happened. Internally, Mark Olechowski, the deputy CFO has left, and thankfully, we've been fortunate enough to have Bruce Kisliuk, as you just mentioned. He will serve as the acting deputy CFO until September 30th, getting us through the fiscal year which is a very challenging, challenging period. So we're very thankful for that. And Bruce is actually going to run you through some slides in a little bit. I just wanted to kind of set the stage of what we have been going through over the last three months.

Since we met last, the continuing resolution for Fiscal Year 2011 has expired and we have a full year appropriation at the level of $2.09 billion, which is more than we had earlier in the year but less than we think we're going to collect this year. You're all familiar with the concept of fee diversion. Right now we estimate roughly $80 million will be collected that we will not have the authority to spend. That is an
unfortunate happenstance because it's required that we make some difficult decisions this fiscal year, such as a hiring freeze. Right now we've cut things like training, travel, overtime operational issues that we can control, but things that don't help us with our backlog and pendency issues.

Congress, thankfully, is well aware of this and they are taking great, great steps to fix this problem. The Senate passed a bill in March as you know, S. 23, which would make us a public enterprise fund or revolving fund, which would eliminate fee diversion forever because we would have full access to our fees every single day. And then the House recently passed H.R. 1249, which differed greatly on the fee side in that we would remain an appropriated account. However, there would be a reserve fund created which would in essence eliminate fee diversion. Now, there is a lot of talk back and forth as to whether it definitely eliminates fee diversion, how that would work. We'd still be part of the
appropriations process, which means we'd still be
subject to continuing resolutions. So there would
still be challenges.

Obviously, you know, you listen to Dana
and no one has got a crystal ball to know where
this is going to end up, but we still try to work
our little crystal balls because we don't know
what's going to happen. We have to prepare for
several scenarios. At the beginning of next
fiscal year, Fiscal Year 2012, we could have
another CR, which means that we're at $2.09
billion for anybody's guess -- a month, six
months, eight months? We don't know how long a CR
could go for. We could get the President's budget
request before the bill is enacted. That's $2.7
billion. You know, that's a huge swing between
$2.09 billion and $2.7 billion. Or we could get
something in the middle. Anything could happen.
They could do an anomaly, which means we'd get
full access to our fees on a prorated basis. We
could get the 15 percent surcharge that is called
for in both Senate and House bills. Track one
could be enacted. There are so many variables and
Bruce will walk you through some of our
challenges.

While we're trying to prepare for '12
and live in '11, we're also planning for Fiscal
Year 2013 where a budget is required to be
submitted to the Office of Management and Budget
by September 13th. So there are so many balls in
the air we're just trying to figure out -- because
each year builds on the prior. So some of the
hiring that we didn't do this year affects the
fees that we'll collect next year. Obviously, it
affects our workload. So as we're planning for
initiatives for 2013, we're not really sure what
we're going to get done in 2012.

So without further ado I'm going to kind
of let Bruce take over from here to give you the
specifics.

MR. KISLIUK: Thank you, Tony. Good
morning. You can go ahead to the first slide. As
Tony said, we are facing a lot of different
scenarios and we don't know the specific outcome
yet.

So where we're going to start is kind of a snapshot of where we are today, then I'll get into some of the variables that we're trying to manage with. Like Dana had said earlier, we are watching the bills closely hoping, but from a financial point of view we are, you know, fiscally cautious, because we must prepare for the worst case scenario at this point in time.

So the snapshot right now is on our current fee collections, and this slide is probably not up-to-date. The "as of May" amount is still a range. The range that you see on the slide is a range that was developed for our submissions early in the year and that range as you can see is pretty big. The reasons it's so big, because like Dana had mentioned, it assumes as our earlier budget submissions were that we had a 15 percent surcharge. So that range includes having the surcharge and not having the surcharge. So that is a pretty big range.

Right now our straight-line projection
collections are $2.17 billion. Okay? So it's kind of on the lower end of that range. And then the two components, the patents component and the trademark component of that collection.

Now, the middle piece is worded here as surplus. As Tony had referred to, this is really the amount that we could possibly collect and not have the authority to spend. And as Tony said, we're sitting at $2.09B spending authority plus carryover this year. So right now, again, this range included the potential of having the surcharge money. We know that surcharge money at least wouldn't be coming until later. And as Dana had mentioned, right now as the legislation is written if it passed we would actually have potentially the authority to spend that surcharge money outside of the appropriations. But again, another variable that's hard to judge. So the range right now is not important. The snapshot is, as Tony mentioned, that right now we're projecting collections at about $80 million over our authority.
And the bottom piece is projected obligations, which is basically our spending. This is a true update, not a range. We are about at $2.19 billion, and the important thing as we go into the slide is this is our FY11 snapshot. As Tony mentioned, we are monitoring what would potentially be one of our worst case scenarios, is going into '12 under a CR at a low level, potentially the $2.09 billion. So we are trying to maximize our carryover. And our carryover is basically the money that we don't spend under our authority. Not over the not the $80 million -- but underneath. And right now we're looking at carrying over roughly $140 million into the start of '12.

So as Dana mentioned and Tony referred to, we are anticipating -- anxiously anticipating -- the passage of the Act, and we are starting our planning. So the way I like to describe it is we're trying to get a running start to the passage without putting ourselves in a financially uncertain position. And by doing that one of the
things we have done is start the process for hiring. And what that allows us to do is put out vacancies, have people apply, go through a selection process before we actually make offers. So we can get that ball rolling, get going, and basically hold off on giving the offers, which is the point at which we'd kind of be starting to obligate. And hopefully by the time the legislation passes and we can turn that hiring on relatively soon.

Other things, we have frozen a lot of other things this year, again, because of the situation we're in and because of the unknowns of '12 and we're trying to again maximize our carryover to make our position in '12 good. So we'll, as soon as the legislation passes, again, revisit the things that we froze, particularly the workload specific things, such as hiring and overtime. And try to turn those on again, conscious of the fact that we still may not know our specific CR language. So we have to manage and kind of guess in a worst case to make sure
that the first few months under the CR in '12 we can operate and operate financially safely.

And this kind of repeats what I just laid out -- the Fiscal Year 2011 funding is critical. It's critical because of the carryover. And I mentioned what would happen in a potential worst case CR at the $2.09 billion level. A year of that in '12 would be, for lack of a better word, devastating operationally, particularly to our strategic plan objectives. Tony mentioned through '12 there are a lot of scenarios that we simply don't know so we are kind of planning for the worst and hoping for the best. So we are gearing up to turn everything on but cautiously holding back to make sure that we can make it through a CR. And hopefully timing-wise we get the passage in time to have our carryover or potentially a little bit higher carryover into '12, get CR language that is consistent with what was passed in the House version of the CJS [bill], at least the intent so that at least the beginning of '12 -- and '12 looks like a good year -- we can
move ahead with our plans.

And while we're juggling the end of '11 and the unknowns of '12, we are formulating the '13 budget. And so the PPAC can expect to receive fairly shortly -- we're sharing those Fiscal Year 2013 initiatives currently with the Under Secretary. When those get approved we will be sharing them with the PPAC and moving forth with our planning.

And that's a summary of where we are.

CHAIRMAN BORSON: Thank you very much, Bruce. Any comments from the Committee? Yes, please.

Wayne.

MR. SOBON: I think I'm a little dim but how does the carryover work? Again, I don't quite understand that piece of the financial puzzle.

MR. SCARDINO: Okay. Well, USPTO funds remain available until expended. So it's not like at the end of the fiscal year the money goes away. So we always have carryover. The issue is how much money do we need to carry over to meet our
obligations for the following year. So we have a multiyear budget plan. We know that by hiring 856 examiners or whatever it was this year so far that we have certain obligations in the first quarter specifically next year. So under a CR we really couldn't afford all of our payroll needs as well as operation needs. It would be very, very challenging. So we are planning for that by carrying over, or planning to carry over, a certain amount of money. Similarly, under a revolving fund we would need to kind of self-populate the fund. Day one, October 1st if it was enacted, we'd need money in the fund because all we could do is spend whatever we collected day one. If we collect $8 million, that's all we'd have in our bank account. So we need to prepare for that.

So that's where we talked about we're preparing for several different scenarios, whether it's S. 23 wins a day, H.R. 1249 or something in the middle. We don't know what's going to happen, so we're doing everything we can to, as Bruce
said, turn everything on or get up to the point where we can spend some money but we're actually not spending the money, such as hiring. We're preparing for hiring but it takes months to bring people onboard. Once a bill is enacted, either an appropriation bill or the America Invents Act, we'll know what we're going to basically have to deal with in 2012. And then we can make some further decisions. Carryover just means the ability to spend money next year with money that you're collecting this year.

CHAIRMAN BORSON: Yes, Marc.

MR. ADLER: So, Tony, I mean, part of the budget calculation is with the surcharge and without the surcharge.

MR. SCARDINO: Correct.

MR. ADLER: How do you decide -- how is the PTO going to make the decision about when to impose the surcharge with regard to the House bill? I mean, how do you make that decision?

MR. SCARDINO: We don't actually get the choice there. It's 10 days after enactment.
Statutorily we'll have to implement.

    MR. ADLER: So the users will be paying

35 percent more without --

    MR. SCARDINO: Fifteen percent more.

    MR. ADLER: I'm sorry, 15 percent more.

Thank you. Fifteen percent more. Sorry, yeah, thanks. I don't want -- we'll be paying 15 percent more and you may not actually be able to use it.

    MR. SCARDINO: No, no, no. That's not true. We would actually -- H.R. 1249 provides instant access to those fees. It doesn't need to be appropriated further.

    MR. KISLIUK: Bob can probably add --

    MR. ADLER: As long as you don't go over the -- up to what you were --

    MR. KISLIUK: No, no. This is separate.

When we originally -- some of these numbers you are seeing in our original plans, we didn't know what authority we would have so we were estimating the 15 percent in our collections without knowing what authority we would have to spend it. Now
with the language as written on the House side,
that 15 percent money would be available to us
immediately outside of the appropriations.

MR. STOLL: Until it's spent.

MR. KISLIUK: Outside the
appropriations.

MR. STOLL: And Marc, that is also true
with the track one money.

MR. KISLIUK: In other words, they don't
score. The scoring as you were talking about
earlier, it does not score.

MR. ADLER: Separate money.

SPEAKER: Thank you. I didn't realize
it was separate. Thank you.

CHAIRMAN BORSON: Very good. Thank you
very much for that question.

Okay. I'd like to move ahead then if we
could. The next item on our agenda is policy
update, Robert Bahr, senior patent counsel. You
can -- how many titles do you have now, Bob?

MR. BAHR: Two or three. I'm collecting
them.
CHAIRMAN BORSON: All right. Please.

MR. BAHR: Thanks, Ben. Quite frankly I'm giving a policy update but after discussing the pending America Invents Act it seems, you know, like a sideshow almost. But there are a few other items we should mention.

The first is with respect to restriction practice. We did request comments last year and we studied them. As you probably know many of the comments suggested that we should look at moving to a unity -- a unity of invention standard with respect to restriction. We are studying that but in the meantime we also wanted to make some other, you know, changes in the interim to smooth out the rough edges, if you will, around the current restriction practice. And we are in the process, the late stages of drafting a Federal Register notice that announces those changes. And primarily what it involves is, you know, giving more training to the examining course so there's more consistency and also giving greater review to late and prosecution restrictions.
With respect to -- I'm sorry.

CHAIRMAN BORSON: Yeah, I just had a question about the timing of that.

MR. BAHR: Sure.

CHAIRMAN BORSON: When is that proposal going to come forth to the Committee?

MR. BAHR: Okay. First of all I sent a first draft of the notice to the Committee, to the PPAC already. We're working on editing it. Actually, we're working out some things with a labor union right now and once that's done we'll send it back.

CHAIRMAN BORSON: And how long do you think that'll be prior to the actual enactment?

MR. BAHR: I'm hoping they're very close. I think we're talking weeks.

CHAIRMAN BORSON: The question isn't when we're going to get that; rather, you know, what the timing is of us receiving that compared to the actual sign off and the publication.

MR. BAHR: Well, it would be, I'm going to say, before. So, you know, a couple weeks
before hopefully.

CHAIRMAN BORSON: All right. The only point here is that it would be very nice if we had it in enough time so that we actually could respond if we had any comments to it.

MR. BAHR: Okay, yeah, well, that's the idea.

CHAIRMAN BORSON: I understand that's the idea but sometimes --

MR. BAHR: I know.

CHAIRMAN BORSON: -- it hasn't worked out quite that way.

MR. BAHR: Okay.

CHAIRMAN BORSON: So if you would, please. Okay, thank you.

MR. BAHR: The next is three track. And as you probably know, we published a notice of proposed rulemaking on three track I think it was in early March, and we actually published a final rule on three track in early April. But what happened is after that our budget for this year really didn't allow us to implement track one --
this is the track one to go fast track -- without negatively impacting other applications. So we published a third notice basically indefinitely delaying track one. And after that, Congress basically put in provisions that would in essence codify the track one provision. And, you know, set the fee by statute. And as was discussed earlier, the way that it was written, the revenue that's generated by track one would come to us and was available to expend it without the need for further appropriations. So that would allow us to turn it on. And of course, if this passes those provisions go into effect within 10 days. So we would be able to basically turn on the track one proposal that we had published in April and we'd be able to turn it on within 10 days of enactment. Well, on 10 days of enactment it would go.

CHAIRMAN BORSON: Yes, good.

MR. BAH: Okay. With respect to the third track, which is the go not so fast track, we are in the stages of developing a notice of proposed rulemaking and we're just working out
some kinks and that should be ready to send to you
I'm hoping within a month or two.

CHAIRMAN BORSON: Okay, that's fine. We
will talk in executive session about the other
strategies for rulemaking based on the passage of
the America Invents Act, so we'll defer that
conversation until later.

MR. BAHR: Sure.

CHAIRMAN BORSON: Do you have anything
else, Bob?

MR. BAHR: Oh, quite a few.

CHAIRMAN BORSON: Please, please
continue.

MR. BAHR: On 101, on 35 U.S.C. 101
patent eligibility, I'm sure everyone knows last
summer the Supreme Court decided Bilske v. Kappos
and we were hoping at that time that there was
sort of a logjam of 101 cases at the Federal
Circuit and that the Federal Circuit would give us
further guidance in light of the decision of
Bilske. But in the year since then what has
happened is, first of all, the Federal Circuit has
only decided two cases and the Supreme Court has taken one of them up on Prometheus. So, you know, we're not giving out -- basically, we're not giving out further training to the core because we just don't have enough new data points, if you will, to give further training on. And of course, you know, you're going to have another Supreme Court decision within, you know, six to eight months so that's where we are, if you will, on that.

On reexamination, we conducted a roundtable and had a public comment period that closed fairly recently. We were in the process of digesting those comments and coming up with proposals, you know, in light of those. You know, obviously if some of them require rule changes we're going to have to come out with a notice of proposed rulemaking to implement them and some of them, you know, internal process changes we could do without rulemaking. So, you know, we could possibly do internal process changes quicker than that.
With respect to the patent prosecution highway, we recently modified our requirements with a number of countries to make it more widely available. The prior system was designed based upon, you know, the Office of First Filing versus the Office of Second Filing where you have leapfrog situations. Now it will be focused on the Office of First Examination and the Office of Subsequent Examination. And we are, again, we are discussing -- we are in the process of developing a notice of proposed rulemaking to modify our duty of disclosure requirements based on the Federal Circuit's case (inaudible).

Any questions?

CHAIRMAN BORSON: I'd like to thank you. It was very concise.

Ester, do you have a comment?

MS. KEPPLINGER: Yeah, I had one question. Recently we got an action that indicated that certain steps would be right out of the claim. Things like calculating and classifying. And the examiner said that they were
mental steps and wouldn't contribute to the
patentability of the claim and said that the
office had taken -- that this was a policy
decision within the office and that's what they
had been instructed to do.

MR. BAHR: I mean, I'd have to see the
specific case but I know that in some Federal
Circuit decisions, like informing type steps, you
know, are basically not given weight for 102, 103
reasons if there's no, you know, functional
relationship. But, you know, this is a very --
these are very particular situations. There's no
like per se rule that this type of step isn't ever
given weight.

MS. KEPPLINGER: That was my question.
I mean, what the examiner had said was that they
had been given instructions to do this. So I was
just curious.

MR. BAHR: Well, the instructions we
give, I mean, you know, the guidance to examiners
and memos and stuff, we post that all on our
website, you know, under the patent examination
place. So if it's been given to the examiners it's posted there. And I can't recall anything like that being posted there that would say a per se treatment.

CHAIRMAN BORSON: Yes, Wayne, please.

MR. SOBON: Going back to 101, I guess I would make or ask one question which would be have you done any studies over the last year of the statistics of 101 rejections in various art units and/or can information be given to the Committee so we can see is there any sort of factual statistical changes that have happened in the core post-Bilske?

And secondly, I would just make the sort of suggestion/plea that I'm not sure the user communities can afford to wait for, you know, further guidance and I'm not sure. It may be chimeric to wait for potential pronouncements that, again, might not be anywhere near what the kinds of clarity that you're looking for. And I would just suggest that the office -- between you and the other skilled staff, and I'm certainly
personally happy to help assist and I think the PPAC would well assist in helping craft concrete guidelines to implement the Bilske decision in a way that's practical for the office. So, you know, I just would make that suggestion/plea.

MR. BAHR: I appreciate that suggestion. If you have any specific suggestions, I'm all ears. My concern is twofold. First, if you, you know, obviously in reading the Supreme Court's decision and Bilske in the Supreme Court decision and KSR, they don't like tests. So that makes it kind of hard to give concrete tests to examiners. And the second is that, you know, with another Supreme Court lurking in the background, you know, one never knows what's going to come out. But if you can come up with, you know, things that might ease the burden of examination without running afoul of these decisions we'd appreciate it.

MR. SOBON: And I would suggest that, you know, in some sense it's a chicken and egg problem in a sense but I think in some sense the courts look to the office for, you know, well
conceived guidance that can help them understand at a practical level how these things work out. Right? So I'm happy to offer my personal views on this but I think the PPAC as a whole can come and help assist on these things.

MR. BAH: Yeah, I'm willing to take either.

MR. SOBON: That would be great.

CHAIRMAN BORSON: Good. Thank you.

Marc?

MR. ADLER: So track one is limited to a certain number of cases. Right? Like 10,000?

MR. BAH: Right. Well, the way the legislation is drafted it's limited to 10,000 in each fiscal year until we -- until we issue regulations changing it.

MR. ADLER: Okay. I was going to the track two proposal that hasn't been put out yet. Would that also --

MR. BAH: Track three.

MR. ADLER: Well, he said two.

MR. BAH: Okay. If I said two, I'm
wrong. I meant track three.

SPEAKER: Three?

SPEAKER: Three.

MR. ADLER: So would that also be limited to a certain number of --

SPEAKER: Yes. In our planning it is to limit it to a certain number.

CHAIRMAN BORSON: Any further comments for Bob? Questions?

Okay. What I'd like to do is take a short detour. We do have a question from a member of the public. This actually relates -- and I'll just quote it, "Would the quality of patent applications be improved if working examples were required for some categories of mechanical and electronic technology? Similarly, working software would be required for software inventions." Could be, not would. So any comments about that from the quality shop? Marc, do you have any comments or --

MR. MILLER: I'll comment. I'm not sure I totally understand the question. But anytime we
can get more clear on 112 and what people are
defining as their invention, the better
examination and the better quality patents we
would get. So if there are the ability to include
working examples I think that's always helpful.
But I don't know it's the best practice.

MR. ADLER: You aren't suggesting -- you
aren't suggesting that working examples are
required but the more explanation for enablement
and detailed description the better so that
everybody in the public understands what the
invention is would be helpful. That's the only
way I can answer that question I think.

CHAIRMAN BORSON: Well, I would just
offer the comment that certain countries require
working examples and that you would end up being
limited to a working example in your patent claim.
And so I think that's a potential countervailing
force that what we in the United States like to do
is describe the invention and not necessarily one
specific embodiment thereof. And we like to
ensure that the claims be given reasonable
breadth. And if there is a generic claim that's
supported by the application under 112 that that
be granted.

So I think that, you know, just to
parent what Marc and Steve were saying is that the
enablement standard I think is reasonably clear at
this point. And I'm not sure whether the person
who asked this question believes that it is
unclear. And maybe I would invite the person to
submit another question explaining further if they
think that the 112 standard is unclear at this
point.

Okay, thank you. Well, Bob, thank you
very much. I'd like to move on all the way over
to Robert Bahr. He is the -- who will then talk
about the MPEP demonstration.

MR. BAHR: Thank you. We've been --
we've had an MPEP reengineering effort underway
the last couple of years and I just wanted to go
over the fruits of that effort. In all fairness,
I shouldn't be listed here as the principal. The
people who are going to be giving this
presentation are Magdalen Greenlief and Terrel Morris. Those are the folks who are actually most involved in working on this. And so without much further ado I'll turn the program over to Terrel.

MR. MORRIS: Thank you, Bob. What you see on the screen right now is our working example of the electronic MPEP that will be presented to the examiners in the near future. The previous tools that we've had have been paper and I think stone tablets before that. But paper. And then we have moved into the electronic MPEP in the form of a program that is no longer supported called Insight. That particular application has had a number of issues with it as it's matured over the years and the support for it has fallen off and we are now migrating to this electronic version where it is web based. So we will have much more flexibility as we move forward into the future.

What you can see up here is, of course, the first page of the manual. The examiners now have access to the entire manual. They can navigate through it on the left here and you see
the table of contents, including the ability to select a particular section, like Section 700, one of the most popular sections, and our largest subsection, which is 706. We can go down here and pick that out. That's a good one. It'll pull it up and it gives you the ability to see the entire section. Examiners can now easily highlight content and paste it into their office actions so they can get verbatim content from the MPEP and directly insert it into their office actions to support their positions or to make points.

In addition to this, examiners have the ability to search. Currently, there are several different searching schemes available, everything from our in-house, very specific BRS search that allows proximity operators and those types of operations as well as Googlesque-type searches, either from the Internet or from other journal sites on the web provide their own search capabilities as well. So what we've tried to do here is standardize the search language that will be presented to the examiners to that which is
most similar to what they use in their daily work environments. So this will use a BRS-type syntax so I can do things like put in double NEAR patent and it will provide me with a list of search hits. And as you can see, the search results appear in the middle here and we have 86 results for this particular search. And the left side changes from a table of contents to a faceted list so what it does is categorizes in which sections these actually fall out and you can then further select based on these.

For example, if we go down to 804, which is where a double patent mainly occurs, it limits the search to just the 800 section, the 804 section that I put it on. Then clicking on one of the links, which I have done accidentally, takes you directly to it and you can see that the terms are highlighted throughout the selection.

Examiners can do this and they can also save their searchers so they can repeat them later and of course, navigate further through it. We have the ability to add annotations to any point in the
1. MPEP and these will also be retained for examiner
2. use as we go from version to version into the
3. future, unlike today where if they had annotations
4. there removed from the manual because they don't
5. exist in the new manual, this one will preserve
6. those as we move from version to version.
7. Unfortunately, I don't have a lot more
8. to present to you. If you have any questions I'd
9. be happy to take those.

10. CHAIRMAN BORSON: Yes, I have a
11. question. This seems like a very useful tool for
12. examiners and I think applicants would also find
13. it to be a very useful tool. So I wanted to ask
14. if you have any plans to make this available
15. widely to the user community.

16. MS. GREENLIEF: The web-based part on
17. the displaying and the searching of the MPEP
18. content, we plan to make that available to the
19. external folks. As to the annotation parts, we
20. are still working on that to see whether we can
21. make that available.

22. CHAIRMAN BORSON: That would be very
interesting. And I presume that would be a one
way so it would not be a WIKI-type thing where the
applicant would say, oh, I think this provision of
the MPEP is just plain wrong and argue against it.
I know that that was discussed some time ago and
was discarded but I just wondered if, you know,
what the scope is of what you think ultimately
might be available to the outside.

MS. GREENLIEF: This application only
provides displaying and searching the content. As
to a collaboration tool, that is a separate tool
and I believe Marti Hearst has provided a demo for
PPAC. And that's called IdeaScale where it would
link the user to the MPEP content and if a user
has a particular comment, the user can type that
in and we will take all those comments into
consideration.

CHAIRMAN BORSON: And when you mention
you will take them into consideration, does that
mean it will go through the formal process and
ultimately will be incorporated into the MPEP or
whether it would remain as part of the legislative
history, if you will?

MS. GREENLIEF: The comments that we think are appropriate to include we will include all those. And right now in Ideal Scale we have posted chapters 500 and 600. We have received a number of comments. We're reviewing those comments now and we are working on revising these two chapters, 500 and 600, to incorporate any comments.

CHAIRMAN BORSON: Thank you very much.

Yeah, Wayne.

MR. SOBON: I noticed that you have the links to the statute and to the rules and regulations but any thought about linking to underlying case law as well for the examiners to see the underlying cases?

MR. MORRIS: Actually, in the content that we have provided, if the case law is used in the MPEP now it is linked.

MS. GREENLIEF: Let me just clarify that a little bit. We currently don't have links to particular cases and this is a feature that we're
working on for the future so that we hope to
include all the Federal Circuit cases and the
Board decisions and maybe a repository so that we
will provide the link because this is one of the
comments that we received from all users, internal
and external saying that we would like a link to
the particular case. So that's a feature that we
will be working on in the future.

CHAIRMAN BORSON: Good. Thank you very
much. That's very interesting.

Okay. Any further comments or
questions? If not, thank you very much. We
appreciate your time. Okay. All right. We do
have -- oh, good. This is the follow-up question.
This fellow was talking about patent models.

Are you going to -- are you saying that
submitting a working model of the invention is
always allowed as part of the application?
Working model, I don't know whether you're talking
about a working model or a working example. A
working example is something that's written and
described and may include flow diagrams if it's
software or it might include code or it might
include pseudo code as a working example. If
you're talking about a working model this might
mean a physical device such as a mock up of a
washing machine, you know, harkening up to the
original days in the previous century. So I don't
know. Just let me open this up to members of the
community here.

Peggy, would you like to comment on
this?

MS. FOCARINO: Well, we do -- I know in
some areas we still get some working models but we
see fewer and fewer of those as each year goes by.
But there are some areas where the applicant will
bring in a working model or supply it.

CHAIRMAN BORSON: Are you seeing that
more in a particular technology area?

MS. FOCARINO: Not really. I don't know
if Bob Bahr can speak to that.

MR. BAHR: Very few. Yeah, there are
very few. Usually they only come in when there's
some question as to whether or not it works or
exactly how it works. And so it's fairly rare for an examiner to ask for a model but there are -- or a demonstration. But there are provisions for it when it's necessary.

MS. FOCARINO: What we typically see now as a replacement is a disk with a video on it that shows the operation and so that's what you're getting now more and more than what we used to have to, you know, see with the model being brought in years ago.

CHAIRMAN BORSON: Sure. Okay. Well, thank you. And I'd like to thank the person who wrote this question. He's obviously paying attention and following up. And if you have any further comment or question or clarification, please let us know. Thank you.

Okay, then next we'd like to move to patent office operations with Deputy Commissioner Peggy Focarino.

MS. FOCARINO: Thank you. Good morning. So I'm going to take you through basically what's a high level overview of the operations and what's
happening in various areas and some of the metrics that we're tracking. So the first one is to show you the backlog and we usually show you this every time we meet. And I think many of you know that we had a really strong campaign going towards the end of last year and our goal was to get our backlog down to under 700,000 applications awaiting an action. And we didn't make that goal. We came really close but you can see the trend and basically the far right of the chart shows you as of July 11th we are down below 700,000, so we hit the 692,000 mark and we continue to focus on attacking our backlog. And of course, a lot of that is dependent on our filing rate. So as filings pick up it becomes more of a challenge to keep driving that number down but at least you can see the trends and we're definitely making a lot of progress in spite of the fact that we've had to turn off overtime and we've had to curtain hiring. So, you know, this is a really good sign. Examiners are working really hard and so it's good. Good news.
That backlog number does not include RCEs and we've talked about this at length before, too, especially in the previous meeting. So I wanted to show you what's happening with the RCE filings. And on the right you'll see the volume in thousands and on the left axis is the growth rate. And the takeaway news from this, the good news is that the growth rate is tapering off so we seem to be seeing a leveling off and by the end of this fiscal year we project that the growth rate will actually be around one percent from the previous fiscal year.

So, you know, we're tracking. This is a new dashboard dial, if you will. You can see the actual inventory of RCEs that we have in the backlog and it's right around 62,000 I think right now. That red dotted line in the middle represents when we changed the crediting of the RCEs, they're worth less to an examiner in terms of the amount of credit. We also moved the RCEs from the amended docket of examiners to the special new case docket. So that's obviously
driving some of the backlog numbers here.

Wayne.

MR. SOBON: Sorry to interrupt. But do you have any sense about what is behind this rather stark drop in RCE growth rate? Is it -- can we sense about what are the causes?

MS. FOCARINO: I think one of the factors is that they're not being picked up as quickly so --

CHAIRMAN BORSON: I think Ester could answer that.

MS. FOCARINO: Yes, there you go.

MS. KEPPLINGER: The allowance rate has gone up. So I think when the allowance rate goes up, if you look at the timeframe that we're looking at, we have experienced now some allowances. So those people don't have to file RCEs would be my guess.

MR. STOLL: That's part of it I would agree. But I also believe that the fact that they are not put onto the amended docket, people recognize it's not actually as expeditious in
getting them handled and they may be more willing
to amend, exchange, and take allowable subject
matter earlier. At least since we're only talking
about a decrease in the amount of increase.

MS. FOCARINO: That's right. That's
right.

CHAIRMAN BORSON: Well, have you heard
any comments, Peggy, from the user community about
that? I mean, I think these are important
questions about whether there is an increase in
allowance which is dropping --

MR. STOLL: Yeah, Ester calls me and
yells at me a lot about that.

CHAIRMAN BORSON: Well, I'd like to
thank Ester Kepplinger for her efforts.

MS. FOCARINO: I think there are several
factors here and all the comments you've heard so
far are accurate comments.

So let's take a look at the backlog. I
mentioned this but you can see that the backlog
has been growing and part of that is because we
did move the applications from the amended
document of the examiner to the special new case
docket of an examiner. So we're watching this
closely obviously and we are discussing situations
where if the backlog gets really high, you know,
we may be wanting to do something about that so
we've been talking to Bob Stoll about this
particular issue.

Pendency continues to go down slightly.
The green line is first action pendency and the
blue is total pendency. And just the little red

MR. STOLL: Can I interrupt for just a
second?

MS. FOCARINO: Sure.

MR. STOLL: I just want to add one more
piece back on the RCEs. We are in discussions
with our union who has been working with us very
closely on a lot of issues to see whether or not
we can't expand what we handle after final. And
we're in discussions to see if we can't maybe find
a mechanism that doesn't necessitate the RCE as
much as it has in the past. And hopefully we will
be able to find something along those lines. And we've been working very closely with POPA on this.

CHAIRMAN BORSON: Well, I wanted to ask you, Bob, what sort of a listening device did you use at the PPAC dinner last night in which we discussed this very issue? Yeah, we have some further follow-up on this in the executive session.

MR. STOLL: That's fantastic.

MS. FOCARINO: That's great. That's great.

MR. STOLL: Go ahead. I'm sorry.

MS. FOCARINO: Okay. So the pendency, as I said, the green is the first action pendency. It is dropping, although not as much as we would like. But the red line shows you the effect of us not being able to have the hiring and the overtime in place. We had projected a lower first action pendency. We also projected a lower total pendency. It's not enough to show it on the chart there in the blue line but certainly we're experiencing a change in our pendency projections.
because we can't hire at the rate that we had wanted to and because we had to suspend overtime.

Our actions for disposal, we've talked a lot about this in the past and the good news here is that it continues to go down. The dotted line there that you see in black is basically what Dave Kappos has asked us to have as a target, which is just over 2.0, so he would like us to get down in the very low 2.1 -- between 2.1 and 2.2 actions per disposal.

This is something that we track in our quality index data set so we're watching this very closely. And obviously certain technologies are normally going to have higher actions per disposal but we certainly are looking at areas that have outliers, both good and bad and doing a lot of training to try to bring that number down to a reasonable level.

Ester.

MS. KEPPLINGER: And this number includes designs?

MS. FOCARINO: This is just UPR, utility
plant reissue.

MS. KEPPLINGER: Okay. So you've gone back that way which we had done before?

MS. FOCARINO: Right. Yes. Yes. Yes.

MR. ADLER: Is there any correlation -- do you have any data that correlates this with the first action interview program?

MS. FOCARINO: I know we have allowance rate data but I've got to believe that there's a strong correlation between first action interview pilot cases and this number.

MR. ADLER: I would think. I would hope.

MS. FOCARINO: And certainly we can --

MR. DWYER: Yeah, we're (inaudible) since the first action (inaudible) you have to make sure that a lot of them get through the process (inaudible). So we're right at that stage now where we can start looking at and see how is this affected. Just anecdotally it's very clear that the action (inaudible).

CHAIRMAN BORSON: I'm sorry, I hate to
interrupt but I'm not sure that everybody on the outside world could hear the comment. Could you repeat what you said at one of the microphones, please, Tony or Jim? Whoever it is.

MR. DWYER: Yes, just with respect to taking the data with QIR and looking to see how first action interview has affected our actions per disposal, is it important when you start a project by first action interview you let it play out especially in this case because with dispositions you have to get the cases all the way through and get enough of them through in order for the data to be accurate. And we're at a stage now that we have enough cases that have gone through to allowance and to abandonment through the first action interview that we could start looking at this. But anecdotally it's pretty clear that the first action interview program has lowered the actions per disposal.

CHAIRMAN BORSON: Yes, Marc, did you have a comment?

MR. ADLER: Good.
MS. FOCARINO: Okay. Our allowance rate is rising slowly so we are right about at 48 percent now. So again, I think a lot of factors are contributing to this, including the interview practice and the focus on that and compact prosecution. And so that's another trend that's good news hopefully.

We talked about the backlog. We talked about pendency and we're seeing those go down in spite of the fact that we haven't been able to hire and we had to suspend overtime. One of the big factors that contribute is this attrition rate. I know we like to say again that it's the economy is a big factor in this and certainly it does play a role but we can see our attrition rate is just around three percent right now. So it's really low. So what's happening is we have a group of examiners and we currently have just under 7,000 patent examiners. They are staying with us. They are getting promoted so their output is higher so they're able to really attack the backlog.
And if we follow our historic trends, what we see is if we keep an examiner for three years the attrition rate goes down to just about two percent. So hopefully these examiners will stay with us in spite of when the economy picks up that we'll pick a significant number of them.

Wayne.

MR. SOBON: Do you -- you may have talked about this in the prior sessions but do you have anything like internal engagement surveys or climate surveys about just, you know, personnel engagement as well to help support attribution aside from external economic factors? You know, how the workforce is feeling about the environment?

MS. FOCARINO: We do. Right. We have survey data. We have the Employee Viewpoint Survey that is given every year and it's a survey that's government-wide actually.

MR. STOLL: Pat, did you want to add anything to that?

MS. FOCARINO: Oh, I didn't see Pat down
there.

MS. RICHTER: Good morning. Hi. Yes.

As Peggy mentioned, we have the Employee Viewpoint Survey that's administered by the Office of Personnel Management, OPM. And actually, we just found out the other day because the survey took place in the last couple of months and we got the finalized participation rate and I'm happy to say that our employees participated -- 65 percent of our employees participated in the Employee Viewpoint Survey which was up 17 percent from last year. So we hope to get -- the data should come out in the fall and then we take a look at the data and we work with each of the business units to see where there are opportunities where we can improve things or engage employees or where we've had successes that we can help replicate in other units.

MR. SOBON: Would that be -- is that public or is that sharable with this --

MS. RICHTER: Yeah, you usually see it on -- the Partnership for Public Service usually
takes -- extracts information from that Employee Viewpoint Survey and publishes it every year.

MR. SOBON: Great.

MS. RICHTER: So you can look for past years and then you can look and they'll have a number of questions, factors that they'll show. And a lot of it is, employees, how they feel about work, how they feel about their supervisor, et cetera, et cetera.

MR. SOBON: Awesome. Thanks.

MS. FOCARINO: And I'm sure we can publish that on the PPAC website as soon as our data becomes available. But even last year the 2010 results were very positive showing an increase in satisfaction. So it's another thing that we look at and it's good news.

Our historical quality measures, the two of the in-process compliance rate and the final disposition rate just to see -- give you a look at how we're tracking, they were certainly within our range and there's a one percent range for our target. And we have, as you know, five additional...
measures that we've started to look at, so at the end of the fiscal year you'll be seeing those baseline measures along with our two historic measures. So again, looks good. I know, you know, we definitely had some good input from the work that we've done with you and our roundtables and what other things we need to be looking at. And we also look at our quality index data set that really drills down to very specific things that gives us a really -- another good measure to, you know, find areas that we really need to focus on and offer training to try to bring examiners back into sort of the norm for the particular technology area that they're working in.

CHAIRMAN BORSON: Peggy, I just wanted to reiterate something that we've mentioned before which is that there are really sort of two purposes for the quality approach. Obviously, one of them is internal to the office about, you know, training examiners, trying to identify outliers and bring those back into the fold. And the other, at least from our side, we were trying to
drive consideration of best practices. And those best practices can come from a number of different areas, including board decisions, district court decisions, Federal Circuit decisions, and Supreme Court. So we just wanted to make sure that we all have that perspective as well as the internal perspective.

MS. FOCARINO: Right. Okay. Interview time. We've been tracking this closely since we decided to grant examiners time for reaching out to applicants to hold examiner initiative interviews. So you can see again that we've noticed an increase in that. And I think this is another thing that's contributing to reduction in RCEs, reduction in actions per disposal, more contact prosecution because we're getting together with our applicants earlier in prosecution and talking about the issues earlier. So even though the time spent on this is going up which is not production time, certainly it's having a good effect in terms of disposing of applications sooner and hopefully preventing filing of any
continuing applications.

MS. REA: Peggy, can I just add something there? I think it's important for our user community to appreciate the fact that it's not just the interview time that's going up, that really a lot of PTO resources have gone into actually training our examiners. The training modules for interview practice are actually very, very good. We're getting our examiners training modules and negotiation skills, for instance. And I think we're just upping the quality of our examiner and their comfort level. So I think that overall we didn't just ask them to conduct more interviews. We're actually providing what I consider to be amazing, excellent training to give them the confidence to have more interviews so that indeed prosecution is more compact. But I think the caliber of our examiners is going up because of it and their confidence level.

Thank you.

CHAIRMAN BORSON: Yes, Robert.

MR. BUDENS: I want to -- back on
Terry's comments about when it comes from the other side, from the examiner point of view, too, because I think we're seeing more and more applicants and their attorneys coming to the table in interviews willing to talk and willing to work on cases and work with the examiner to come to allowable subject matter. And I think that's reflected in two things. One, statistically in the increase in the allowance rate. Two, anecdotally in the more and more attorneys we see at the guard stations trying to get past us to get into interviews and stuff so I think, you know, there's improvement in a sense of more collaboration I think we're getting on both sides of the table.

CHAIRMAN BORSON: Yeah, that's very good. Thank you, Robert.

Okay, please. Thank you.

MS. FOCARINO: So I'll move quickly so we can keep on schedule. We talked before about our effort now to clean out the older cases. And so the idea here is to clean off -- clean out the
tail of old cases. But just to give you an idea of where we are, we're making great progress this year on our goal. We wanted to work off 235,000 cases in this tail of older applications. And so to date we worked off a little over 190,000 of them. And we have about 45,000 left to do before the end of the fiscal year. So it's a great effort.

It's been -- the examiners have really embraced this effort so it's been a fun campaign and Terry's been our champion of this. And we had a function yesterday here in the auditorium where examiners came and sort of rallied around the goal. And so it's been really successful. So the burgundy color there represents how many applications have been examined and the blue is what's remaining to go. But you can see that examiners have really, really focused their efforts on this and the supervisors have been great at trying to move work and working with one another. The tech center directors have been really great and collaborative in moving work
around to areas where there's an excess examination capacity. So it's really taken a lot of cooperation and our managers really changing the way they think about who owns the work and the examination of the work. And this is just the first step. We'll continue after this fiscal year to keep refining so we're actually chopping the tail off so that we can get to that 10-month first action pendency.

CHAIRMAN BORSON: Ester.

MR. ADLER: So as we work off the tail, obviously there will be a new tail. So we need to, I assume, see a new chart next year.

MS. FOCARINO: Yes.

MR. ADLER: And then you can start chopping those off.

MS. FOCARINO: Absolutely. So you can see there's still some tail left. It's hard to see on a chart but the next effort will be to actually chop off a portion of the right of the tail and then to keep squeezing so that we've got very few cases on either side of that 10-month
filing date.

CHAIRMAN BORSON: Okay, good.

MS. FOCARINO: Just some other initiatives we're doing. We're really looking --

I'm sorry.

MS. KEPPLINGER: Yeah, I did have one question. So clearly with the RCE numbers, because the growth rate has decreased and you're beginning to see a flattening of the RCEs and more than that number is filed. The examiners -- some of the examiners are picking the RCEs up and doing them so that's good. I did have a question. With this -- with the COPA chart, if you placed RCEs in this, where would they fall in the date? If you compared them to continuations which are in this chart, do you know where the RCEs that are in the backlog would be falling since they're not in the COPA?

MR. DWYER: With respect to the RCE backlog and how would overlay on this chart, most of the RCE backlog is recent because it's the recent change that occurred. So I don't think
you'd see much with respect to the RCEs in this tail. When we do redo it next year there might be a different story.

MR. STOLL: Right now we did RCEs on the amended docket so the age is not that old.

MR. SOBON: I guess the related question is the perennial question but this pendency is per application pendency. It's not total life pendency of first original application plus RCE or plus two RCEs equals, you know, 90 months pendency. Right? It's --

MS. FOCARINO: This is basically the age of the applications.

MR. SOBON: Of the particular applications.

MS. FOCARINO: Right. So it's not reflecting pendency at all. These are applications that are waiting to be worked on. Right.

MR. SOBON: Right. But so to be exact, the filing date is the filing date of that particular application, not the original priority
date of the full family --

MS. FOCARINO: That's right.

MR. SOBON: -- that it's descending on.

MS. FOCARINO: That's right. This is

the actual filing date.

MR. SOBON: Right.

MS. FOCARINO: Okay. So we're really

focused that first effort there, PPOP as we like
to call it. We've got Greg Mills, who is

providing us with regular updates and we're

focused on working on the oldest application. So

we are making great progress there. We have some

very old applications, some of them because

they've actually fallen off the radar screen, if

you will, and have not been reflected in a pending

status. So we've been really focused on that

effort and on tech centers who are doing a great

job.

The second thing is our patent examiner

technical training program where we've reached out
to our stakeholder community and have great

participation levels there. We've had over 30
organizations come in and give our examiners technical training and this is on their own time and at their own expense. And so we've had over 3,000 examiners that have gotten technical training because of the participation of our stakeholder community. So that's been a really great effort.

This year also for the first time we've offered examiners a bank of time so they can use it as they see fit within categories of training. There's technical training, there's legal training, there's leadership development training. So for the first time we've given each examiner a bank of time that they can use to, you know, further develop their skills. So that's been a really good program also.

We've also given all of our SPEs coaching and mentoring training. And this is really to help them incentivize examiners to reach out to applicants to hold better interviews, to be more collaborative, and to really be more of a coach and mentor and help facilitate applications.
moving through the process.

And the last one here Terry had just mentioned, our negotiation training is a new training that's really more in-depth than our interview training. And we can provide you with this training also. We'll post it. But it's a really great package, very robust and it's focused on examiners working with applicants to really get through the issues and have it as a collaborative process and not as more of a conflict resolution process but really to focus on collaboration and working together to move the application through the process. So that's a really great training package.

CHAIRMAN BORSON: Well, Peggy, I wanted to thank you for that. As you may recall, some of the comments that we made in the annual report involve mentoring and training of SPEs and management skill training, and I'm very pleased to see that that's moving ahead. And I look forward to, you know, hearing more about these, you know, the special time, these 25 hours of the time bank
is just such a great idea. You know, it gives -- it demonstrates to examiners that you trust them and that they will be operating in their best interest to develop themselves. So thank you so much. I appreciate that.

Just one sort of offhand comment --

MR. ADLER: I have a question.

CHAIRMAN BORSON: Yeah, I understand.

Just an offhand comment. Well, go ahead. Why don't you do it, Marc?

MR. ADLER: I'm curious about some data that you may or may not have. Do you have data on the percentage of cases that become abandoned by tech center as in comparison to the time to first office action? In other words, if they didn't get an office action in 32 months, what percentage of those drop off the table?

MS. FOCARINO: We do have -- you're just talking about abandonments versus time to first action, just that --

MR. ADLER: Yeah. I'm thinking of the track three in terms of trying to understand the
relationship between what happens to cases where nobody cares about whether they're, you know, anybody picks them up and whether you know that by tech center. Do you understand?

MS. FOCARINO: We would, yes. We do have that data. And we can actually -- we could get it. I don't know if, Jim, if you want to make a comment.

MR. DWYER: Yes. You're talking about express abandonment.

MS. FOCARINO: Right.

MR. DWYER: Yes. Well, it could be express abandonment or just failure to respond. I mean, is that -- I mean, nobody files an express, I mean --

MR. ADLER: It could.

MR. DWYER: Well, yeah, if they have yet to be acted on there's nothing the applicant needs to do to keep the case alive so the only thing to make it into abandon status would be through express abandonment.

MR. BAHR: I think what you're asking
for is a relationship between when we did the
first office action, how long that took and the
likelihood -- and how often those cases go
abandoned.

MR. ADLER: Correct. Yeah.

MR. BAHR: The cases where we do an
office action early, you know, in pendency, do
they tend to get responses more frequently?

MR. STOLL: We could find that
information.

MR. ADLER: I'm just wondering. We're
focusing on all this tail stuff. I wonder whether
maybe some of those would have just gone on
anyway. I can't imagine people would be sitting
around waiting to find them.

MR. STOLL: Dave, could you run that for
us, please, and get the information over to the
(inaudible)? Thank you, Dave Fitzpatrick. Do you
understand my question?

MR. FITZPATRICK: Yes.

MR. STOLL: Okay, thanks.

CHAIRMAN BORSON: Okay, thank you very
much, Peggy. We do have a question from the outside. Has the current budget situation impacted the Board of Patent Appeals and Interferences and to what extent? For example, with respect to staffing and rulemaking. Do we have -- is Bruce still here? No? Is Tony still here?

MS. REA: I could provide a brief comment. The Board of Patent Appeals and Interferences would probably have hired additional examiners had we received all of the fees that came into us last fiscal year. That was one of the things that was also delayed. I believe we have about 92 judges, administrative patent judges right now. We'd like to hire more now even before patent reform is passed. So it has indeed affected their operations. However, James Smith just joined us back in May and he is revolutionizing the Board of Patent Appeals and Interferences. And he has a plethora of wonderful ideas, some of it requires money, other of it doesn't. So we do expect significant changes
there just because of the new leadership at the
Board and also with patent reform and the
instrumental action that they're going to, you
know, that they're going to take with these
inter partes review type procedures.

CHAIRMAN BORSON: Thank you very much,
Terry. Comment, Wayne?

MR. SOBON: Yeah, actually following up
on that. I think it would be great if he could
perhaps come to our next PPAC meeting that we'll
be having and present some of those things as well
as I think we'd be interested in the statistics
because I'd be most interested in the detail
statistics given the sort of fall off on growth
rate of RCEs. Another obvious part of the
hydraulics is potential, you know, increases of
appeals at the Board and how those are being
processed and, you know, processing rates and
allowance rates.

MS. REA: I'm sure he'd like to do that
so I will make that suggestion and he will come
with tremendous amounts of data so you can all get
a feel for where we're at right now.

MR. SOBON: Awesome.

CHAIRMAN BORSON: Very good. Thank you so much. Yes.

MR. FOREMAN: Peggy, I was just curious. On the tail, was there any traumatic impact from the exchange program where applicants could take a current application and move it up in place? Did that help work off the tail at all?

MS. FOCARINO: Not at all.

MR. FOREMAN: Not at all.

MS. FOCARINO: I think the volume of cases that we actually realized in that program was probably around 50.

MR. FOREMAN: And of the 190,000 or so that have been worked off, how many of those when you contacted the applicant they just said my application is obsolete at this point? Five years ago when I applied I thought I had state-of-the-art technology but today it's irrelevant because technology is surpassed. And that's why they were willing to get these, you
know, disposed of.

    MS. FOCARINO: Well, I don't believe that we -- we actually just picked them up for examination like we would any other case so it's not an effort where we reached out to applicants asking them if they still wanted --

    MR. ADLER: This is sort of where I was -- this is sort of where I was going. I'm just wondering whether the technology by technology center, some of those applications, those inventions may be totally obsolete. You might be working on things that nobody cares about anymore.

    MR. BUDENS: I think, Marc, the problem is we probably wouldn't know that until -- except for cases where they got restricted and they didn't respond to the restriction requirement or something. Other than that the cases are just having a first action sent out on them and then we have to wait and see whether they go abandoned after first action.

    MR. ADLER: So the real question is is there -- are there cases in the tail that, you
know, right now there's no incentive for them to bail out because if they don't have another application that's pending they're not going to jump in line. At the same time, their technology may be obsolete but nobody's contacted them. Is there another way to incentivize these applicants, just abandon. Right? Maybe it's giving them some sort of a refund or a partial refund since there's no examination been taking place anyway. And I know you don't want to give money away --

    MR. STOLL: Or implementing track three which allows them to defer payment on some of these things.

    MR. BAHR: There is a provision for cases filed after 2004, I think, that you can (inaudible) abandon and get a refund but just people don't do it.

    CHAIRMAN BORSON: Okay. Thank you very much. I'd like to move ahead with our agenda. Next on our agenda is a description of the telework legislation update with Patricia Richter, Chief Administrative Officer. Please, Patricia,
welcome.

MS. RICHTER: Good morning. Thanks for having me. I appreciate it. This is my first opportunity to address the groups so I'm very happy to be here. And I was asked to come just to give an overview of the Telework Enhancement Act of 2010. And what that means both for the Federal government as well as the PTO.

So to go forward, okay, in terms of the Federal government, because not everybody is advanced in telework, the legislation codifies granting federal employees eligibility to telework. Agencies had to let employees know whether or not they were eligible to telework by, you know, virtue of their position. Requires federal agencies to establish telework policies. Requires agencies to develop -- to designate a telework managing officer, which we do have in Denette Campbell here. On or before June 7th, federal agencies were expected to establish the policy, determine employee eligibility, notify all employees of their eligibility, establish
interactive training programs for teleworkers and telework managers, and include telework in business continuity plans or COOP plans. And actually, because we've had telework here at this agency for quite a long time, we already had done all of those things but we are moving to the other phase of the legislation which is to establish an advisory committee, an oversight committee, and the program.

So in terms of the legislation for the PTO, this will allow us -- and we were specifically named in the legislation -- to conduct a seven year test pilot program. And the program is designed to enhance cost savings or other efficiencies that would accrue to the government. We have a committee that's comprised of equal representation of labor and management and our program participants would be full-time teleworking employees. That's what constitutes their eligibility.

So we established the committee in March of 2011. Okay. And it's made up of -- there were
two representatives from Patents Management, two
representatives from Trademarks Management, myself
as the chief administrative officer, the head of
labor relations, two representatives from POPA,
NTEU 245, and NTEU 243. So there were 12 of us
and then we had alternates in the room, as well as
other subject matter experts in things that helped
us develop the operating procedures that's
required under the legislation.

Okay. So prior to the program
implementation we are in the process of finalizing
a cost benefits analysis and the criteria for
evaluating the program. And that's a lot of what
the Telework Oversight Committee worked on in the
last several months, how we would judge whether or
not we were successful in the program, et cetera.
And it's to be submitted to the administrator of
general services, you know, GSA, and to the
appropriate committees of Congress.

So in our process we do vet documents
through the Department of Commerce and we're
working with Governmental Affairs to make that
happen. And the operating procedures actually have been developed and we did have a signatory with the three union presidents as well as myself to establish the memo saying that we are establishing the operating procedures.

In the cost benefits analysis, some of the items that we'll be looking at is the impact on the agency efficiency, the impact on real estate, continuity of operations, reduction in transit subsidy, environmental impacts, staffing impacts, and administrative support. So these are all sub-elements of that that are all factored in to the cost benefits analysis.

In terms of the operating procedures, we are -- it's going to provide for the appropriate functioning of the program. So we laid out actually the criteria, how people will apply, what's the eligibility criteria, et cetera. And we, as part of the legislation it requires agencies to make sure that we use reasonable technological alternatives to employ travel before requiring employees to travel back to our campus.
here. The program is applied consistently and
equitably throughout the Patent and Trademark
Office and the operating standard is developed and
implemented that maximizes telework and minimizes
agency travel expenses.

And since we have very different
bargaining units as well as three different unions
that represent employees at different parts of our
organization, it was certainly a challenge but one
I'm glad to say that the Oversight Committee I
think really met, and in all seriousness, I think
did a good job in pulling together what would be
enough common ground so that we could establish
our program.

In terms of eligibility, what we've
established initially is that in order to -- you
have to be eligible to telework a full pay period
but for the bi-weekly reporting requirement we do
have hoteling programs now. We do know some
employees choose not to opt into them. Some we
know from a survey that we conducted while we were
creating the operating procedures that some
employees are actually waiting until this goes into effect. There's a requirement under OPM that employees report back once a bi-week currently when this is their home office. And so once the program is enacted the employee is going to voluntarily change their official duty station to outside of the 50-mile radius which is considered to be the local commuting area. So right now anybody who lives outside the 50 miles, and we do have about 500 and change employees that currently live outside the 50 miles, they come back once a bi-week. Once we enact the pilot program they won't have that reporting requirement anymore.

Employees do waive rights to travel expenses for a number of employee-paid trips which we did negotiate with our union partners. And I think we came to a good number that's going to work both for the employees and the agency. And the employee will ultimately, you know, has to be identified as part of the pilot program.

We're going to phase in participation because, you know, we want to make sure that we
are successful in implementing the program. So after reviewing everything we had we settled on taking 25 percent of our current full-time teleworkers who were offered -- will be offered the opportunity to join the pilot program. So for our POPA employees, mostly the patent examiners, there are 668 slots. For the NTEU 245, that's the trademark folks, there will be 84 slots. And for NTEU 243, which that union actually covers almost every business unit, there will be 88 slots initially. Okay. As the program goes on and phases on, we will keep that number as more people are eligible to full-time teleworker employees. You know, we hired a large number of patent examiners in the last year as they're here for two years and they're eligible to full-time telework. And that augments the number of eligible teleworkers, full-time teleworkers, and we'll keep the number at 25 percent going into the first year.

Okay. For the alternate worksites on the test program, all the alternate are temporary,
you know, worksites, work space. Worksites must meet security, safety, and privacy requirements. We can't have employees working in public areas, so even though we know some folks might like to work at Starbucks, et cetera, that's kind of off limits.

Okay. An approved official duty station is one in a city, town, and/or country and state in which the individual employee works. We are limiting the program initially to employees relocating within the 48 contiguous states currently.

In terms of impact on employee pay, for our patient examiners it's not as much of an impact actually because since they have a special pay rate and it's carried out nationwide, unless they move to a cost of living area that was higher than what they're currently paid, they would retain their pay rate. For other employees participating in the program, if they were to move to a lower cost of living area and they don't have a special pay rate, then their pay would drop to
the lower cost of living area because their duty station will change.

MR. ADLER: Why would they do that?

MS. RICHTER: I guess I heard a question on the side as why would some folks do that.

Well, actually, when we surveyed employees, employees had a lot of different reasons as to why they would like to relocate outside 50 miles.

Some of it's for family, some of it's because they have parents or other family members who are ill and they need to be near them, et cetera. So folks, that's a personal decision obviously everybody's going to make.

The travel requirements is we're authorized to establish a reasonable maximum number of occasional visits to headquarters before employees are eligible for payment of any accrued travel expenses. And the intent of the program as I said before is to bring employees back as few times as possible and where possible what we discussed was to combine purposes for trips so that there's not necessary travel or expense on
either the employee or the agency's part.

Obviously, in order to know if, you

know, we know where we've been, we need to know

what's happened along the road. So this is some

of the factors we'll look at to measuring the

program's success, and that'll include the

agency's performance, the cost effectiveness,

employee satisfaction. I know before there was a

questionnaire like employee surveys and we were

also looking to see if we could get OPM to maybe

enhance some of the telework questions that they

ask on the Employee Viewpoint Survey as well as

make determinations if we were to follow up with

surveys of our own to see how -- what the impact

of the program has been in terms of employee

satisfaction, for recruitment purposes,

stakeholder satisfaction, as well as retention.

So these are some of the major factors we'll look

at.

In terms of evaluation, we have

quantitative analysis of production data and at

designated intervals we will be assessing the
production data and examination time for the
different populations of employees to make sure
we're on target and on track. Qualitative
perception data survey analysis, so we'll have
surveys to gather information about job
satisfaction, time savings, et cetera, job
performance, collaboration, and retention. And a
lot of that is dependent, of course, on our tools
that we'll have. And as we get newer tools and
they get deployed throughout the work place,
that's going to enhance our ability to -- and
maximize the effectiveness of having a telework
process.

So I don't know if anybody has any --
CHAIRMAN BORSON: Okay. Thank you,
Patricia.

MS. RICHTER: -- questions?
CHAIRMAN BORSON: Are there any comments
or questions?

Yes, Wayne.

MR. SOBON: I think it's great because
all workforces are going towards these models.
And one question I have obviously from the user community is going to be the biggest concern is availability and effectiveness of the telework program. So going to the point about stakeholder satisfaction, are there thoughts about how to do sort of anonymous surveys or, you know, post-action surveys to see was your examiner available or, you know, to find that kind of data just to see from the user community how well that's working?

MS. RICHTER: We did talk a lot about that and there is a gentleman that's on the patent staff that does do a lot of survey work or information work. And he explained to us some of the pros and cons if we were to try to design something and what it would take to maintain a database because obviously the stakeholders or the user community is so wide and we may or may not have the capability of really updating and keeping that database and being able to reach out to everybody the way we might like. So we're going to look at the other factors that we do have or
the way we look at whether it's feedback from the
user community, forms like this or other forms of
focus groups. And I know that the patent
organization does do a lot of quality control type
things and that does include some stakeholder
feedback. So we're going to judge by that.
Obviously, one easy measure is if complaints go up
then we have to take a look at what's the
rationale.

MR. ADLER: Would an applicant know
whether the examiner is teleworking or not?
MS. RICHTER: I don't think so because
we actually have over 2,500 full-time teleworkers
currently.

MR. ADLER: So it might be hard to
collect feedback if there were complaints.
MS. RICHTER: Except if we knew who the
complaint was against or the particular art unit
it was against, then we would have the sense of
who was teleworking or not.

MR. ADLER: All right.
MS. RICHTER: That's one way to do it.
CHAIRMAN BORSON: Okay. Well, Patricia,

thank you very much.

MS. RICHTER: No, thank you.

CHAIRMAN BORSON: Thank you for your comments. I'd like to move ahead to a break now. We are a little bit behind schedule but we'll take a 10 minute break and then we'll return. I have 12:02. We'll return at 11:12. 11:12, not 12:12.

Thank you.

(Recess)

CHAIRMAN BORSON: Okay, we're a few minutes behind in our agenda but we'll be finishing up well before 6 o'clock tonight so that's okay. I'd like to move on now to the patent process re-

Engineering, Jim Dwyer, assistant deputy commissioner is here. And oh, okay. And Christian Chase is also here. So please, gentlemen.

MR. DWYER: This is just an update from our April 14th when we reported out to PPAC. And at that time we talked a little bit about
restriction practice. And Bob Bahr gave a little bit more specifics of where they are in restriction. We've been working on double patenting color drawings, the classification and transfer. That's cases within the technology centers as to getting them to the best examiner available, enhancing technical knowledge. Originally, we looked internally at how examiners can share their knowledge in a more efficient manner. And we went back to that team and asked them to look at the external as to how you can bring folks from the outside in to answer technical questions and so forth.

We looked at CRU thoroughly as to their processes. We looked at pre-exam and post-exam and for one specific area of that that we believe we can do ahead of our PE2E -- the next slide here -- is to looking at the applicant or office interface. This is a piece where if we give the applicant a little bit more control over the bibliographic data, metadata that they submit with respect to applications, that the chances of
accuracy go way up. And our correction cycles and
time cycles within the pre and post. And if you
look down to the fourth bullet there, systems to
allow applicant to review change and validate data
prior to publication, this is kind of the same
concept of giving the applicant more ability to do
review prior to actual publication. And
obviously, that reduces our time at post and also
reduces the number of certificate of corrections
that might come through.

The second bullet is interviewing button
and pair. This as a suggestion I think came from
an AIPLA subcommittee and the concept of the
ability for applicant to submit using private pair
and a request for an interview would then pop up
into an examiner's e-mail as a request so that we
would have basically a -- that would be the first
indication that there was a request for an
interview. And that's very important with
statistics to find out actually how many interview
are requested and how many interviews are granted.
So it would again start the discussion between the
examiner and the applicant to set up an interview time.

IDS reference submission. This is basic. We already have form fillable. One of the things that the teams looked at is how can we increase the use of this because we know this is a piece of where we have a lot of errors because of transcription and the more the applicant controls in this piece the better the quality of our product.

And looking at the last bullet is basically looking at ways in which we can do more education to the public to use the systems to their advantage and to our advantage.

CHAIRMAN BORSON: Ester, please.

MS. KEPPLINGER: Yeah, just a follow up on what Jim is saying. We had this discussion yesterday, and particularly about the form fill -- the fillable forms for IDSs. We need to do some additional outreach to encourage applicants to use those forms because it takes -- and one of the things that I think we can focus for applicants is
that if the office has to actually transcribe this information from a PDF into an electronic format it takes a considerable amount of tech support time. And that's tech support time that could otherwise be used in doing other tasks that would decrease the time between amendment entry and the applicants, things like that, at least right now before we get to the electronic files. So I think we need to try to do things to encourage greater participation in using those forms.

MR. DWYER: Okay. Looking at other ongoing efforts, IDS. I know that's a big issue internal to the office and external. In looking at the practice and how we can improve and certainly in view of recent court decisions, how can we reduce the efforts of applicant and the examiner in going through submissions and ideas.

PCT, again, this is a big issue with respect to reuse of work and the processes that we currently use, both through our contractor and in chapter two where it's done by your examiners. On the petitions front, this team -- I was looking at
some of the things that were done in E-Petition
and how to expand that consistency among TCs. So
this group is in the middle of looking and mapping
out all our petition processes, both specific in
the patent core and also in the petition shop.

The next bullet talks about -- and this
is basically coming up with a -- using the
international standards. When we publish either
applications or patents, again, this will help us
in our future harmonization efforts.

The last bullet is to look internally to
the technology centers and look at management
operations and try to make the supervisor's job a
little bit more efficient in the things that they
do day-to-day. Consistency also is very important
such that we can operate from our manager's
perspective more efficiently.

Further efforts, you know, sequence
listings have been, you know, a problem for many,
many years so that we have a team looking at, you
know, for recommendations on how to handle the
large sequence listings.
On the 371 case processing, and I think it was mentioned about PPOP coming up -- one of the things we did that we kind of started by the COPA initiative is to look at cases that were old and why were they old. And we found out that there was a tremendous number of cases, 371 filings, that were in various stages within initial exam. I think you had some data specific to what the clean-up looked like.

MR. CHACE: Yeah, they went through from April 2010 to July 2011, pre-exam inventory was reduced by 24,000 applications. These we get about 50,000 new requests per year and we have to wait the 30 days for the WIPO documents. Well, we wait the 30-month time period and then we also have to wait for WIPO documents. So there's some opportunities for automation improvements here. The processing improvements have been done and currently there's only about 7,600 new requests. And again, those are waiting the time they're required to and for the document. So what happened with this, and we're forming a team to
look at 371 processing to find out exactly what the improvements we need to make there are to smooth this out. But what happened was that huge reduction created a bubble when they did that. So now that bubble is starting to make its way through the tail. So that's the --

MR. DWYER: I think that was a question from the last PPAC meeting as to what does the tail actually look like? You know, what's in that tail? Is it cases that have been transferred back and forth between examiners? And actually, there was -- a good portion of that tail is the 371 clean-up that was done in initial exam. And there was also a clean-up again based on, you know, COPA moving -- trying to move the tail cases where there were cases that were awaiting -- that either needed to be reconstructed in some manner with applicants' help or there were some revivals that were in pre-exam that those cases got pushed to the awaiting new office action or awaiting first action which was part of our COPA tail. So, you know, one of the benefits from looking at doing
the COPA is that we've actually cleaned house.

What re-engineering is looking like, for instance, on the 371, is make sure it never happens again. You know, put in processes and checks and balances so that we know we have a confidence level that it won't occur again.

So further initiatives are the core processing of an appeal on pre-appeal. These are the appeal and pre-appeal conferences. You know, we're looking to study how HTC handles these and making sure there's consistency and that there's meat with respect to -- in these conferences, that the right people are there and the people that can make the right decisions are there so that we can improve that process.

Cooperative patent classification. Re-engineering was asked to take a two-week look at all the issues that this CPC -- going to CPC is going to create that need to be answered -- where we need to get answers for some of the issues that come up from changing from a USP patent classification to this cooperative patent
classification.

The next one, surprise, surprise, models, exhibits, and artifacts. Part of the re-engineering team. We found that this was a process that didn't have a lot of -- didn't have a process to speak of. You know, we've had our artifact room for years but examiners don't know where it is and applicants don't know what to do. So this is just forming but we're looking at, you know, providing the applicant with an easier avenue and to submitting models, exhibits, and artifacts. And then how do we translate that into a telework world? How do we get -- if this is important information, how do we get it to the folks that may be remote?

This is -- the next one is the board and patents interface. And I know there's been several attempts at this. But we were looking at basically it's a better working relationship and a process relationship between the two to improve that, the throughput of the board.

And the last ones that are up next is
internal data requirements. And I think this came up earlier with respect to data collection. How many 101 cases went from, you know, any tech center, you know, year to year did it decrease or increase based on court decisions? And some of this internal data requirements are going to be requiring PE2E to be in place so that once we have full text of all our work then we can do some really creative ways of looking to see where our problems are and addressing issues of if there is a court case have we seen results from that based upon the behavior of our examiners. Are they getting it? Do they need more training or are we in good shape?

And the final one is it goes back to this issue of we know with re-engineering especially when we get into the PE2E world that some jobs for some folks are ever going to change and that's basically making sure that we understand what those changes are and that we have retraining efforts along the way so when time comes we have places for our staff.
And basically, you know, things that are always in front of us is respective funding. You know, and that's basically -- a lot of that is PE2E funding. The resources, again, we've asked our first line supervisors to come to these re-engineering teams, both post and pre folks and so forth that, you know, this is a strain on their day-to-day jobs so they basically have two jobs. One through re-engineering. So we're trying to manage that from a resource issue.

And then a lot of the things that we want to do also have to have policy, you know, with respect to IDS practice and restriction and so forth that those need to go through the policy shop and obviously through the higher management for decisions on this.

Okay. And the last thing that re-engineering is going to be expected to do is to help out with when we go into PE2E is working with procurement to develop the exact things that we need to put in our procurement contracts to make sure that when we get to the final product it
meets our need. When we get to the -- when we
start to implement some of these processes we know
there is going to be training so this team is
going to be asked to look through and find out
what level of training is necessary and who needs
to get trained.

And the concept of the re-engineering,
we don't look at this as, you know, we're
finished. We closed the book and go home. We
want the staff to be on call at any time to look
at things as things change or whatever our needs
are to pull the team back together quickly and to
continue to go through, you know, using techniques
to uncover problems and solve them.

MR. ADLER: Can I ask a question? It's
sort of -- I don't know if this is right but phase
two early stages, could you say something about
the time savings that you achieve in the
re-engineering of the classification system?
Because I think it's significant and you should
take credit for it.

MR. CHACE: Thank you. We looked at the
-- in the classification and transfer group, they looked at the process we have for classifying, assigning cases, and finally getting them examined. And it's sort of a bowl of spaghetti of a diagram. It went through several people. There's a lot of different decisions being made and there was nothing preventing it from re-entering that loop.

We did discover -- this wasn't a significant portion of cases in the COPA tail, for example, but if we didn't do something to fix it, it could theoretically someday be significant. So the team redesigned, again, using the lean six sigma format, redesigned the process to an examiner doesn't think it's theirs, SPE agrees, goes to a central transfer unit type thing and a decision is made. That decision is final, period. It's examined. So we're taking a process that could have taken eight years or more and knocking it down to perhaps three weeks.

MR. DWYER: Yeah, just to add on some of the data that we collected. We had 900
submissions in our open houses from examiners, and this came up 30 times. And the common theme in those 30 times was a single, you know, some people talked about bringing back or we used to have post classifiers. But what they were asking for was a third neutral party to make these decisions because there was always the perception that they were getting cases not because there was best examiner but it was because of the politics of who's making those decisions and they wanted a neutral party.

CHAIRMAN BORSON: Any other comments?

Yes, Wayne.

MR. SOBON: Given the post-(inaudible) world, and it may be already part of your discussions, but it would be interesting to hear what you may be thinking about from an engineering and policy standpoint on especially resolving McKesson-type self-citations to related cases. And ideally, is there thinking around expanding that to other significant examining authorities so that an applicant can relate all of their related
cases for a family with all the major patent offices and examiners could get electronically updates to the record without having us to cite all these things, especially internal patent office.

MR. DWYER: Yeah, the IDS team has looked at that. They looked at it from both the applicant and from the examiner's perspective. It had to make it easier for both parties to manage the IDS situation we're in.

The team at this stage just reported to the core and re-engineering team so no one else in the agency has yet seen some of the recommendations. So we want to move it up to the next step, and at that point I think it would be open because we believe there's a lot of options available that we can make it easier again for the examiner and for the applicant to get through large submissions.

CHAIRMAN BORSON: Okay. Thank you very much. Moving on then if we could to the OCIO update.
John Owens is unavailable but Kevin Smith will be filling in for John. Very good. So this team is John, Kevin, and David Landrith, who will probably have some comments about the OCIO update and the PE2E process. So, gentlemen, thank you for coming.

MR. SMITH: No, absolutely, thank you. As you can tell, it was last minute as you can tell from my name tag. John, apologizes for not being able to make it in today.

So we'll just kick it off with patents end to end and then go into the other updates. So I'll hand it over to David Landrith, who you've all met before.

MR. LANDRITH: So this is a high-level update that John had prepared in advance of the deep dive that we'll do later.

As everyone here knows, we had funding reduction that reduced our funding from $45 million to $18 million. The impact that had was on our ability to train a full complement of IT stakeholders in agile development and agile
awareness. We also had to cut back some of the research that we had planned to do into some of the foundational functionality for Fiscal Year 2012 deployment. That included search-research, patent classification research, and work into the breadth and the depth of XML schemes, which are the structure definition for the structured content we're going after.

The ongoing initiatives that we have are the design for the CRU release that we will have for Fiscal Year 2011. And the plan that we will have for improving that with Fiscal Year 2012, expanding the data models to encompass a larger set of functionality as well as data interchange between the existing systems and once again, the XML scheme of development because the structure content is core to the effort.

So the primary risk that we have is we have a very aggressive set of features with a very aggressive time frame. I think we reviewed the scope at the last presentation that we had and so it's a very hands-on process for us to make sure
that we stay on course, we stay focused, and
effect that there aren't any missteps so we can
make these deadlines.

MR. SMITH: All right. So on the next
section we'll talk about some general technology
things within patents that actually fed through
the rest of the organization as well. Within
PALM, over the past consecutive Mondays -- this
happened late June going through -- we had three
Mondays. Two of them including count Mondays
where there are some issues on PALM that affected
the examining core.

We have been all hands on deck looking
at these issues and it's a description kind of
like when you peel layers of the onion away. We
found an issue in the first occurrence that then
uncovered another issue in the second occurrence.
We've reached ourselves down to a combination of
things that made this situation happen. So based
on the fact that we've gotten to that level of
detail with what caused the outage to occur, we've
actually been able to design a process and some
monitoring to basically watch the right things to then come up and predict this is going to happen as a failure and recover the system within a few minutes instead of it being off for a few hours.

All the OCIO can do from this standpoint is say we apologize for the fact that it went off. We took our measures to make sure it doesn't happen again, and we're taking measures continuing to make sure that we improve the system to get past this. We have documented some short-, mid- and long-term plans to go forward and correct all the known issues we have right now within the current PALM system. This doesn't take away from the fact that it's always been under a large plan to redesign the whole system based on going in to PE2E, based on the way this application was written in the past and the way it's grown upon itself. It's very hard to move in scalability.

And so this is a known fact. We're trying to cover the bases of known issues that may cause symptoms and cause issues. We have a plan to fix those that we're aware of now and still as
fast as we can migrate the functionality into PE2E
and a more elegant technology format to make sure
it can actually scale and expand past some of
these issues we currently have.

And as I said, we've identified the
specific indicator positions. We've been working
with patents, as well as how to communicate these
issues to the examining core when they do happen.
But as I said, we're talking about a recovery
within 10 minutes, not hours. And so we've
actually gone through the recovery process and
have had minimal complaints from the examining
core, not realizing we're going through the
recovery. So we actually -- we didn't want to
test it but we've tested it and it works.

CHAIRMAN BORSON: Okay. Ester, you had
a question?

MS. KEPPLINGER: It's more a comment.
It comes from a suggestion that Ben had made and
we talked about some yesterday. And I just wanted
to reiterate it for the larger group. And that is
for the PTO to consider staggering the timeframes
for the reporting because, of course, the problems on count Monday stem from the fact that everybody is having their work counted on count Monday and at the end of the quarter. So it gets worse as the fiscal year progresses. And I know there are challenges to doing that but it is -- the differences between the usage of the systems between a lower time and the peak time is 20-fold. So they have equipment that's sitting fallow and very much underused at certain periods of time. And then coming close to crashing or crashing at these peak times. So if the employees were balanced across that time you wouldn't have those problems. Now, there are any number of issues that the office would have to consider in doing this but it is certainly something for them to consider.

MS. FOCARINO: We did form a team actually late last week, Patents and OHR and our OGC staff because there are a lot of issues that it touches on but the team has begun working options to stagger the cutoff times.
MR. SMITH: Yes, and to support Peggy's comments, we elaborated on that a little bit yesterday and said that basically it's a situation where, you know, it was described very well. The systems are running -- we're not going to say idly but they're not running at full maximum capacity except for a handful of times a year. And so 20 times the performance on a few certain days for count Mondays and then, you know, a 20th of that for most of the time throughout the rest of the year. Not just to take away some of the user load -- that's one of the conditions that create some issues -- it's also whenever we go through technology we're going to do the redesigns in the future. There's talks about cloud. There's talks about moving to better performance and architectures for systems. Anytime you can minimize the peak load that you have it's going to be more cost effective going forward because you still don't have to buy to fit that maximum capacity. So it makes good sense either way. And we're going to work with Patents to see what we
can do with this and if it makes sense at this
point to entertain.

CHAIRMAN BORSON: Thank you.

MR. SMITH: So on the ULP update,
production deployment started in March 2011. To
date -- and this thing moves every day -- to date
2,100 on this. I think I checked a day or two
ago, it was up to 2,200. We're doing 65 a day
rollouts to the end-users. A significant amount
has been done with CFOs, CIO, and OGC, a lot of
the back office. I'd say significant. There are
a few outliers but a majority of those staffs have
been complemented.

Within the patents organization we
worked on tech centers 2900 and 1600, which were
the designs in the biotech and organic chemistry
groups. Those have been done, those phases, and
we're now moving into tech centers 2100 and 2600,
which are the computer architecture and software
management groups, as well as the communications
groups. So we look at the rollouts within those
teams being much more fluent and much quicker.
These are guys who are used to technology, used to the hindrances that happen with some of the new platforms. And hopefully we can move forward smoothly through those groups.

And as I said here, I didn't touch on it but we're still expecting and shooting for May of 2012 to have this finish throughout the agency.

So that's the plan for the government employees.

Call center update. There are some issues within call center when some of these issues happen within PALM. They've happened every time there's an outage. People call the call center. But based on recent events within the end of this last quarter we actually added 20 tier one call center agents. So the first people who get the phone call, we've doubled that staff. There's still another escalation point of tier two staff who are more technical, and tier three staff are even more technical on very advanced problems. That structure is still in place but at least to handle the front burden of calls that come in we've added 20 people and doubled that staff.
This right now has taken the average call that we had from eight minutes in June -- a lot of issues with PALM in June. People were waiting on the phone to declare other time, document the fact that they were affected by the issue. Waiting for eight minutes is unacceptable from our standpoint. We understand that. And we went back and we added the staff and we've actually reduced it now to 50 seconds. I realize it takes a catastrophic issue to see what will happen, but the fact that we've doubled the staff, we should be having these numbers.

Something else that we're working on in that last bullet is we're working with Patents to create a system where people don't have to call the call center, wait on the phone, speak to an agent, to then document that they were affected by the issue. We're going through an application where -- and we're working through the final stages of how the process will work but someone should be able to call the call center, understand there's an outage, go to a simple website and
document the fact they were affected. And we're thinking that's going to offload a ton of calls to the call center because people know that it's out and it's off basically. When service calls are made we make an announcement but people are still waiting on the phone to basically document they were personally affected. This will take a lot of the bulk of that load off of the call center and hopefully reduce the times even more. So we're taking measures and working with Patents management to finalize the process of when to roll that out.

That from the OCIO standpoint was all that we had at this point to present but we're open for questions as always.

CHAIRMAN BORSON: Good. Thank you very much. You know, the perpetual question is what do you plan to do if the funding situation does not improve?

MR. SMITH: With the funding situation today we've got money to keep the lights on, the general operations and maintenance to keep things
moving, and we've declared within the director's
office and Patents the key initiatives going
forward for priorities. And what we're going to
do is just continue with the funding we have to
keep things running. Hopefully not have to make
any tough decisions in that standpoint and
continue these next generation applications, these
key capital investments, and go through the
stages. I'd have to say based on the way we're
going through the development doing it agilely,
each time we make a step in the right direction,
each time we do some developments there's
something to use. So we're going to have pieces
to use along the way instead of without funding
waiting a year to have something done. We'll be
able to make some decisive, you know, measures if
we have to throughout the year but we appear to
have the money to go forward right now and
continue the key investments that have been
declared up front. And we'll do them to the best
of our ability.

CHAIRMAN BORSON: Good. Thank you very
much. Are there any comments or questions from
the Committee? Are there any comments or
questions from the floor?

Well, if not, then, you know, moving on
to just sort of to wrap up today's public session,
we've had some very good reports from the office
and we thank you very much. And just to reiterate
our willingness to work closely with you. We will
have to sort out some issues in executive session
about how we can do that efficiently within the
60-day limit but I expect that we'll be able to
get through those.

Just to reiterate for the members of the
public that are still with us, if you have any
questions or comments or would like to make
contact with the PPAC, you can do so through the
e-mail or Internet or telephone. And I'd like to
thank you very much.

MR. STOLL: We're not done.

CHAIRMAN BORSON: Oh, you're not done

yet. Oh, David. Sorry about that.

MR. LANDRITH: I apologize. So this is
a deep dive that I mentioned earlier.

We'll start out with a timeline. It's similar to what we saw before but we're further along. We've refined some of the dates and we've added some strategic information. As you can see, we are still on track for the September 30th deliverable to the CRU. Right now we are between the first and second sprints. We had our first sprint completed last Friday with a successful demo on Monday. And the second sprint is well underway for the functionality there. And then beneath we've added some strategic information for Fiscal Year 2012. The major requirement areas are going to include the examination tools (which expand on what we've built so far) the applicant tools, the workflow. And structured text content acquisition is something that we'll continue during Fiscal Year 2012. So all of those are planned primarily to be rolled out to the CRU. So for Fiscal Year 2013 through 2015. In 2013, we're going to focus on rolling out to broader audiences. So for the examination tools that will
include the examiner core. For applicant tools that will include going beyond the initial pilot audiences. And in Fiscal Year 2014 and 2015, the focus will be defining and pursuing a decommissioning strategy.

So with the front end summary, we have integrated front end design and implementation. The first stages of that are complete the development continuances for additional stages. The front end development is delivered as a fully functioning web application rather than some kind of mockup that's done by the back end developers. The actual services that make it work are stubbed out with sample data, and the process of doing the back end development involves filling those in so they access the appropriate back end resources to make it a dynamic and secure system. And the front end development occurs, you know, between two and four weeks in advance of where the back end development is. So that's a cycle where we can readily uptake the front end into the back end.
We've completed the service level architecture that defines the high level needs for how services will be defined to interact with the front end. And with the data models there's two elements to that. One is to drive data points that are manifested in the front end and the other is to handle the stuff that's under the covers on the back end. So that's touched on again in the back end. For here we have, again, the data model has been completed and deployed for the first, and at this point actually the second sprint as well with a good deal of progress done toward the third sprint.

So this is a screen shot of where the front end was I believe about 10 days ago. So what we see on the left is the case table of contents. On the right is the claims examination tool with claims tree. So this actually represents things that in the back end will be developing, and some of them will be developing in sprint three. Some of them have already been developed in sprint one. Just to give you an idea
of where that's headed and generally what it looks like.

MR. STOLL: I have a question. I've been on vacation so I haven't had time to talk to you.

MR. LANDRITH: Sure.

MR. STOLL: But have you all begun coding yet?

MR. LANDRITH: Yes. In fact, that's the sprint that we completed on Friday and then demonstrated on Monday.

MR. STOLL: Okay. So that's fantastic.

Thank you.

MR. LANDRITH: Thank you. So the user involvement on the front end, the front end sprints occur in two week increments so they are a little bit more rapid than the back end sprints. We're meeting weekly with the examiners, both the CRU and the examination core. And the purpose of those is to design functionality for the next sprint and to evaluate what's been done in the previous sprint. And we do a major holistic
evaluation of total progress every six weeks.

We have a usability council that is updated with fresh eyes on a regular basis. We're keeping POPA representatives completely informed. The reactions have been generally positive. We have received some very good critical feedback in the last week and a half which has led to some solid improvements in the UI. And the agile process that we're pursuing, where we are evaluating in very short measures and getting this in front of the user as soon as possible, is ideal for incorporating that feedback.

So the back end summary, this touches on what Bob had mentioned. So we kicked off development on the 20th, so that was two weeks later than we had hoped. That was due to procurement options that we had to pursue because the SDING protest and financial adjustments we had to make. The high level physical architecture for the infrastructure is complete. We have the development and the testing environment designed, and we're developing the requirements for the
staging and production environments. And in the back end database we are also proceeding a pace with the data model that accommodates the needs there.

Again, returning to our XML schemas, we have -- at this point we have 7 schemas. This isn't reflected in this presentation, but they cover 23 different document types specifically and we have two schemas that are lightweight schemas to accommodate incoming and outgoing documents that are more generally applicable to a large number of document types. We vetted and finalized the technology stack for the Fiscal Year 2011 release.

As I mentioned, we actually -- although the procured solution developers were not deployed on June 6th, we did have some internal developers beginning to work on some transformation tools and the continuous build environment that we're using, which allows for code that is checked in to be tested in real-time to make sure that it works rather than the normal process which is you
accumulate a bunch of stuff, try it and see if it works, and that doesn't allow for the same kind of feedback and agility. As I mentioned, the timeline of sprints are on schedule with the Fiscal Year 2011 release.

So this is a tech stack. Some of the more technical people here may want to dig into the specifics but if you look at it, we're using industry-leading products here that are based on widely accepted open standards, which is a key priority of the patents end to end project to ensure that it's maintainable and scalable over a long period in the future.

So for Fiscal Year 2012, as I mentioned with the timeline, the four major requirement areas are examiner tools, applicant tools, workflow elements, and structured content acquisition. And then within the development areas we have the several major development areas. These include lightweight improvements to existing systems. As we touch on some of the existing systems there's going to be an opportunity to make
improvements. A lot of them are geared toward collecting datasets toward the older dataset. To the extent that we can upgrade them quickly to facilitate higher quality -- the collection of higher quality data, we'll do that. Also, PE2E improvements will be rolled out to pilot audiences during Fiscal Year 2012. And we'll also be doing AIS integration solutions for the existing system for data exchange and migration. And we'll also be trying to scale up the content acquisition.

In Fiscal Year 2013, as I mentioned earlier, rollout to a broader audience. We hope to have the feature set fairly fixed by that point. There's still going to be room for improvement. Most of the changes that we make in Fiscal Year 2013 are going to be operational and the technology that is needed to facilitate those in order to scale up from the CRU to successively larger groups within the patent core. And then Fiscal Year 2014 and 2015, we want to define and pursue a decommissioning strategy to begin pulling offline the existing systems.
So the risks again, this is very much consistent with what we mentioned in the overview, are preserving the Fiscal Year 2011 scope in light of the procurement delay and the acquisition of production-level structured XML, which is ST96, also known as XML4IP. It's another name for that. Both of these risks are related to the tight deadline that we have and the aggressive function set that we've defined. So this is a very hands-on development process, as I said to maximize our ability to stay on course and ensure that we're on focus and that we minimize missteps.

CHAIRMAN BORSON: Thank you very much, David. Any other questions? Are there any other slide sets that I've ignored so far?

MR. STOLL: You're fine.

CHAIRMAN BORSON: All right. Well, thank you very much. We are exactly on time and I'd like to thank you all very much for coming.

I just had one question for you, David. Actually, the same one as for Kevin. What about funding? And how crucial is the immediate funding
to the roll out and your timeline?

MR. LANDRITH: It's crucial. So for the FY '11 you saw the different areas. For examination tools we're looking at search and office actions which are both huge areas in addition to the workflow complement that is needed to support those as well as the connection to the front end. So we will be rolling out multiple concurrent projects. And if we do not have funding for that we're going to have to rigidly prioritize those. And instead of having a stream of new functionality, we'll have to minimize that to a trickle.

CHAIRMAN BORSON: I understand. So the point is that even if you don't get fully funding and you don't have a full rollout of everything you would like, at least you'll have some things that are online.

MR. LANDRITH: That's exactly right.

CHAIRMAN BORSON: Good. Okay. All right. Well, thank you very much. If there are any further comments, please speak now.
Otherwise, I'd like to thank you all for attending, and I'd like to thank the public for tuning in on the web or telephone or however you've managed to do it. And this is the end of the public session of the Patent Public Advisory Committee. Thank you all very much.

(Whereupon, at 11:57 a.m., the PROCEEDINGS were adjourned.)

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I, Stephen K. Garland, notary public in
and for the Commonwealth of Virginia, do hereby
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