UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia
Thursday, December 2, 2010
PARTICIPANTS:

PPAC Members:

DAMON MATTEO, Chair
MARC ADLER
D. BENJAMIN BORSON
LOUIS J. FOREMAN
ESTHER KEPPLINGER
F. SCOTT KIEFF
STEVEN MILLER
STEPHEN M. PINKOS
MAUREEN K. TOOHEY

Union Members:

ROBERT D. BUDENS
CATHERINE FAINT
VERNON A. TOWLER

Also Present:

ANTHONY SCARDINO
ROBERT BAHR
Office of the Associate Commissioner for Patent Examination

PARTICIPANTS (CONT'D):

PEGGY FOCARINO
Deputy Commissioner for Patents
ROBERT STOLL
Commissioner for Patents
MR. MATTEO: Now that we've got everybody in place, we'd like to call this public meeting of the USPTO and Public Advisory Committee to order.

My name is Damon Matteo. I'm the chairman, and I'd like to offer my apologies (inaudible) today, not being able to be there (inaudible) unavoidably detained here on the West Coast.

I'd like to welcome those here in person and those listening (inaudible). And to kick off the meeting what I'd like to do is have introductions go around the table.

Bob, perhaps if you could (inaudible) as well.

MR. STOLL: Good morning. What I think I heard you saying, coming in and out, was that you wanted the introductions, and I guess I'll start off.

I'm Bob Stoll. I'm the commissioner for
patents.

MR. BORSON: I'm Ben Borson, member of PPAC.

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

MR. MILLER: Steve Miller, member of PPAC.

MR. FOREMAN: Louis Foreman, member of PPAC.

MS. KEPPLINGER: Esther Kepplinger, member of PPAC.

MS. TOOHEY: Maureen Toohey, member of PPAC.

MR. BUDENS: Robert Budens, member of PPAC.

MS. FINCH: Catherine Finch, vice president of NTU-245 and member of PPAC.

MR. ADLER: Mark Adler, member of PPAC.

MR. PINKOS: Steve Pinkos, PPAC member.

MR. STOLL: And, Damon, we'll be handing it back to you.

MR. MATTEO: Can you hear me there?
MR. STOLL: Yeah. The suggestion here is that you get closer to your microphone from our experts here.

MR. MATTEO: That's not possible. I'm about as close as I can get.

MR. STOLL: Okay.

MR. MATTEO: I'll try and speak a little louder, if that helps.

MR. STOLL: Yes.

MR. MATTEO: Okay. So just a few housekeeping issues as we (inaudible). Some of them will sound familiar.

As PPAC members, we're (inaudible) for our private sector (inaudible) then the prospective, but then we always remind all members to leave their (inaudible) sector affiliation behind and (inaudible) and PPAC.

So with regard to public (inaudible), we do our best to get public questions. It's not possible to do real-time questions, you can get questions to PPAC at USPTO.gov. We'll try to get those questions answered either at a break or
(inaudible) the meeting, and I think we're stumbling over some of those (inaudible) problems now.

But for housekeeping (inaudible), if you are dialing in, please place your phone on mute to limit background noise.

And, if I may, what I'd like, before we begin in earnest is to take a moment for a special recognition. For those of you who are not aware, PPAC members serve a (inaudible) term as defined by statute. Three of the current members of the PPAC (inaudible) this month, so this will be their last PPAC. Those members are Louis Foreman, Scott Kieff, and Esther Kepplinger.

And, if I may, by way of personal reflection, when I first took over as chair of PPAC, I mentioned that anything I might accomplish here was done on the shoulders of giants. Well, as it turns out (inaudible) of PPAC have (inaudible) expression. It's been more like working shoulder to shoulder with giants, and we've done some marvelous work over the course of
their tenure here at PPAC.

Their contributions to PPAC are too many to name, also too valuable to forget. It has been my personal and professional privilege to work with all three of these talented individuals, and they will be missed greatly. And all the more reason I wish they had (inaudible) this meeting.

And Louis, Scott, Esther, do you care to say anything at this point or (inaudible) comments?

MR. STOLL: They're good.

MR. MATTEO: Okay. All right then.

Well, what I'd like to do then is turn it over to Robert Stoll, commissioner for patents, United States Patent Trademark office for opening remarks.

Bob, please.

MR. STOLL: Thanks, Damon. Before I start with opening remarks, I'd like Ben to actually restate some of the information you provided so that folks can clearly understand how to get their questions in because there were
technical difficulties with respect to the voice
that came over here.

MR. BORSON: Okay. Thank you, Damon. I
believe that the questions should be addressed to
PPAC@USPTO.gov. We have a facility here whereby
they can be presented to us, printed out, and
presented to us, and also that we will handle
questions as we can. It may not be in real time,
but we will have an opportunity to consolidate
questions; and there may even be an opportunity to
have the public questions addressed in real time
during the presentations.

Now do we have any microphones here for
members of the audience here in Alexandria? Yeah.
We can do that. We can handle that. So I believe
the address is PPAC@USPTO.gov.

MR. BORSON: Thanks, Ben. Good morning,
everybody. Welcome to the United States Patent
and Trademark Office PPAC Meeting. I think this
is the first one of the Fiscal Year '11, and we've
very happy to be here this morning to talk about
issues related to the Patent and Trademark Office.
I will be very brief in my remarks this morning. Most importantly, I would love to thank the members of the PPAC for the annual report and the efforts in putting it together. It's an excellent report. I charge it to everyone's reading list. I think you're going to find a lot of information there with request to the Patient and Trademark Office and our efforts over the past fiscal year, and, again, thank the PPAC members for all their efforts in putting it together and all the efforts over the past year.

I just want to talk briefly about what we did last year, and I think most of you are aware that the secretary charged us with reducing first action pendency to 10 months by 2014, and to 20 months for full pendency by 2015. And we really, under very difficult conditions, were able to take a real bite out of that.

We reduced our backlog through our 699 efforts, which was an attempt to reduce our backlog to 699,000 applications by over 26,000 cases, and that was in lieu of approximately a 4.5
percent increase in filings, a difficult year fiscally in that we were uncertain for a long period of time what our final funding would be, which caused us to not have full overtime during that year and only allowed us to hire at basically attrition rates for the entire year.

So I am very proud of the efforts of everyone at the Patent and Trademark Office to undertake this reduction under these conditions.

I also want to mention to you that we're continuing our efforts in improving our handling of applications here at the Patent and Trademark Office. Our October figures show that we continued this success into Fiscal Year 2011, as first action pendency was 25.4 months, down from 25.7.

We've had a successful green technology program that continues to show strong growth, a total petitions received as of November 15th are 1,665 with an overall approval rate over 51 percent at this point. In addition, 106 patents have issued under this program as of this date.
The ombudsman program, which we initiated last year, is working very well. We're finding new ways to assist applicants. In fiscal year 2010, we met all of our quality targets, and our work on improving better patent quality continues into this fiscal year. And I want to, again, thank Mark Adler from PPAC in helping us with new metrics related to our quality analysis. We continued our partnership with POPA as of 2010 and concluded by reaching an agreement on a new examiner performance appraisal plan, and I'd like to acknowledge both Peggy Focarino and Robert Budens' outstanding efforts in this very difficult goal. Thank you both very much for getting us to this conclusion.

Patents is undertaking major systems and process redesigns with our redesigning efforts. You're going to hear a little bit about that later on today. We are reengineering top to bottom, and I think you're going to be happy with the progress being made. We've also had a major breakthrough in
Telework legislation, and we are currently putting together what will be, I believe, the President signing it very shortly if he hasn't already, our new Telework program here at the Patient and Trademark Office.

And with that, I'd like to turn it back over to Damon to proceed with the rest of the agenda. Thank you very much.

MR. MATTEO: Thank you very, Bob. I believe next on the agenda we have the finance update, Tony Scardino, chief financial officer of (inaudible). Tony, if you would please.

MR. SCARDINO: Good morning. Thank you. Hi, Damon.

Hello everyone. Thanks for having me back. When I was here last time, I guess it was late September, I had been on the job about one month, and I'm happy to say I've survive the first three months here at the PTO, very happily in fact.

When we talked last, we were going right
into the end of the fiscal year, and we had
estimates for what our actual final numbers were.
The first slide today is actually going to give
you a rundown of our actuals for the end of the
year.

As you'll see -- bear with me. I'm
still new to this pointer thing right here. In
red, the collection in excess of appropriation.
That's usually one of the lines that everybody
likes to look at. It's almost $53 million that we
collected in -- more than we had access to in
terms of spending. So you'll see our numbers
above that actual fees collection number 2069,
while our appropriate level is 2016.

Also the number -- people like to look a
the numbers at the bottom, the final carryover
amount. We carried over almost $223 million; $122
million of that was on the patent side, and that's
a good thing under a continued resolution.

I'm sure you all know we've been under
our continued resolution since the beginning of
the fiscal year. It expires December 3rd, which
is tomorrow. The house passed another extension
that should go to December 18. And there, you
know, some of what I say is complete speculation
here, but, you know, we all read the same papers,
or have access to the same papers I guess.

The thinking is that Congress or at
least some parts of Congress, some parties, would
like to see an Omnibus bill passed, so they wanted
to extend the resolution so they could keep
working on it. Other folks think, of course, that
we're going to have a year-long CR, new leadership
in the house. We may want to go back to '08
funding levels or '10 funding levels, you know.
My crystal ball is as cloudy as anybody else's
there.

But we, USPTO, would like the
President's budget to be enacted. Obviously it's
a very good funding level. We think we'll have
collections that will enable us to do a lot of the
things that we need to do. The surcharge in there
is what we, of course, would like to get authority
for. So we'll move to the next page and kind of
We are required each September to kind of revise our estimates or actually revise our estimates to Congress and let them know. Since the President's budget was submitted in February, what are our collections looking now, our estimates for collections to be?

So we submitted the following ranges up here. Again, we submit a range because when you're forecasting so far in advance, you're not going to be able to come up with an exact number, but we always have a working estimate. Our working estimate in September when we submitted this to Congress was $2.431 billion.

Now, that assumed the 15 percent interim fee adjustment or surcharge we call it for the entire year, starting October 1st. Because we don't have the surcharge authority, we're not collecting the 15 percent, of course. So whenever -- if a bill is passed, an omnibus that gives us the authority to collect that, we will not be bringing in $269 million dollars from the
surcharge. It will be some number less than that. Roughly, roughly it's about $1 million per day we lose, and it's not really losing because we're not collecting it. But if we had collected it starting October 1st, we estimated we'd collect about $1 million extra a day.

So, you know, if you do the math, whenever a bill is passed, we'll collect some amount less than our original estimates.

So it's probably a longwinded way of saying -- one thing I do want to correct, the last bullet there, "Emphasize Need for a $200 million buffer," that's actually a typo. It's a $100 million buffer. It was in the President's budget request and also the House the Senate also included that in there.

Now there is some discussion that maybe the buffer could be increased. The House and the Senate are thinking about it. There's a lot of things that are still in play, and yesterday was a furious day. They're working on, you know, full-year CR options versus an omnibus option.
So, you know, the appropriations committees have been very, very busy, very supportive of our efforts. They understand our needs, but I don't think anyone knows where we're going to end up. So we've been trying to, you know, just educate folks. A full-year CR at 2016 with no surcharge authority, you know, would be very problematic, versus the President's budget request, you know, minus less surcharge because it would get passed later in the year. You know, it's a $350 million swing from 2016, again, because that's the CR rate from 2010.

But we don't think Congress will enact anything that will have 2016. We think they'll either adjust us for the CR period, or they'll pass an omnibus, which is similar to the President's budget. But, again, we really don't know. No one knows, but we're preparing and planning for the best and worst scenarios, worst care.

So the current CR expires tomorrow as I said. The next CR will go until December 18th,
and we have hopes that a bill, a full-year bill
will be enacted.

Since we met last, there were all kinds
of scenarios proposed, including another
three-month extension, which would have taken us
to the end of February. The administration does
not want to do that. That is just kind of kicking
the can down, but, you know, you could imagine the
new leadership in the house would like to kind of
pass their own budget next January, February. So
it's hard to say where we're going to end up.

And, finally, for 2012, this all plays
into that of course. Whatever we end up with in
'11 would drive our needs for '12 to a certain
extent.

So the OMB -- what's called the OMB
passback. We submitted a budget to OMB in
September. They pass back their kind of decisions
or their thoughts on our budget, typically would
have been this past Monday, the Monday after
Thanksgiving. They deferred it a week or delayed
it a week, so next Monday we'll get our passback
from OMB. And then every agency has 3 days, 72 hours to respond.

So we'll be working hard next week to help shape the President's budget for USPTO. And then once we get final decisions from OMB, we then prepare the President's budget. We provide to PPAC for review, and by February 7th we have to submit a budget to Congress.

Any thoughts on '10, '11, or '12? Yes.

MR. MILLER: The President's recently announced that freeze on all salaries. What is the effect of that for the PTO for '10-'11?

MR. SCARDINO: Well, a couple things on that. President has proposed it for '11, but, again, he proposed the 1.4 percent increase in his budget. So, you know, Congress already marked up all their bills with a pay raise in there. So they'd have to take action on -- it's almost like the President is amending his own budget request. So that's very possible. And then in '12 he's got more control or power over that because he hadn't submitted his budget yet.
So what he has told the world is that I'm going to submit a budget with '12 that has no pay raise in there; 1.4 percent was not a huge raise to begin with, but obviously it does have some impact for all employees across the government. We costed out at I think $18 million for fiscal year 2011.

So in essence, you know, the pay raise has always been a little bit of a funny thing in the federal government where the President often times -- not President Obama, any President, often times submits a pay raise, and then Congress will often times authorize a higher pay raise to match the military or whatever it may be. So it's basically an unfunded requirement for the federal government. So federal agencies are used to having to kind of absorb that pay rise.

This is the opposite where actually in the omnibus bill, Congress would have to go in and shave out money from every agency and say, well, you don't need the money for the pay raise. So it's a little different.
And then for PTO, of course, we don't get budget authority. So there's no money to shave for the pay raise. Sort of a very strange scenario if our collections are the same amount of money, we would have more money to do other things with. We'd pay less people, you know, because no pay raise.

MR. STOLL: Let me just add that if enacted by the Congress, this would not affect, from my understanding as proposed, within grades, and it would not affect bonuses, just so that you're --

MR. SCARDINO: Right.

MR. STOLL: -- aware of those two things.

MR. SCARDINO: That's the proposal right now. Yep.

Any other thoughts or questions? We'll know more in a week. We'll know more in a few weeks after that, but right now that's all we know. Thank you.

MR. MATTEO: The General Legislative
update. Dana?

MR. COLARULLI: Good morning. My friend, Tony, was faster than I thought he would be.

Well, I thought what I'd do is -- and I don't have the -- is there a remote for the slides? My apologies.

Good morning. What I thought I would do this morning, being that this is the -- this is the last meeting at the end of the 111th Congress is do a little bit of a wrap-up for you, but we can go through this fairly quickly. I'll also give you a sense of at least what we're seeing for the 112th and what the agenda might be.

So at the end of the 111th Congress, you know, our challenges continue to be the same. Funding is number one, and there is two places where we're having discussions with the hill. One is continuing with our appropriators. The other is with our judiciary, the committee of oversight for the Patient and Trademark Office.

As you all know, the House judiciary
committee introduced a bill earlier this year, so there is both authorization and appropriations areas on the Hill that we're having these conversations. We expect to continue those conversations in the 112th given that bill did not move forward in the House judiciary.

Patent reform clearly is the second big priority, and then there is a number of other technical and substantive law changes that we'll continue to push. Some that weren't done this year, things like our proposed fix for GIPA fundings, our proposed fix for clarifying the pay for judges, two pieces of implementing legislation. I'll go into a little bit more detail here, but there may be other things that we want to be more proactive next year on in the 112th -- proactively sending up to the Hill in reaction to case law.

So those are discussions that we're having right now. But as of the end of the 111th Congress, these three items still continue to be our big focus.
So in the 111th we had some successes, really over just the last year. The Trademark Technical Corrections bill that was one of the pieces that the administration had sent up and asked Congress on. They did. Supplemental appropriations, the $129 million to help support our patent backlog reduction. That was a huge success.

More recent successes, our Telework Enhancement Act, has not been signed by the President yet, enabling the agency to expand its Telework flexibility or provide more flexibility in this Telework program, and I'll talk a little more about that in a second.

I included this last bill, you know, clearly a relevant IP bill, but really the majority of it simply was technical corrections. There is also a small provision adjusting the Trademark Bullies study that the office is currently engaged in developing.

So those are the three items I wanted to just quickly highlight. One was the Trademark
Bullies study. We're working on that. Congress has directed us to complete a report by March 17th, St. Patrick's Day. The amendment I mentioned from the Copyright Corrections Bill merely was on the phrasing of the scope of the study. It changed the word "corporations" to the purpose of which there was some suggestion that corporations, merely by enforcing their trademark rights, would be violating the law. Clearly that's not how we took it. The Technical Correction fixed that, but otherwise, that's one of the things that's in front of us, which I reported to the TPAC on last week.

Supplemental appropriations, I think we've talked about that quite a bit in this forum.

And then the Telework legislation. That's the newest bill, and it makes sense to spend a couple seconds on that. There were basically three parts of that bill that affect all federal agency in the Telework program. First series of provisions really were to bring up other federal agencies to where we think PTO already is,
really taking Telework as a serious business
model, making our Telework program part of our
overall operations. It encourages other agencies
to do that.

A second provision provides for a test
program at GSA that other agencies can apply to,
to their flexibility in their travel regulations
and expend Telework opportunities.

A third provision is a PTO specific
provision. This is one that we had extensive
conversations with the Hill on. To in effect
allow us to waive our biweekly requirement for
examiners to return to the office, and it requires
a number of things including creating an oversight
committee to implement this particular provision.

The President has yet to sign this bill,
but we expect him to do so probably in the next
week. He is 10 days from when it was sent from
the Hill. It was sent I believe just at the end
of last week or the beginning of this week. I'm
losing my days now. But we expect it actually to
be signed within the next week, and when it's
signed, we'll move immediately to create an oversight committee and start implementing this provision, which really will allow us to take our Telework program to the next step.

So pending -- this is a slide that I've shown to this group previously, and I think I've mentioned a number of these already: Patent reform legislation clearly, the House Judiciary Funding Stabilization Bill. The four remaining easy pieces, the implementing legislation I mentioned, that's the Hague and the PLT; performance rights, another issue that has been pending over a few Congresses, and the administration and DOC has supported that legislation. So that will be reintroduced next year we expect.

And the last category, IP Attaches. We continue to see proposals to expand to alter our IP Attache program. Generally the proposals are supportive proposals of our current IP Attache program, so we expect those conversations to continue next year as well.
So what can we expect for the 112th Congress? Republican majority in the House. You know, it's unclear what changes the new Republican leadership of the judiciary committee might choose to implement. There has been an IP subcommittee in the past. We've heard rumors that that might be on the table again this year, but certainly the leadership changes. And actually, it's going to change both in the House and the Senate.

In the House, the majority has changed, so the ranking member, Lamar Smith, is the presumptive committee chair. Leadership elections don't take place until the new Congress convenes. So these decisions will officially be made by the end of January, but we assume, and, in fact, it's clear that Lamar Smith also assumes that he'll be the chair; and he is already trying to make plans and build his agenda for next Congress. And we've talked to him a few times, both the staff and the member himself.

This is a member that has a background on patent reform. He helped to initiate a lot of
the discussions four Congresses ago. He held a
number of hearings. He has, I think, a vested
interest in seeing this legislation through. So
this could be good news for patent form.

He also, in recent statements, has said
that he's looking to work with his Senate
colleagues so that any bill that's introduced, you
know, can move through the House and also be
addressed by the Senate. So we'll be watching
that closely, certainly current Chairman Connors
will still be in the leadership; so we'll watch
him as well.

On the Senate side, one change in the
ranking member. Sessions was the ranking member
this year. That member has gone off to another
committee, and Chuck Grassley from Iowa is likely
to be the ranking member in the 112th Congress.

Now Chuck Grassley has been involved in
the patent reform discussions. In particular, he
has been very supportive of what is a more minor
change in the bill on Bayh-Dole and the royalties
that universities can receive under Bayh-Dole,
increasing those royalties available to the university.

So he may be active. It is unclear how vested he is in the overall patent reform. Although, as I said, he has been involved in the discussion throughout.

I've already suggested this last bullet. So from comments from Lamar Smith and others, it suggests that patent reform may move quickly, at least in the beginning of the next Congress to be introduced and to at least start its progress.

It's, as you all know, a number of hurdles to moving legislation, but at least I think we can expect seeing a bill introduced pretty quickly, probably in the house and then to the Senate maybe at the same time, yet to be determined.

But I think certainly patent reform will continue to be one of those things that both the House and the Senate want to get done, so I think that's a good sign for seeing legislation happen in the 112th.

I know Tony had spent some time already
on what the current situation is with our funding.

Tony is spending a lot of his time, and I'm
spending a lot of my time as well trying to watch
progress on this and really make sure that folks
on the Hill who are making decisions understand
what our request is. And not only they understand
the need for the funds, but they also understand
the need to have both of these two things, both of
these bullets.

If the Congress gives PTO the ability to
increase its patent fees by 15 percent, they also
need to give us a parallel ability to spend those
fees, and we've been very strongly arguing that we
should be able to spend all of the fees that we
collect. It's a very delicate time at PTO. We're
making some progress. That progress will come to
a dramatic halt if our funding is in jeopardy.

So, you know, we've been trying to be
good advocates on behalf of the agency here, and
this case is supporting the President's request
and supporting what we know the agency needs to be
successful.
So with that I'll end, but I'm happy to take any questions that folks have about what may or may not happen next Congress.

MR. ADLER: I don't know that this is for Dana, but maybe it's for your, Bob. What are the budget implications of the Telework legislation if it was expanded and changed in terms of the reporting requirements? Have you factored that into the 2011 or 2012 budget?

MR. STOLL: We are working on that. I think that there is some factors in the 2011 budget for it if I'm not mistaken, but the -- I mean, we're going to have to buy setups for remote locations. There is the discussion of how many times we bring folks back and pay for their -- There are costs associated with it. I don't know what the actual numbers are, but I can have somebody get those numbers to you guys.

MR. COLARULLI: And I'll add that, you know, part of the discussion with the Hill as this legislation was being addressed, the Hill asked us for, you know, what our cost savings would be.
You know, there's been lots of discussion as this bill moved forward on what are the costs and what are the potential savings. So we have some information on that as well I can share.

MR. PINKOS: Thanks, Dana. Just a point of clarification or expansion, the key crux of this -- please tell me if this is correct -- is that, you know, now the office will be able to sit down with Robert and others and have the flexibility to essentially have a nationwide workforce, to have examiners working potentially from anywhere if the office can pull it off from a training, and IT standpoint, and reporting standpoint, and also, as Mark asked about, a cost standpoint of how often do people need to come back to the mothership and who bears the cost. Is that correct?

But the idea though is that you now have the --

MR. COLARULLI: Authority.

MR. PINKOS: -- authority to do that.

The chains have been loosened and people don't
have to come back twice a week or twice a bi-week,

excuse me.

MR. COLARULLI: And an easy way to think about this is, you know, we've expanded our flexibility within the 50-mile radius. The biggest impact for this bill is it allows us to do beyond 50 miles what we're already doing within the 50 miles. And technically what the bill does is it allows an employee to waive their entitlement to the agency paying for their travel back.

We have employees right now that are paying their own way, and we are forced to require them to come back every two weeks. We want to expand the program, allow these employees to continue to do this, and, frankly, not require them to come back when they don't need to. That travel back to the office is downtime. It's time that's not productive time, and it's a burden on the employee that's not necessary.

MS. KEPPLINGER: I wondered if you could tell us something about the implications for
in-person interviews, which I know the practitioners that I am familiar with find these to be extraordinarily helpful and more helpful than a telephone interview, if you know anything about that. And, secondly, would there be opportunities for interviews off premises, which in the past have not been permitted.

MR. STOLL: Again, Esther, we're working on all of that. We've been -- we will be experimenting with different mechanisms for undertaking that in the future. We are discussing a lot of issues whether to maybe have a location outside of the Washington Metropolitan area for holding a personal interview somewhere close to where they're residing.

We are -- we currently have issues with respect to personal interviews now with folks, almost 3,000 of them, telecommuting. There have been some problems with it, but I think that we're working those out. And it's possible that we may be using technology solutions where there is more of a video, maybe not in-person but a capability
of seeing, for example, the applicant pointing to
a graph and saying this is what I mean here.

So we're looking at all different
aspects, and of course we'll be in discussions
with Robert Budens as to find the most effective
methods for being able to provide applicant with
an in-person interview or something as close to it
as possible.

MR. MATTEO: Okay. No more questions
from the floor? Very good.

What I'd like to do then is introduce
Peggy Focarino, deputy commissioner for patents,
who will give us an operations update.

MS. FOCARINO: Okay.

MR. MATTEO: Peggy?

MS. FOCARINO: Thank you. Thanks,
Damon. I'm going to quickly give you an overview
of some of the highlights of the last fiscal year,
and I think that Bob Stoll has touched on several
of these at a higher level. So I'll give you a
little more detail. I'll quickly go through them
so that we can have an opportunity to have a
discussion afterwards on any areas that you want
to have some more discussion on.

Let's see. Okay. So as Bob mentioned,
we experienced an increase in our filings in FY10
that were at level a little over four percent of
what we had predicted. So that added to the
backlog obviously. We experienced an increase in
productivity, so we finished the year at 104
percent of our goal, which was really good
considering some of the changes that we had put in
place including giving more time to examiners. So
it's not something that you would intuitively
expect.

We granted 233,000 patents, so our
output was up in grants, allowances. Patent
allowances were at 240,000.

And Bob mentioned our initiative to work
off our backlog, and I think we had talked about
this the last time. But we really had a big push
from our examiners to work off new cases, and it
resulted in 27,000 cases being worked off in the
fourth quarter.
So they really made a great effort at trying to reach that 699,000 goal, and I'll show you in another graph how we ended up exactly. I think Bob mentioned it, but even though we didn't make it, I think we really came close and a lot closer than we thought we would based on that increase in filings that we experienced.

In quality, Bob mentioned our two quality metrics that we did come out at the end higher than our targets. As you know, we've added new quality measures. So we now have a total of seven, and Bob Bahr will be talking a little bit more about that.

And our board numbers continue to be fairly decent, although it's an area that you're going to hear about. We've got some initiatives to try to improve the quality of the cases going to the board. But affirmed and affirmed in part are at 63 percent for the year.

The tech support, also we had a good year in trying to make progress because we've had some issues in '09 with amendment entry continuing
to go up. You can see there that at the end of
the '09, we're almost to 35 days for an amendment
to be entered, and in Fiscal Year '10 we finished
the year at a little over 5 days. So really huge
push to get those timeframe way down.

And tech support, we also have an
independent quality review of their work, and
their error rate is under 2 percent, so really,
really good. And they -- they can continue to
exceed their production goals, and their quality
error rate targets, and their amendment entries.
So they also had a phenomenal year.

Bob mentioned the Green Tech, and he
told you how many petitions in total down there;
but this just shows you the breakout of how many
are awaiting decision, the grants at 800, a little
over 50 percent dismissals, and then how many were
denied.

The Ombudsman program was also
mentioned. I thought you would be interested to
see by tech center the volume of inquiries, and
your attention probably will be drawn to those two
mechanical tech centers on the right. We are looking into those particular inquires in detail to see what the reasons are. Is it something to do with perhaps more training is needed in those areas or could be the volume of work. It could be pro se applicants.

Some of the initial feedback we're getting is that some of the inquiries in those two areas really are more general in nature and could have gone to the General Inventor Assistance Center. So we're really trying to get drilled down to make sure we don't have a problem in this area that we really need to address. So we're trying to get the team to really dig in and find out why, but the overall feedback on the program has been fairly positive.

Interviews. Esther just asked a really good question about interviews, and interview time is up. And these are examiners picking up the telephone in most cases to call applicants. You can see they spent 138,000+ hours in FY10 doing this, and it has resulted in I think a lot of
positive feedback from our stakeholders and

hopefully leading to early disposition of the

issues in an application.

The First Action Interview Pilot

Program, has resulted in an allowance rate that is

over twice that of other filings. And, again, you

know, we're trying to strive for collaborative

relationship with stakeholders and to move our

culture in that direction. So I think, you know,

we're definitely on our way. We still have a lot

of work to do.

And Bob talked a bit about the

interview. We had a meeting on this yesterday.

Esther, it's actually on my list to talk to Robert

about because we would like to get a team together

to try to focus on a plan to address this personal

interview issue. In particular, I think it was

mentioned that examiners within the 50-mile radius

now have their duty station changed, right? So

that's a couple thousand examiners, but as we

implement the new Telework legislation, we will be

adding to this issue. And we really need to find
some productive solutions to it.

The backlog. I mentioned that we had a really big push in the fourth quarter, so you can see that we didn't make our target; but we came pretty close. And as filing increase, as you know, and depending on the budget situation with the hiring, we may be making really good progress and then, you know, kind of have the rug pulled out from under us so to speak. But we continue to make a lot of headway here.

The pendency. We've got some really aggressive targets, so this just shows you where we finished in '10, at the end of Fiscal Year '10. And we have a target first action pendency of 10 months and total pendency of 20 months in 2014 and 2015 respectively. So we will have efforts that are focused on that, that I'll talk a little bit about in a minute.

The allowance rate. We had an increase in our allowance rate. I told you how many patents were granted, but the allowance rate is up from what it was in '09. We don't have a target
for an allowance rate, but, you know, certainly we
want to get actions per disposal down, which we
are going.

We are encouraging that examiners reach
out and indicate allowable subject matter in early
time and prosecution, and certainly we're on our
way to getting people to be much more focused on
that.

This just shows you what the quality
targets were and also where we ended up at the end
of the year. On our historical measures,
obviously we're doing quite well, but we know that
those were not necessarily as balanced as our
stakeholders thought; so we've added new measures,
which we will be looking at.

This is a really interesting slide in
that it shows you currently, if you look at all
the cases that are in the backlog, it shows you
the age of the particular cases that are in the
backlog, so anywhere from the newest cases filed
that are 1 or 2 months old out to, you know, some
that are several dozen months old. And if you
think about getting to 10-month first action pendency, that backlog tail that shown there has
to be compressed so that cases are not really, really old because you will never get to 10-month first action pendency.

So we have a team together led by Jim Dwyer, and we are coming up with a plan to try to work that backlog tail off. And we'll have to really focus on that over the next year, two years in order to even have a hope of making 10-month first action pendency. You just can't have older cases in your backlog to make that kind of pendency. So that will be a critical, critical initiative.

Esther?

MS. KEPPLINGER: I hate to bring it up, but two questions. In this backlog, are RCEs included?

MS. FOCARINO: No.

MS. KEPPLINGER: Okay. So that's the one problem --

MS. FOCARINO: Right.
MS. KEPPLINGER: -- with all of this
data because actually even on your backlog
numbers, this graph is actually probably up not
down because the RCEs aren't included.

MS. FOCARINO: You're right. You're
right.

MS. KEPPLINGER: So it's a little
misleading --

MS. FOCARINO: Mm-hmm.

MS. KEPPLINGER: -- and that's -- and
because RCEs are such a significant number of the
cases right now, it skews all of your statistics
if they're not included.

MR. STOLL: I do believe that on the
dashboard, the RCEs are included. So it is
discernable as to where the RCEs affect the
pendency issues.

This is a totally different issue
though. We're trying to attack that tail,
exclusive of the RCEs, as we've decided, as you
well know, to move where they actually appear on
examiner's docket now to special new instead of
amended, but this is a different initiative that's honing in on the tail of the non-RCE filings. But I just want you to be aware that those numbers with RCEs are on the dashboard.

MS. KEPPLINGER: Understood, understood. But if somebody just looks at some of the things, they can be misled.

MR. STOLL: Well, for definitional purposes, the backlog is, not counting the RCEs, initial case filed before an examiner picks it up for our first office action.

MS. KEPPLINGER: But it's serialized filing, utility plant and reissue. Right, right. Okay.

MS. FOCARINO: Okay. Let me just go back to this a minute. So these are the ages of the cases. You can see that we have some very old ones, and just for your information, that backlog tail portion, most of those cases reside in tech centers 2600 and 3700. So these cases are not uniformly spread over the course. So there's a very big challenge in trying to leverage resources
and perhaps even move work around to be able to
attack this tail. Those will be the two key
components of the initiative, is looking at where
the resources are that might be able to do this
work, or if the work has been classified in an
area that perhaps could be just as well examined
in another area at a high level of quality, then
we have to look at those ways of getting this

backlog down.

We made changes to the count system, as
you know. We talked about that in several PPAC
meetings, and I think that's going very well. And
some of the metrics that we put in place to try to
capture the consequences are looking fairly good.
I think one of them is perhaps the RCEs, and, yes,
the backlog has grown in that area.

The performance appraisal plan changes
that we implemented, implementation just took
place last month, so we'll be looking at the
effects of that and hopefully see some good
results from that.

Our hoteling program. Again, we
continue to have high interest in this. It's a big recruitment thing for us in terms of getting -- you know, people definitely like the flexibility that it offers and often times come here with that in mind that they would like to eventually hotel. But that forces us to continue to look for improvements in our ability to collaborate and to train in a virtual environment and to interact with our stakeholders also so that it's transparent. And as we've been discussing, we have some challenges there, but I think we're -- you know, we've got some collaboration tools that we are currently testing that are very robust and I think will really be a big improvement.

The hiring for last year. We ended up hiring 276 examiners, and we had a mixture of examiners that had previously worked at the agency, so they were reinstated. We had some retirees that came back. We had almost 100 examiners that had experience in IP, and then we had about 133 new examiners that had come in with no experience.
So we continue to focus our efforts on hiring sort of a diversified population of employees, and we have our work cut out for us this year because we have a goal of 1,325 new examiners to bring in. So our hiring coordinators are very, very busy.

We had a low attrition rate last year. That rate, 3.27 percent, does not reflect retirees and transfers, but it's still very low. I think if you added retirees and transfers in, it's about 4.6 percent.

MR. ADLER: Peggy, how many people does that 3.27 equal?

MS. FOCARINO: I believe it was 280 or something like that.

MR. ADLER: About the same as we hired?

MS. FOCARINO: Yeah. We didn't quite get to the replacement hiring number. I think it was just about equal. Right.

MR. BORSON: Peggy, how do you expect the attrition rate to change as the economy picks up and there may be other opportunities for
examiners offsite.

MS. FOCARINO: Right. I would think we could expect to see an increase in attrition, particularly in the electrical and computer areas as those industries, you know, need hires. So, you know, hopefully -- we have a lot of initiatives in place that we focused heavily on retention, but certainly the economy is a factor in all of this.

And we also have now a new training academy program where we've cut the duration in the academy from 8 months to 4 months. So we have a new program there also that we're monitoring closely to see, and we haven't see the first class graduate from this 4-month training yet. But, you know, we had done a lot of surveying over the last couple of years on the 8-month program, and it was pretty unanimous that both the SPEs and the examiners in the program felt that that was too long of a period of time and that 4 months seemed to be more appropriate. So we'll see how effective that is.
MR. BORSON: I have a related question to the economy picking up elsewhere. If the President's pay freeze, increase freeze goes into effect, have you run any projections on what that would do to attrition?

MS. FOCARINO: Well, we're on a special pay scale, so it has some impact obviously. But, you know, I think that will definitely not be in our favor, and I think we experienced a decrease in the amount of attrition because I think people perhaps were looking at federal employment on the heels of '09 and thinking that there was -- you know, if you consider overall the compensation package, that it was a pretty good one. But I think it will hurt us. It's just hard to predict how much.

Robert has something to add to that.

MR. BUDENS: Actually I was going to propose a slightly different view on the attrition numbers if the economy picks up. Admittedly it's an unknown, but historically when we've been able to hold onto examiners for more than about four
years or so, we tend to keep them, mainly because they've been away from the, you know, the lab, or the engineering spaces or whatever for long enough that it gets a little more difficult to go get back into that realm.

We've gone through a fairly significant lengthy period now where most of the examiners we have, have been on board for several years. We're hiring some, but we haven't hired really very many in the last two years.

It's very possible that we may not see as much of an increase in attrition as we might have expected in other periods of time, but what we might see is also maybe an increased difficulty in bringing people on board, especially with the pay freezes coming into play now. And if a hiring freeze comes on board, we're in deep kimchi.

But just a different thought. I mean, I think it's all speculation, but it would be interesting to see what happens.

MS. FOCARINO: Yeah. Robert is right.

If we look at our data, you can see that if
examiners are here three years, then the attrition rate goes down to under 3 percent. But, again, it's hard to predict. If we have a lot of newer examiners in here and they haven't, you know, reached that threshold or -- and we are hiring a lot in the computer and electrical area. That's where we -- at least history shows us we seem to be vulnerable in terms of losing examiners with the less experience to the outside.

And then just -- Bob mentioned this also, but we're looking at, you know, improving our systems, both the entire system itself. And you'll hear a little bit more about that from our CIO, but also looking at the process and trying to reengineer that.

And Jim Dwyer is looking at that with his team and Christian Chase and areas where we have duplicative processes, or we can improve processes so that we're just not automating a system that really is not as efficient as it could be. So there's a lot of effort in that area.

So, any questions? Robert?
MR. BUDENS: Yeah. Peggy, on the Telework issue, do you have current numbers of how many people we have teleworking that live outside the 50-mile commuting area?

And, number two, has the agency, you know -- you know, we've been talking in PPAC for quite a while about the problem of having people come back, and we've always said it would take an act of Congress to change that. Well, now we've had the act of Congress. Has the agency done any projections yet that if we -- you know, if and when we get the details worked out in the joint committee and stuff, how many people, who are currently living within the 50-mile radius, may choose to move out the 50-mile radius?

MS. FOCARINO: Yeah. Good questions. The last numbers I saw, there were probably about 70 examiners that live in other states outside of the 50-mile radius.

And, you know, we've done surveys to ask the examiners, if you could move and not have to come back in, would you? And, of course, a lot of
them say they would. How many that translates
into when it acts comes down to it? Well, now you
can so go ahead. I'm not really sure, but I would
expect a significant number would move.

But because of this legislation out, I
think there's no time to waste to try to figure
out how to make sure that we continue to be able
to communicate with applicants and with each other
and training. The four-month academy program, a
lot of the training will be CBT, not only in
person, but also you can access the training
either via webcast or CBT. So that we are
covering all bases in terms of the modes of
training, and we just have to start thinking about
doing many, many things virtually or at least
having the capability. So it's definitely going
to be a challenge.

MR. BORSON: Okay. Peggy, thank you
very much.

MR. PINKOS: Can I have --

MR. BORSON: Oh, a question. Yes,

Stephen.
Hi, Peggy. Thanks. Going back to the green tech program, do you know what percentage of those petitions are from non-U.S. Applicants?

I don't. I don't see Jackie Stone here, but she sort of administers the program. We probably -- I don't know if we have that data. Do we, Bob?

I'm not aware.

Yeah. Yeah. I'm not sure, Stephen, but I'll inquire. And if we can get that data, I'll certainly share it with everyone.

And is there sort of published criteria? Like for petitions that are granted, dismissed, and denied, is there -- there's a significant number, so I'm not sure you can generalize, you know, the leading basis for dismissal or denial.

I don't think we have -- I don't think my thing is working.

We don't have that, like the various
types, but it's all kinds of things. You know, a
lot of it is just --

MR. BORSON: I'm sorry, Bob. For the
benefit of those that are not here, maybe pick
another station with a -- oh, there you go. That
seems to be on now.

MR. STOLL: It's on, Bob.

MR. BAHR: Oh, wow. It's on now. We
don't have it published. Petitions get turned
down for many different reasons, and the older
ones, when we had a filing date requirement,
sometimes that would be missed. Sometimes it was
just, you know, statement is not there, but it's a
variety of reasons.

MS. KEPPLINGER: I can speak from
personal experience. I think initially also they
had requirements --

MR. BAHR: Right.

MS. KEPPLINGER: -- as to subclass. So
some of them were dismissed because they -- or
denied because it wasn't -- they weren't
classified in the correct subclass.
Some of my clients, we suggested other subclasses, and they accepted them into the program.

They don't have those requirements now, so I suspect the numbers have changed since they changed -- since they amended the criteria for entering it.

MR. PINKOS: So what's the general definition of a type of application that qualifies as a Green Tech?

MR. BAHR: Well, it would be an invention that helps the environment, that, you know, contributes substantially toward improving the environment, or cuts down on greenhouse gases, or, you know, improves energy, you know, more energy effective. So those are the primary reasons. Or energy efficiency and new types of renewable energies.

MS. KEPPLINGER: If you look -- there's a federal register notice --

MR. BAHR: Yeah.

MS. KEPPLINGER: -- that lists a
significant number of things. I mean, it can be scrubbers in, you know, smokestacks, all sorts of things.

MR. BORSON: Okay. Are there any further questions from the floor?

MR. ADLER: I mean, it's obvious -- I mean, it's very good that the backlog is starting to come down because you've focused on trying to get those older cases out of the system, but the pendency numbers to get to 10 and 20 from where they are now still requires a lot of reengineering or changes to get anywhere near there in the time frame. And I know that the QIR effort and Jim's reengineering work is some of it, and we'll hear, I guess, from that. But there really isn't much change right now in the pendency numbers.

How we going to -- I mean, do you have any thoughts about how we're going to get from where we are to where we need to be?

MS. FOCARINO: Well, as I said, Jim Dwyer is really spending a lot of time on this.

Bu, you know, I think, Mark, to your
question, I mean, the backlog is one thing, and
you can work off a significant number of cases in
the backlog. But the age of those cases runs a
wide spectrum. So they're kind of two different
things in a way.

So to get pendency to 10 months, you
really have to focus on the age of the cases that
you're doing in addition to the amount of cases
that you're doing. So, you know, we're looking at
a plan that would focus 80 percent of our
firepower in that backlog tail, and it has to be
strategic like that because if you just focus on a
certain volume of cases being worked off, you're
not going to get to the 10 months.

But we --

MR. PINKOS: I understand. But even if
we look at the tail and you reduce that tail.

MR. BORSON: Could you turn your
microphone on, Mark?

SPEAKER: The thing is, is they're
limited so they don't all open up.

MS. FOCARINO: Okay.
SPEAKER: So only two of them can work at a time.

MR. PINKOS: All right. Okay. Even if I look at that tail, in order to get to 20 months, there's a significant number of them. Even if you worked off the tail, there's a lot of them that are above 20 months to the first office action. So it's obvious from the data that there's a lot of work to do to push this all the way down to the first couple months.

MS. FOCARINO: There is. I mean, and I think that -- I don't know if Jim wants to shed any more light on this because it's a plan that is, you know, in progress in terms of how it would be done. But it can be done, but we have to start now in 2011 either looking at resources or looking at case distribution and making some significant movement in order to place those cases in the right docket area so that people can work on them because some areas have more capacity to work on them. I told you the two tech centers that own
this tail basically, so you're looking at movement
of work between areas that have more capacity to
areas that have not enough capacity. So I'm going
to let Jim talk a little bit more just to give you
a preview.

MR. DWYER: Okay. Basically, right now
you can look at it two ways. We've got our
throughput and our backlog. Currently we have
enough firepower to do our throughput, so we're
not necessarily adding to the backlog as you can
see from the numbers. We're pretty close to even.
So assuming nothing happens with --
filings don't go up, and our examination core
doesn't go down, the only thing we need now is a
plan to do the backlog. And using some modeling,
we've determined a specific number of examiners
that we need to hire, a certain percentage of RCEs
that we're hoping that our examiners change
somewhat of their behavior so that there's a
reduction in RCE filings so we don't put our
firepower towards that.

So with a matter of hiring and overtime
and other initiatives, the thought was that we increase our throughput so that we start to work off more and more of the backlog. And, again, of course that's very much budget dependent so that we can get those 1,300.

       But our actual, even though right now we're in that 700,000 range of backlog, we've determined an ideal backlog, which is what the expectations would be at 10 months, and that's in that 350,000 to 370,000. So if you look at that as our working inventory, the rest of that is the backlog.

       So from our models we determine what resources we need to get that down and making some assumptions on filing rights and so forth. So that's one issue.

       The second issue is what Peggy was talking about as the tail. Currently, if everything was homogenous that an examiner could pick up cases, we wouldn't have that distribution tail. It would be basically everything would be right around that 25 months pendency, which is our
average pendency now, but it isn't.

Well, a lot of what's in the tail area

is electrical engineering work and specific
electrical engineering work that needs to get
done.

We know we've been using hiring models.

We've been trying to hire in that area, but,
again, there's a point of where you maximize your
abilities to train a certain type of technology
and to work off the cases in that specific area.

So our thought was with looking at the
tail is what other methods can we do beyond just
hiring because hiring would be very difficult to
hire in that specific area and train in that area,
is to look to other ways in which to move that
work. So we put a concept of putting an incentive
in there and to look at classification issues, as
Peggy was saying, because sometimes there is work
that could be shifted easily. There is other work
in which we know we're probably going to have to
do some retraining of the examiners.

MR. BORSON: Yes. Scott, please.
MR. KIEFF: Maybe just to broaden this out. I mean, I think the different comments that have been made so far reflect different guesses about how empirically all of this will play out, and we might or might not convince each other.

But can I ask a totally different question, which is much broader, and I don't know whether in particular Bob or Ray wants to weigh in on it. But the electrical area seems to be the area where almost all of our public patent reform debates, policy debates, and Supreme Court activity have been about how patents are just bad. They're trivial. They are clogging. The ones that are at their best are valid and infringed but tiny. They're little paperclips that weigh down every business transaction.

And so one macro -- I'll just wait until the question is done being asked and then -- so one macro question is, if society tells us these patents either don't matter, or are bad, or matter and are good but in really small ways, does that tell us anything about how we ought to be thinking
about them when they're in the office? So that's
the first big question.

And then the second big question is, the
Supreme Court seems likely to tell us that
everything you're doing doesn't deserve a
presumption of validity, and what does that tell
us about how seriously we're taking ourselves
here?

And I don't mean to be too caustic about
those points, but those are the elephants in the
room. And I think we ought to -- I mean, before
we fight too much over the empirics of the deck
chairs, we ought to talk about the ship, you know,
that's driving the deck.

Does that make sense?

MR. STOLL: Well, I understand your
question. I don't know that I have a valid answer
to that one. I can tell you in what we're doing
here, which is -- I mean, first of all, we
administer the laws as Congress enacts and the
President signs.

So we undertake to actually do what the
laws say. We do have a policy function where we, you know, recommend to the Secretary of Commerce policies, and in doing so we are actually looking at some of what you're saying.

I think, for example, if you look at our three-track proposal, it allows applicant to pick the rate at which they want to actually prosecute their application. So those that really aren't interested wanting to move it quickly can park it in track 3, and those wanting an accelerated examination in 12 months soup to nuts can go through track 1.

So that kind of does it a little bit. It's moving in the direction you're talking about, and it's not subject matter specific because there are folks in the pharmaceutical area that want to accelerate quickly, and there are applicants in the electrical area that don't. So, I mean, it doesn't violate any of our treaties, and I think it really is important in that it allows folks to decide how they intend to prosecute their application. And it allows them to make the
determination as to whether they value -- so that
they want a quick application through the system
or not.

MR. KIEFF: Yeah. And that makes great
sense, and I don't want to -- I mean, I don't
think we can solve these problems here, and I
don't think anything we're doing is bad or wrong.
I just -- even that example though, seems to run
directly contrary to the major current in the
policy debate, which is I'm an Intel or, you know,
some big -- and it's precisely because you
applicants out there are choosing to take the new
submarine track, right. The old submarine track
was -- well, we know that. That's gone.

Prosecution latches has dealt with it. But now
it's you're just --

There's this big pool of applications
that, had they been brought to our attention in
standard setting meetings, had they been surfaced,
you know, we might not have built our Fab for $5
billion. But, golly gee, that's what is holding
us up.
So, again, we can't solve all of it, but I'm just -- I'm trying to figure out how do we take these very real, very heartfelt, hardheaded, good thinking, working that is going on here and marble that into conversations with the Solicitor General's Office so that when the United States Government is talking to the Supreme Court, the Supreme Court is getting an accurate understanding of all the things you're doing. And when people are up on the Hill flogging you, I mean -- you know, these debates are caricature debates, right? So the question is how do we -- how do we make them more accurate.

MR. CHEN: Scott, hi. My first reaction was -- to your question, which is a fair one because I think there is a sentiment out there where people are, within a certain industry, have some skepticism about patents. My first reaction was, oh, Scott, I thought you were the pro-patent guy. I don't understand, but I'm just kidding about that.

MR. KIEFF: I'm not in favor of that --
MR. CHEN: No. I understand.

MR. KIEFF: -- but I recognize they're out there.

MR. CHEN: The second reaction I have is I think that PTO is doing a lot of things to try to do everything it can to improve quality under the circumstances we're in.

Bob is absolutely right. We have to administer the laws that have been given to us by Congress and then as interpreted by the Federal Circuit.

And to that end, we've been doing our share of examination guidelines. This past summer, we updated the KSR guidelines, right, because we're doing everything we can to give as much information and instruction to the patent examiners to understand what is, in many ways, kind of a difficult area to make that kind of judgment. So to give them as many road maps as possible with as many examples as possible can only help the process.

I think, secondly, we're, you know,
really considering doing what we can to remind
examiners about all aspects of Section 112. And I
don't know if that's already been discussed here,
but that's something we're also looking at very
deeply.

So there are a number of things we're --
we're doing here to try to improve the process.
We have to be careful, of course, to not devote
attention to one specific industry. That's not
our -- never been our approach. Everyone agrees
that shouldn't necessarily be our approach.

But you are right that -- and maybe I'll
get into this a little more when I give my little
presentation, but it's not just about us in this
room figuring out what patent law ought to be,
right. There is a lot of generalists out there
that have become all the more interested in patent
law, and so it's up to us to do the best we can to
effectively communicate.

MR. STOLL: Mr. Chairman, I would

respectfully request that we take a 10-minute
break. I think we're a little bit ahead of
schedule, and my understanding from my friends on
the outside is that they're not hearing any of
this great discussion. And so I think we need to
reboot, and I think that takes about 10 minutes.
And I think this would be a perfect time.

(Recess)

MR. MATTEO: Okay. Please, and
actually, Ben, if you can indulge me, I could tell
the operations update was ongoing. I couldn't
hear anything that was being said, so I don't know
if we managed to wrap that up, or if we need to --

MR. BORSON: Yes. That's been wrapped
up. So next on our agenda is Robert Bahr.

MR. MATTEO: Very good. Then, Robert,
if you would, please. Robert, associate
commissioner for patents examinations and policy.
If you would start our quality initiative update
for us, please.

MR. BAHR: Okay. Thank you. First
thing, I don't have a set of slides, but I do have
a handout for you. It's basically an Inspector
General's report from the Department of Commerce.
I didn't want this to surprise you since we had been working so long on the quality team.

The Inspector General had actually also been studying the quality issues. They had been charged in mid 2008 with doing a study of our quality assurance practices, and they conducted this study for about a year, year and a half. And they've issued this memo or report on it, and I just wanted to go over it with you.

They had a number of recommendations. The first recommendation is that they basically noted or felt that the technology centers lacked standard policies and procedures for quality assurance reviews. The concern was the lack of procedures for resolving errors reported by the Office of Patent Quality Assurance, or OPQA, and for reviewing the referrals and treating them within the AIPA time frames, and for having consistent practices for charging examiners with errors, and for establishing clear criteria for closer reviews of individual patent cases.

First I should explain that, you know,
their first comment to us was that these OPQA
reviews are such that most of these patents issue,
and they have patent term adjustments. And we
pointed out that, gee, you know, most patents we
issue today have patent term adjustments because
of our backlog, and the problem is not the OPQA
review it's the backlog.

And then they noted that back in 2008
and earlier that many of the reviews done by OPQA
took longer than the seven months and resulted in
patent term adjustment for failing to meet the
4-month issue deadline. And that was correct;
however, my predecessor, Drew Hurtzfeld changed
the procedure back in 2009 to make it much more
streamline, and today roughly 2 percent of all
patents get patent term adjustment because we miss
the 4-month-to-issue time frame. And, actually,
if you look at only the cases that went through
OPQA, only 1 percent of them got patent term
adjustment for missing the 4-month-to-issue time
frame.

And the way it works is that the OPQA
reviews are concluded on average within 30 days of
the date we mail the Notice of Allowance, and the
issue fee is not even paid on average within 70
days of the date you pay the Notice of Allowance
-- the applicant pays the issue fee in response to
the Notice of Allowance. So the bottom line is
that the OPQA process, as it runs today, doesn't
result in us missing the 4-month-to-issue time
frame in the AIPA.

So with respect to that comment, I think
we're already there. Unfortunately, when we tried
to explain this to the IG, they said, "Well, we're
only reviewing 2008 and earlier." So they didn't
take into account any changes that we made. So
that issue has been addressed.

Now with respect to clear criteria for
reviews of individual patent cases, what they are
referring to is the second pair of eyes programs,
and we have, in essence, discontinued those. So
there's no change that would need to be made with
respect to that.

Their next issue is the consistent
practices for charging examiners with errors.

What they said, and I'll move to the next line, is that the OPQA in the Office of Patent Quality Assurance lacks a substantive role in the final disposition of these error cases. And what they felt is that OPQA should decide whether or not an examiner is charged with an error, and that OPQA should be in charge of the final disposition of the application, namely follow it through, you know, to make sure that the error gets corrected.

Now we disagreed with their conclusion there, as we feel that charging examiners with errors for purposes of a performance appraisal plan, it's not a quality assurance program. It's not part of that. It's a management function, and we've purposefully kept the OPQA process separate from the management process so there's no -- you don't get the same people -- people reviewing their own work, you know, the work that they're responsible for.

So we have purposefully kept OPQA separate from the management of the technology
centers, and we don't want to combine them in the way that the Inspector General suggests that we do. So we felt that it would be better for the TC management to be responsible for deciding whether or not to charge examiners with errors and also for making sure that the error gets fixed, you know, if it's a patentability error before a case is finally issued.

Now they did say that we should be more consistent about whether to charge examiners with errors, and we agree with that. You know, consistency is always a good thing, but we did not feel that it would be appropriate to have that be an Office of Patient Quality Assurance function.

Then they noticed that the Office of Patient Quality Assurance lacks a formal training program, and they're somewhat correct in that we probably don't document it as well as we should. But you have to step back and look at the context of this. We don't take a group of new examiners and send one off to Patent Quality Assurance. Patent Quality Assurance is not an entry level
position. We take experienced examiners. So it's
not -- we're not taking people who we really need
to give specialized training on examination
practices and on patent case law. You know,
they're ones who already know it.

So from that perspective, we give the
OPQA, you know, quality assurance specialists, the
same training that we give examiners for matters
of patent examination and on patent law. We do
also give the quality assurance specialists
training on how to fill out the forms and, you
know, how to conduct a review; but I guess we
probably should document that better so that, you
know, the next time this comes up, we can point
out, you know, that we do give this training. But
in perspective, we've hired four quality assurance
specialists in the last four years. So, you know,
we hire one a year. So it is not something you
set up a patent training class for because it's
just not practical.

And, finally, the other recommendation,
which is a little disconcerting is that they found
instances of improper records, dispositions.

Now when they brought this up, we took -- or at least I personally took a little issue with them including it in this quality report because the improper records disposition was, in their view, situations where cases were coming up on what we call our signatory review program, where a supervisor was reviewing cases of an examiner either because it was decided whether or not they were going to get a promotion, or the decision was whether or not to take a personnel action against them.

Now neither of those situations have anything to do with our patent quality assurance program, but it got lumped into this because sometimes our technology center quality assurance specialists do these functions. And so they felt that since that was the case, they would include it in this report. I guess if our TC quality assurance specialist J-walked, they'd include that in this report.

But, you know, what they are complaining
about is, in essence, that when a TC personnel, you know, a manager, would review a case, they would make notes on things they felt was right or things they felt was wrong, and then at the end of the day they'd meet with other managers. And it was decided whether to write it up officially or not to write it up officially, and the practice was to basically discard these notes when they were no longer needed; and those are the notes that it was felt we need to keep. And the reason we need to keep it is there is some litigation against the Department of Commerce that is going on, I think for over 10 years, and there's a litigation hold relating to that litigation. And because of that litigation hold, we need to keep all records that -- you know, all documents that relate to personnel actions in essence, and you can correct me if I'm wrong.

And so it's a fairly extensive volume of documents that we need to keep, and that is what we ran afoul of. It's not documents being thrown away that we have to release under FOIA. It's
documents that we have to keep because of this litigation hold.
So that's what you're seeing in this report. I didn't know if anybody had any questions about it.

MR. BORSON: Yeah, Bob. Thank you very much. I wanted to ask one sort of question related to the correction of errors that are identified through the quality metrics or the metrics, however you want to say it.

MR. BAHR: Yes.

MR. BORSON: One of the comments in this report is that the OPQA does not seem to be -- there is sort of disconnect between the TCs and the OPQA, and that if there is an identified error in a TC, that it is not necessarily corrected. And so I wanted to ask sort of two related issues. One of them is about this report and how you think the OPQA can more effectively address errors in the TCs and have them corrected. And a slightly broader question is who should be responsible for initiating correction of
those errors? We've had conversations in prior
PPAC meetings about whether this is something that
should be left exclusively to applicant to come
in, and to petition, and to sue, et cetera, or
whether an identified error in a TC should be
corrected sua sponte by the office.

MR. BAHR: I should point out that these
errors were ones that an applicant wouldn't be
motivated to correct. These were where OPQ
identified a case with an un-patentable claim and
sent it back to the TC. And the TC should have
reopened to, you know, to make the appropriate
rejection.

Now I don't want to make it sound like
it happens routinely. It happened a couple of
times. There were a few instances they
identified. I don't know exactly how many, but
I'm told it's more than one. But it's certainly
not the norm. The norm is for the TC to withdraw
the case from issue and reopen the prosecution,
but apparently on a couple of occasions the cases
were not corrected; and we have to put in a check
to stop that.

MR. BORSON: Yeah. That I understand
and so that's fine.

MR. BAHR: That's what the report was.

MR. BORSON: Okay. That's -- so that's
specifically what the report was addressing --

MR. BAHR: Uh-huh.

MR. BORSON: -- the issue of these false
positive errors, a patent that issued with a claim
that should not have issued. Then maybe if I
could generalize it and go back to what about
errors that were made that resulted in the denial
of a valid claim.

MR. BAHR: Well, the problem them, or
the situation there is we basically correct it
when we next take the case up for action. So I
guess, yes, it requires a response by the
applicant.

MR. BORSON: Mm-hmm.

MR. BAHR: You have to understand that
normally an error, it's not that we rejected the
application. You know, we issued a rejection
where we should have issued a Notice of Allowance. Normally what the issue is, is that one claim or a couple of claims were rejected on a basis which they should not have been, or the rejection was inadequate.

So it's not a matter of that a case was rejected where it should have been allowed. It's a case was rejected where it should have been rejected for a different reason or some claim should have been allowed, and that is why we don't step in and, you know, issue a new office action two months later while the applicant is preparing a response.

MR. BORSON: Okay. Thank you. Robert?

MR. BUDENS: Sorry, Bob. This one can't -- you know, this report can't -- I've got to have some comments on this one.

First of all, as somebody who was shall we say rather actively involved with the Inspector General in some of the aspects of this report, the first thing I would say is I'm not sure I agree with your analysis that this was directed at just
OPQA. I think that the original charges to the Inspector General from the members of Congress was to look at the, you know, quality assurance of the examination process. So I think it goes --

    MR. BAHR: Robert, I just want to make clear. I don't disagree with you. I agree with you on that, and that's why they did that. I was just clarifying for the members of the PPAC since they were working on a patent, to make it clear that they're not -- that some of these things didn't relate to how we measure, you know, come at our quality measures.

    MR. BUDENS: Not in the sense of OPQA.

    MR. BAHR: Right.

    MR. BUDENS: I mean, it could measure -- it could look at it from what's going on at a tech center level stuff, and I think it was intended to do that.

    The other thing I wanted to take issue with was the issue of the destruction of the records because I don't think that that issue is also just limited to, and limited because of the,
you know, lengthy pending litigation. I think that they were determining that things like signatory authority records are part of, you know, promotion process and could become part of a litigation process, and, therefore, needed to be kept for at least some period of time; and the agency's own, I believe, comprehensive records database or whatever said they should have been kept for a while.

And I think we're going to be -- you know, we're going to be investigating that, guys, at some time very soon because I think that those records need to be available to examiners, you know, to see what comments are made when, you know -- on their signatory reviews and stuff like that, so that it's easier for an employee to determine if they were treated fairly and whether there's issues that need to be taken up.

So I'm just letting you know that I'm not sure I, you know, agree with your total assessment of this report here.

MS. KEPPINGER: Just a followup. It's
more in the line of a suggestion really, and I
spoke to Peggy for a second. But followup to
Ben's point about situations where an application
is rejected, and there may not necessarily be an
assessment that there was an error by a supervisor
or whatever.

But my experience is that the SPEs are
uneven in terms of you could have an interview
with an examiner. You could have the interview
with the SPE. Some SPEs will push the examiner to
take the legally correct position, some will not.
And so what happens is you end up having to have
interview after interview to get to someone who
will take an action, and in some cases it's been a
cross for me; and that's worked very well.

But I would suggest that you have more
mechanisms in place for getting this kind of
resolution easier and faster because I had one
case where it took me five interviews. All the
evidence had been in the case from the very
beginning, before first action, and it was
clearly, you know, an unexpected results, all
sorts of evidence.

And so maybe in the pre-appeal brief conference you could have the option for a personal interview with different people that have looked at the case previously so that there is more interaction. And I would venture to guess that this is one mechanism for helping you to reduce your pendency because the faster you can get resolution and the more you can get people not to need to file an RCE, the better off you're going to be with reducing the backlog and the pendency.

MR. BORSON: Yeah. There used to be a procedure involving technology specialists whose role was to do that, and I don't know what's happened to that or whether that's been wrapped up into the pre-appeal.

Maybe Bob or Peggy, you'd like to comment on that?

MR. STOLL: I think Bob Bahr has been working actively in that area.

MR. BAHR: We're trying to come up with
some proposed pre-appeal brief changes that, you know, expand on the current pre-appeal brief opportunities to try and get resolution.

I think, Esther, you probably would want to get resolution even earlier. Is that correct?

MS. KEPPLINGER: Yeah.

MR. BAHR: Yes.

MR. BORSON: Okay. Well, if there are no further questions, Damon, you want to move ahead?

MR. MATTEO: Hello?

MR. BORSON: Hi, Damon. Yes. Bob Bahr has finished. Oh, maybe not.

MR. BAHR: I had two more things. First is that, with respect to the quality metrics, I wanted to point out that our ultimate metric was a composite score with respect to the seven metrics, but it was felt that maybe for each metric we should have an individual target. But we didn't exactly want to have a specific target where if you fell a little bit below it, you know, it was not sufficiently good.
So what we have done is we are going to set up what I'm going to call ranges for each of the seven individual ones. So if you hit 96.3 instead of 96.4, no one considers that failure as long as you're within a reasonable range for each of the individual metrics. And I--

MR. STOLL: Bob, could I--

MR. BAHR: Sure.

MR. STOLL: I hear we're having a slight technical difficulty. It would be very helpful if anybody who speaks into the microphone speak directly into their microphone because it drops off on those people listening on phones.

MR. BAHR: Sorry. I'll try to get better. And the second issue is with respect to quality measures. We are in the process of working on Section 112 guidelines for examiners to try and have more consistent application of, you know, the requirements for definiteness, written description enablement.

And that's all for me.

MR. BORSON: Okay. Thank you. Damon?
MR. MATTEO: Thank you very much, Robert. What I'd like to do now is introduce Raymond Chen, solicitor of the USPTO, who will give us a brief update on patent litigation.

MR. CHEN: Thank you. Yes. I'm Raymond Chen, and in the Solicitor's Office we continue to remain extraordinarily busy with all forms of patent litigation, not just appeals from patent board decisions but also evaluating and filing amicus briefs, whether at the federal circuit or at the Supreme Court.

Just in terms of filing -- people filing appeals from patent board decisions, in the past decade, typically it ranges somewhere between 30 to 40 notices of appeals from patent board decisions. Then last year in 2009, the number was 55 from the patent board. And now this past year in 2010, it was up to 68.

So we're seeing a line of growth that sort of matches more or less the growth of patent board production of patent board decisions. It doesn't correlate exactly, but I would say it's
something on the order of 1 percent of all patent board decisions ultimately get appealed up to the federal circuit; and that's where the solicitor's office steps in. So we're seeing that growth, and we've had to do some -- we've finally been able to do some backfilling of attorney vacancies. So now we're up to full strength.

As for some of these other more high profile litigations, I wanted to quickly give a report on the Therasense oral argument as well as well as briefly touch on some pending Supreme Court cases.

As for Therasense, that's the inequitable conduct en banc case at the federal circuit, and that doctrine just so intimately affects the applicant/examiner relationship here at the PTO. We were fortunate that we were able to file an amicus brief in that case and then also get 10 minutes of oral argument time to present our views on what is really the best way to recalibrate that doctrine.

Just very briefly, we were urging for a
specific intent to deceive, so we were expecting
some kind of true egregious culpable conduct on
the part of the applicant before you were to
assign inequitable conduct liability in that
instance. The should-have-known standard that
you've seen in some federal circuit opinions to us
appears to encompass negligent behavior, and
that's just in our estimation too low and not
appropriate to knock down otherwise valid patents
just on that score alone.

Also when it comes to what is the proper
standard for materiality, the PTO is looking to
its current Rule 56, which has been on the books
here at the PTO for 18 years now where we amended
what our prior version of Rule 56, which was the
reasonable examiner's standard that the federal
circuit has essentially adopted as the still
existing materiality standard.

In our view, so much of the outcry about
this doctrine is exactly what this agency heard 20
years ago and attempted to try to ameliorate when
it amended Rule 56 to be either the kinds of
information that actually renders a claim prima
facie un-patentable or is otherwise a kind of
information that somehow undermines the position
of patentability that an applicant took before an
examiner. In that sense, in our view, that is the
two kinds of information that a reasonable
examiner would consider important in considering a
patentability determination.

And so what the 1992 rule did was make
more definite an objective and otherwise more
vague, loose standard that we had enacted in 1977
and then the federal circuit soon adopted in the
early 1980s.

So just getting back to the oral
argument, it was interesting in the sense that,
for those of you who didn't hear it, much of that
argument, which went on for over an hour, seemed
to be devoted to the materiality standard. There
didn't seem to be that much discussion from the
bench on the intent to deceive element, and that's
not surprising probably because the overwhelming
vast majority, essentially -- uniformly across the
board, all the amicus briefs were advocating a specific intent to deceive and urging the court to eliminate some of these other articulations of the intent standard that would include forms of negligence.

And so what seemed to be the debate was should the court move all the way to a but-for causation, which is much further to the other side of the spectrum than our current Rule 56, let alone our old Rule 56, which the federal circuit currently follows, but instead would be essentially only those kinds of information that would render a claim un-patentable or invalid. That's the only kinds of information that would warrant an inequitable conduct finding so long as that person had an intent to deceive, to withhold it, or misrepresent it.

So that is the basic gist of what's going on. I would expect that an opinion would come out in a few months. I won't predict what will happen, but it was interesting to see that the focus was either a but-for standard or the
PTOs current Rule 56.

Another issue that's important to the PTO is the recent en banc decision by the federal circuit called Hyatt v. Kappos. The en banc court held that essentially when an applicant seeks review of a patent board decision, an adverse patent board decision, in District Court under 35 USC Section 145, the applicant has an unfettered right to introduce any and all forms of evidence he or she wishes, even the kinds of evidence that could have been presented to the examiner in the first instance but for whatever reason the applicant elected not to give it to the examiner, and so in so doing the applicant has the right to have a completely de novo proceeding in front of a D.C. District Court judge.

In our view, that's not only bad law, but it's bad policy, bad government to completely circumvent the administrative process by permitting applicants to essentially go right around the entire agency process. We're the body that is statutorily authorized to examine and
issue patents, and now this outcome has permitted
a different outcome where essentially a District
Court gets the chance on its own to evaluate
patentability based on evidence that an applicant
has the opportunity to withhold from an examiner.

   We're considering filing a cert
petition. We're seriously considering that
question along with the Department of Justice.
Cert petition would be due February 7th.

   In terms of a couple other Supreme Court
cases in the patent realm, one is called Global
Tech v. SEB. Very quickly, that's the question
about what is the state of mind to be liable for
inducing another person to infringe a patent under
35 USC Section 271(b).

   It doesn't specifically require some
knowledge component in 271(b), but the law for a
while, within the federal circuit, has been
understood to require some knowledge and intent to
actually induce someone knowingly to infringe a
patent rather than just inducing a certain type of
behavior that unbeknownst to the parties
ultimately infringes the patent.

The government is in discussions right now on whether to file an amicus brief, and the PTO, of course, is actively involved in that. I can't tell you what the outcome is going to be, but we're considering that. And an amicus brief could be filed either as early as Monday, December 6th, or it could be filed as late as January 3rd.

The other more recent Supreme Court cert grant is the Microsoft v. i4i case. This is perhaps most significant of all these cases that I've been talking about because it goes toward what should be the standard of proof for overturning a patent on validity grounds. Right now the law has always been under the federal circuit that you have to prove that invalidity by clear and convincing evidence. Microsoft has filed a cert petition urging the Supreme Court to take that down to a mere preponderance of the evidence standard, which would very potentially do a dramatic devaluation of patents across the board on that score.
I think Microsoft's second backup
question to the Supreme Court is what about
evidence that the examiner never considered in the
first instance and is now being relied upon to
challenge the validity of the patent in District
Court. Should there be a varied standard of proof
there? Maybe for evidence that the examiner first
considered, it's clear and convincing evidence,
but if it's brand new evidence, then maybe that
should be just a preponderance of the evidence
standard.

We're going to be actively involved in
that one again. My sense is there are other
components of the government that are also
interested in this issue, so there's going to be a
lot of conversations going forward. What I would
say is there is an interesting Supreme Court
decision in 1932 called RCA, that if you're
interested in learning about the origins of the
clear and convincing standard, that one is worth
looking at.

And there is a federal circuit decision
by Judge Rich called American Hoist in 1983 where
the federal circuit, as a brand new court, was
trying to make all kinds of decisions about
various standards, and in that case the federal
circuit took its best shot at explaining, in its
view, why it should be clear and convincing
evidence. But at the same time, it was a bit of a
nuance position in the sense that the court was
saying for evidence that was never considered by
the PTO in the first instance, perhaps it can be
easier to meet that clear and convincing evidence
standard in validating a patent.

The last thing I want to bring up is
there is a mandamus petition at the federal
circuit pending. It's called In re BP
Pharmaceuticals where BP, as a defendant in a
false patent marking civil action, has sought to
dismiss that on the grounds that it didn't have an
intent to deceive the public with its inaccurate
marking of patent numbers on its products. And
that motion to dismiss was denied by the District
Court.
BP filed a Mandamus petition urging the federal circuit to adopt a much more rigorous pleading requirement for pleading the deceptive intent element of false marking claims and to adopt basically a rule 9(b) -- Federal Rules of Civil Procedure 9(b) standard, which really requires a more detailed pleading of why BP and other companies really intended to deceive by inaccurately marking.

That was something that the United States Government, the Department of Justice filed an amicus brief in that case urging the federal circuit to adopt Rule 9(b) and the heightened pleading requirement for false marking claims because there is a deception requirement in the statute, and deception should follow what the federal circuit has done in inequitable conduct. Where last year, in a decision called Exogen, it said to plead inequitable conduct, you have to meet the heightened pleading requirements. So, likewise, the federal circuit should do the same for false patent marking, and the PTO was involved.
in that amicus brief.  

Hopefully that was a coherent summary of some of these cases that we're working on. If there is any questions, I'm happy to take them now.

MR. BORSON: We are a bit over time on our schedule, and what I would propose is that if there is some urgent questions now, we address them quickly if we can and then take a break for lunch.

Yeah. We're scheduled to return at 12:20. It's now 12:06.

Damon, do you have any comment about that?

MR. MATTEO: No. Thank you.

MR. BORSON: Yes. Hi, Damon.

MR. MATTEO: Apologies for the technical problems. I was going to suggest that we break now and reconvene at 12:30.

MR. BORSON: That's fine. We'll break now --

MR. MATTEO: So there is adequate time
to --

MR. BORSON: -- and come back at 12:30.

MR. MATTEO: -- get and make their way through lunch.

(Whereupon, at 12:08, a luncheon recess was taken.)
AFTERNOON SESSION

(12:35 p.m.)

MR. BORSON: We are ready to go.

MR. MATTEO: Very good. So then what

I'd like to do is introduce James T. Moore of the

PAI, who will (inaudible).

MR. MOORE: Okay. I'll start off here

now. Good afternoon, I'm Jay Moore of the Board

of Patent Appeals and Interferences. I'm pleased

to be here today to be able to address the PPAC

and visit with you to discuss our efforts to

reengineer our processes.

The one we're going to talk about today

came out of a stakeholder roundtable from last

January. We listened to what the stakeholders

were concerned about, and one of the things that

really popped out was the number of briefs that

kept getting bounced back.

Frankly, when I was in practice for

several years, every time I would get a brief

bounce back it would annoy me and inconvenience

the client. So it wasn't all that hard to get
behind this initiative.

We started working really closely with the patents organization to find out what we could improve. During process mapping we discovered the patent appeals center conducted a formalities review and then forwarded the brief to the patent examiner, and they conducted a formalities review. Then our board's clerical staff would conduct a formalities review and then forward the brief on to the judges to decide the appeal on the merits, which is where we want to get.

Identification of all these steps resulted in an opportunity to evaluate what was redundant and what we could do to improve. We looked at a lot of different options, but everyone pretty much settled on giving the board the ability to review the briefs was the best option. And the rationale behind that is pretty apparent. The rules for brief compliance are kind of there to get the brief and the appeal in front of the judges at the board, and the board would be in the best position to understand if the briefs could be
decided by the judges.

Errors which don't really prevent the board from deciding the appeal really don't think should delay the cases any further. So the examiner also can be confident that once they've got the brief, it's compliant, and they can focus the resources they need to on actually reviewing the case and prepping the examiner's answer.

In terms of results, we went from a high of between 30 to 40 percent cases being kicked back during the appeal brief compliance review to about 8 percent in 2010. So that's a significant improvement. As a consequence, this also inherently reduces pendency by at least one month, given that's the period to fix your brief and avoiding the need for a replacement brief, and a large number of appeals, and the costs, and the annoyance to the client as it were.

We have had some pretty favorable response to this initiative from its inception. From April onward it was immediate reduction in the number of returned briefs, and, you know, ever
since we published this initiative in the Federal Register on March 30th, I think it's been pretty well received.

MR. BORSON: Thank you. Any questions? Comments? Sure. You have a comment?

MR. MILLER: I think it's laudatory to the PTO and to the whole process that you've listened to the public, and this was definitely a sore spot amongst practitioners. There is more to do, but I'm glad that at least this issue has been addressed. And let's continue to do these types of things to make the office run more efficiently.

MR. BORSON: Here, here.

MR. MATTEO: Okay. Great. It looks like we're in position to move on to the CIO update, and we have from the PTO John Owens and I believe also Marti Hearst.

MR. OWENS: Good afternoon. It's nice to see you all again.

So brief update on patent (inaudible) and things are going very well.

Just to recap, Fred is still the serial
lead for patents. Our chief IT strategist, Marti Hearst, has picked up an acting duty as our program manager. We have received resumes, and we are actively interviewing for a direct report to Mr. Kappos and myself, who will be acting as the person focusing on making sure this gets done and done well.

We've also obtained the special help of Mr. William Ulrich, who is a world renowned expert at modernizing IT systems. He has written several books, and I have used his work in the past when I worked at AOL and was migrating CompuServe to the AOL platform. I am very happy to be working with him, and we have his expertise helping us evaluate the deliverables.

The three contractors are working on prototypes. We have daily meetings going on with them, and we hope to see results. We are on schedule. So we have the documentation now on their proposed architecture was just delivered this week, very excited about that.

Here is a couple of dates. So the
prototype will conclude on 2-18, and we are on track for that. The user interface design that Marti is actually leaving with a different set of contractors has a beta demo on January 15th, and we are beginning the conversation on how to convert the legacy data to XML, which obviously is key since we are moving to an XML format going forward instead of a picture.

Let's talk a little bit about the MPEP. Beta 1 for the online tool for public comment as well as the internal XML editing will be in this month, and we are on track for that. We have a Beta 2 planned with a search and annotation for the public -- excuse me -- search and annotation internally and public search capability for the second quarter, a little later. We wanted to make sure that everything was working internally first before we give it to the public and something happens that we didn't plan for. And then, of course, production rollout for everyone global FY 2011.

So this is a big portion of how we're
moving forward, not only with the transparency of
how we're going to present how we do business here
at the USPTO, but allow people to make comment and
collaborate with the world in general on our
practices.

We have a little demo for you, and it's
going to seem odd that I'm going to demo you a
product that was built for trademarks; but this is
why I'm going to do that. Trademark has a product
called TDR. It's the way that they retrieve
documents off of our system, and we decided in
trademarks for their next generation system and
modernization to rebuild this product as one of
the first products we rebuilt. And we built it in
the cloud. The front end is in the cloud. It's
operating in the cloud in the demo you're about to
see. The backend is housed securely here.

This allows us a great deal of
protection, particularly against those that would
mine, or attack our data, or use the public
interface to get data from us without us being
able to say no. So it's an added layer of
security, and we were very pleased on how this
works out. And what you're going to see is a new
paradigm that looks very Web 2.0 like because it
is, and it allows someone to pull down an entire
docket in their original formats in a folder
compressed or the entire docket in a PDF, which
means we dynamically convert all of the
documentation in and embed them in a PDF file.
And we can add more file formats as we go along.
This is something that we are actually considering
releasing not only for trademarks but later for
patents as well.

So I'm going to turn it over for the
demo, please.

MR. VADERNA: Thanks, John. I'm going
to switch over to the demo now. By the way, my
name is Rahal Vaderna. I'm development manager on
the trademarks project for the TDR.

MR. MOORE: I think you're in the wrong
window. No? There we are.

MR. VADERNA: Okay. So I'm assuming
everyone is able to see the browser, also on the
board on the site and also on the website now.

Just to start the demo -- TDR is the Trademark Document Retrieval application. It's an existing public-facing application, and just to give a context how this application looks in today's world versus how it will be looking moving forward. So if you look at this site, this is the existing public facing application. It provides the features as it's shown, which is based on the serial number, international number, registration number. But if you look at it, the feel is not Web 2.0 based. All the dockets and all the pages are based on a different one.

So I would like to give a small demo on the new application. What I'm doing here is I'm trying to search a document based on the U.S. serial number, and the number which I'm going to type on is 76515878. And as John was mentioning, this application is also posted on the Google Cloud, but the web services of the backend component is secured in the USPTO natural. And even if you look at the URL, I know it's difficult
to watch, even the URL for that application is ATC.USPTO.gov which is the government domain name, although the application is hosted on the Cloud. So now if you'll look at the application, the search results, and the results all are showing in one page. It has a Web 2.0 look where we could do sorting on the column based like, for example, put sort based on document description and it sorts in alphabetical order. And I could reverse the sort. Same way I could do it on the mail create date, and it does that.

Another functional (inaudible) provided as part of this application, which is similar to the current application is to show this application in a document viewer without PDF plug-in. And I'm going to show one document. This is the document viewer plug-in, and if you look at it, this shows both the JPEGs and the XMLs in the format of mail friendly, which is STML and also the PDF, the JPEG images.

Another cool thing, this is a small document, but if you have a document which is say
100 page, you could actually switch to those pages automatically, and it just transfers those pages around that.

Another feature which allows you is when you click the download button, it allows you to do a PDF, and it downloads that document as a PDF.

MR. OWENS: The system dynamically converts the content into the PDF on the fly. It's also useful to note that we don't need an extra viewer; that we dynamically convert the content in that viewer to HTML, which means you won't need -- or the graphics to JPEG, which means you won't need a TIF viewer anymore, so we can move into the more modern graphical formats automatically.

So dynamically behind the scenes, we're not only protecting our environment, we're giving you a modern user interface. Above and beyond that, we're dynamically converting the content to something much more useable to you.

Please continue.

MR. VADERNA: In extension to the
current application, we are also providing the original contents for the viewer for further users. If they are not satisfied with these contents, they could download the original one and then format it as per their need. When they download original, it downloads in the form of a ZIP file, and if you look at the contents of the ZIP file, it pretty much provides you the basic contents as stored in the repository.

Content provided means the consumer can take this and present it in its own format and shape. So in the future direction from the web perspective is you provide the documents, and then you could present it to your clients based on your needs.

MR. OWENS: Could you show them how we can convert it all on the fly to a single PDF, please?

MR. VADERNA: Sure. So this is again the selection, and if you do the selection, it converts everything into a single PDF. And if you look at it, this is the full document in the PDF
MR. OWENS: That's all those documents you saw there checkmarked converted on the fly into a PDF and delivered as a single file.

MR. VADERNA: In addition to this, what additional capabilities from an administration perspective we provide is, if you look at it, this site is, again, based on the Web 2.0 principles where help is hidden behind the question mark. So that if the user needs to see the help, the could see the help, and if you look at it, this is the format the help is.

Right now I'm logged on as an admin, so it allows me to change the help online dynamically. So I'm going to show you how I could change the help.

MR. OWENS: This was important for us here internally at the USPTO. Before when we need to change websites, change help or text dynamically, there was a process by which patents would have to fill out a work request. The CIO would have to perform, do a bill, do a push, and
it was very, very long.

Now we are giving the ability for trademarks, and when we have a product like this for patents, the ability for them to control the text, the look and feel, the help, the comments, the facts, or the FAQs all dynamically without us having to do a build. It takes CIO no time whatsoever, and it's on the fly.

So we have removed CIO from having to oversee the text, very much the same as we're removing the CIO from the publication of the MPEP like we did for removing the CIO from publishing web pages.

My organization is a facilitator of services not a publication unit, so it is very much our goal to remove ourselves from that and put the control directly into the hands of patents and trademarks, which is important. Less important for you all, but very important for us internally here.

MR. VADERNA: So just to demonstrate what John was suggesting is I'm going to change
the number from 5727 to 935229354. And if you'll look at it, this number is changed dynamically at the same time, and it is available to user to see it and its live change on the application in the production.

Similar functionality, we are providing the (inaudible), which is to provide if the system maintenance is down or if there is new announcement coming for the TDR from an application perspective or from a news perspective. It could do those changes also dynamically. So just the same concept but a different idea and different business process. If I save it, it just shows up automatically there.

So that's on the business functionality. At the same point in time, we also introduced the web services, which are exposed to the external vault. And I'm going to show a couple of examples how those web services are exposed, which any consumer can use those web services for their application, in-house applications or building applications as of it. And one of the example I'm
going to give it is -- the search which we did first, based on a serial number, and it returned a result set. It returns a result set in an XML format, which will showed on an STML in a web tool format. But this is the result set which I did a search automatically and it could show up on your browser. You could use the same URL, build your application on top of it, or build your data mining tools on top of it. This is one example which gives you the metadata about a document.

Another example which I showed in the document viewer is you could look into the document viewer, and instead of the document viewer, it would show up in an STML format on your browser directly.

So we say this example in the document viewer. Now we are seeing the same example without the document viewer capabilities but into your native browser. This is the STML format, but we could also deliver it in the native format of the document, which is content.XML if I do it. And it returns me the document in its native
MR. OWENS: So this is important because we have a large number of organizations around the globe as well as in the country that want to interface directly with our content. Of course, up to this point, we haven't provided those interfaces or those web services that they could use.

The Google front end that exists in the Cloud that was demoed previously uses these same set of interfaces, which we could now public to anyone, and we still afford all of the same protections internally against abuse; and anyone can use them. They could build their own products and services to use these tools freely without us getting involved.

This also disaggregates our interfacing our front end user interface from our backend development effort. We can continue to develop our core infrastructure and not affect negatively the front end, which is important because we're going to be using that Agile iterative model I was
describing to you earlier in our past meetings
because those two things will be built
independently, largely.

So this is demonstrating -- by the way,
we did use Agile development practices to build
this product. We have also used all the most
modern technologies.

So I'm going to end the demo here, but I
wanted you to know that above and beyond anything
else, though this isn't a patents product, it does
demonstrate that our own organization did build
this product. We worked with contractors doing
the front end. The backend web services were
built by USPTO federal employees that are
developers, which is a big change from where we
were a year ago.

So I know it looks like a lot of
gobbledygook, and you're probably saying, wow, the
CIO just geeked out on me. I don't know what he's
really talking about. But there's a bunch of
things to be exemplified here, and just a quick
recap because I do think it's important to build
your confidence as we move forward with the
patents end to end system: Built on modern
technologies, built on a cloud platform, built
with flexibility, built with user interface and
user intentions in mind, providing capability that
they don't have today. Though it's not radically
different, we are moving towards there. It was
done in iterative development, and above and
beyond that, it's flexible.

Okay. All right. I'm sorry to take so
much time, but we'll get right into the next big
thing that we're doing, which we've talked about
before, is the new laptop. And I'm happy to say
that the very first laptops in the beta one
program were delivered yesterday. Unfortunately,
someone forgot me. I'm not until next week. I'm
a little disappointed in that, but that being put
aside, the first laptops for beta one planned for
December. We did make it; 100 users are getting
the beta laptop.

We're about to shift over to the other
camera. I think those that -- nope. That's me.
There we go. And we're going to show you the tools, the patent examiner tools being worked. I know Robert has been very cooperative with us as POPAs representative to make sure that the best is given to examiners.

And, again, the laptop is one of the most modern we can buy today. It's on the most modern platform with the most modern security patches put on it, Office 2010, as well as all of the old products and services. And trust me, getting some of these old applications to work on this platform was quite interesting. Though we look at -- I know Marti and I look at replacing here in their future. We wanted to make this update now. The best way to sum it up is folks are impressed with the speed and performance of this system. It will make a difference. I don't want to speak for Robert, but that's at least my opinion.

So why don't we take it away. Go ahead with the demo.

MR. MORRIS: All right. Hello. My name
is Terrel Morris, and I work with Fred Schmidt and Sira. And I typically do these presentations and show everybody all of the different software applications that the examiners use, but there's not a lot of time left.

What I would like to show you are some of the main programs that we use. For example, East I have over here, which allows us to search for patent data, and I have already performed a search in here. And I can browse through it just like I could on the old system. This new system, as you can see, we can flip through this very rapidly. Even do the auto flip that examiners are used to, flipping through there, highlighting from the search terms that were put in there is exactly the same as it was before.

And that's the really the point of the demo is all of the tools that examiners currently use perform exactly the same way on the new laptop as they did on our old platforms, except the new platform provides it that much more quickly because of the multiple core processors and the
larger RAM.

The biggest different that we have is the switch to Office 2010, and you can see that while we can create our own office actions just like we have in the past, just the software itself is considerably different with the ribbons that we have. But we have managed in here -- you can see we put all of our Oaks special features in one place instead of having them in dropdown menus. So it does help it make it more convenient than it was before, and we still get the speed boost with it.

In addition to that, we have the ability to continue doing our electronic red folder processing, so we can initial off on IDS's and whatnot, putting all of our special tags on them and saving them to the electronic red folder. That then allows us to -- let me get back to Oaks -- go to our console and post these office actions off to wherever we need them to go. Like this one here is already off for review by a supervisor, and they can -- I can't do it from her because I'm
not logged on as a supervisor -- could approve the
office action and then have it counted and mailed
so that our external customers will receive the
office actions, all of this, again, working
seamlessly with the same manner that it used to
work on the old platforms.

Our TSS also had the ability to open up
Madras, and, again, even though this one seems to
be written in a DOS shell, it still works just as
well. I apologize. It has a blue background. It
blends right in, so it's hard to tell that there's
actually a window there. But you can go in
through here and open up an application just by
using the normal functionality networks. They're
wonderful.

There we go. Always if it criticize it,
it makes it faster.

Okay. So we have the table of contents
and everything else that was typically done from
this. So everyone that is in the patent core
still has access to all of the tools just as they
did before. They have all the same functionality
they had before. Nothing has changed, except that it is much, much faster, and it puts us into a position to move forward with patents end to end and the use of new tools.

MR. OWENS: Of course, along with this comes, if we could pan out a little bit -- at the same time we're deploying the laptops, we're also deploying a brand new voice over IP phone system. Unlike the voice over IP phone system many of us do not today that we have deployed based on the Nortel system, which was very much a first generation type system, this is a fifth generation system, one of the most modern that you can possibly get.

It is crystal clear, and I would ask that anyone that would like to walk up to it and place a phone call, you can do so. International calling is blocked of course, but the phone is fully functional and operational. Yes. It does have a color display with a picture of our Randolph Square Building on it.

But this phone system has been in
deployment in one of our buildings for over a year. It has been very well received, excellent quality and support services. It also has a software counterpart. We're leaving it to each business unit to determine whether or not the examiners will get a handheld phone set or a headset, as needed. Obviously there are certain limitations. You don't want to carry that around with you. It's kind of big and bulky, but it will bring a much more stable phone environment to our organization to replace that old Legacy piece of equipment that we've been toting around for quite some time.

We're also in the middle of the evaluation or at the end of the evaluation now for a new collaboration suite for video conferencing, desktop sharing, document sharing, and so on, which as we look to expand with our teleworkers across the continental United States, we are going to need those capabilities to keep better in touch, and that evaluation should be over this month.
So -- and just to recap, we have -- all right. The first beta starting now; that's 100 users. Come January, the second beta starts. That adds another 200, and come February we have a third beta that adds another 200 users. The first examiners will see it in the second beta, and the deployment starts -- my commitment to Mr. Kappos that it would start in second quarter fiscal year this year. It will be the very last possible moment, unfortunately, the way the schedule worked out, but I will -- I do plan on making that commitment. It will happen. And then we go into a full rollout. Mr. Kappos would like it done by the end of this year or next year. Fiscal years confuse people, but it might take us a little bit longer since there are 15,000 people to really take care of including contractors. Of course, contractors will get it last. But we do have permission from all three unions to move forward, and we are very impressed with the program so far.

I'd like to give a special thanks to Wendy Garber. Some of you might remember Wendy.
She is acting as our special SES and helping me manage through these issues and certainly appreciate all the support I'm getting from Fred Schmidt and Sira.

That's it.

MR. BOORMAN: Okay. Thank you, John.

Any comments?

MR. ADLER: Yeah. I have a comment. This is great. I mean, thinking back a year where you were and when you came and talked about the architecture and trying to wire things together by hand it felt to where you are now on the cloud computing, using the consulting, the speed of the progress has been great. I just want to say is really impressive. I mean, considering where you were and where you are, and I usually don't say anything nice. So I figured might as well take it for who it's coming from. All right. Thank you.

MR. OWENS: I'd like to thank you for that, and certainly express my thanks for the entire team. It is a team effort. It is patents and as far as trademarks, it is trademarks. It is
the entire business unit. It is the support of my
team.

Of course, it wouldn't be possible,
certainly, without the proper funding, and I know
as we examine that going forward, one of the
biggest risks -- my job usually is to handle the
risks, but sometimes I will take the opportunity
to talk about them. My biggest risk of course is
coming across a lack of funds. That has had, in
the past, a serious detriment to the progress, and
last year we got focused. Mr. Kappos championed
in the organization to push for the funding
necessary to get this done, and if that were to
change, our progress would significantly dampen.
And I don't want to see that happen, and I know
Mr. Stoll doesn't want to see it happen either.

But thank you very much for the praise.

It's very welcome.

MR. MATTEO: And I would echo that.

Early on I was the lead on the OCIO relationship
for (inaudible), and from the inside from where we
were to where we are now, John and their team has
done phenomenal work in an amazing amount of time, so (inaudible).

MR. BUDENS: I'd like -- John, a quick question. First of all, so that you aren't putting words in my mouth, I would agree with what you said earlier. They have demoed this for us. I brought in all the officers of POPA plus our automation team and stuff like that. I must say we were a bit more dazzled than I expected to be, so we're looking forward to getting these tools out.

One question I had, and I just want to make sure I didn't hear wrong, did I hear you say that in the second -- that the examiners aren't going to get these until the second beta or the first because my impression was that we were going to be in both the first and second -- or in the second and third beta, the January and February betas.

MR. OWENS: That would be accurate, the January and February betas. Yes.

MR. BUDENS: Okay. For some reason I
thought I just heard you say the February one, and
I was like --

MR. OWENS: No, no, no.

MR. BUDENS: I was having a heart attack there.

MR. OWENS: No, no. January and February is still accurate. If I misspoke, I
apologize.

MR. BUDENS: Okay.

MR. OWENS: That is still accurate. As far as the cost, obviously we covered a lot today.

You can narrow it down for me. I can tell you in the supplemental that we received last year, money
was earmarked for certain things. Laptop replacement, it wouldn't cover it all, but $20 million was set aside for that out of memory. I could be wrong. And $10 for the replacement of the collaboration tools, the phone system, et cetera.

So I can, of course, provide accurate numbers later, but I believe in a previous presentation I talked about that. So I would
stand corrected by any written paper that exists,
but there are various costs.

Thank you, Robert, by the way.

MR. BORSON: Okay. Thank you very much,
John. Damon, do you have anything to add at this
point?

MR. MATTEO: No. I would like, however,
to (inaudible) questions for John. If not, we can
proceed to wrapping up the public session here.

MR. BORSON: There doesn't seem to be
any call for further comment from here, Damon.

MR. MATTEO: Okay. So unless there are
any comments on any topic, what I'd like to do
first is point everybody to the PPAC website where
they can find a copy of our annual report just
released at www.USPTO.gov/(inaudible)/PPAC, and
you can also get a copy of (inaudible) at the
website as well.

So if there are no further questions or
comments from the floor, I'd like to end the
public session and perhaps take a 10 to 15 minute
break to clear the room and make the appropriate
technical adjustments. And we'll convene with the executive session (inaudible) minutes after the hour.

Thank you very much.

(Whereupon, at 1:10 p.m., the PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

I, Stephen K. Garland, notary public in and for the Commonwealth of Virginia, do hereby certify that the forgoing PROCEEDING was duly recorded and thereafter reduced to print under my direction; that the witnesses were sworn to tell the truth under penalty of perjury; that said transcript is a true record of the testimony given by witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was called; and, furthermore, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

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Notary Public, in and for the Commonwealth of Virginia

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