

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Thursday, September 1, 2011

1 PARTICIPANTS:  
2 PPAC Members:  
3 DAMON C. MATTEO, Chair  
4 MARC S. ADLER  
5 D. BENJAMIN BORSON  
6 LOUIS J. FOREMAN  
7 ESTHER KEPPLINGER  
8 MICHELLE LEE  
9 WAYNE SOBON  
10 Union Members:  
11 ROBERT D. BUDENS  
12 CATHERINE FAINT  
13 VERNON A. TOWLER  
14 Also Present:  
15 PEGGY FOCARINO, Patents  
16 JANET GONGOLA, Patent Reform Coordinator  
17 AZAM KHAN, Deputy Chief of Staff  
18 DAVID LANDRITH, Portfolio Manager  
19 JOHN OWENS, Chief Information Officer  
20 ANTHONY SCARDINO, Chief Financial Officer  
21 JAMES SMITH, Chief Judge, Board of Patent Appeals  
22 TERESA STANEK REA, Deputy Director of USPTO

1 PARTICIPANTS (CONT'D):

2 ROBERT STOLL, Commissioner for Patents

3 TOM STOLL, Congressional Affairs Specialist

4 BOB BAHR, Associate Commissioner for Patent Examination Policy

5 NICK GODICI

6

7

8

\* \* \* \* \*

9

10

11

12

13

14

15

16

17

18

19

20

21

22

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

2 (9:03 a.m.)

3 CHAIRMAN MATTEO: I call to order this  
4 public session of the Patent Public Advisory  
5 Committee.6 My name is Damon Matteo, the chairman,  
7 and what I'd like to do is introduce around the  
8 table the members in attendance. So perhaps we  
9 can start on my left and work our way around.10 MS. FOCARINO: Okay. Peggy Focarino  
11 from Patents.

12 MS. KEPPLINGER: Esther Kepplinger, PPAC.

13 MR. FOREMAN: Louis Foreman, PPAC.

14 MR. ADLER: Marc Adler, PPAC.

15 MR. BUDENS: Robert Budens, PPAC.

16 MS. FAINT: Cathy Faint, PPAC.

17 MR. T. STOLL: Tom Stoll, PTO.

18 MR. BORSON: Ben Borson, PPAC.

19 MS. LEE: Michelle Lee, PPAC.

20 MR. SOBON: Wayne Sobon, PPAC.

21 MR. R. STOLL: Bob Stoll, PPAC-PTO.

22 MS. REA: Terry Rea, PTO.

1                   CHAIRMAN MATTEO: Thank you very much,  
2 everybody. As is my habit at the beginning of  
3 every meeting, I do like to repeat the fact that  
4 PPAC membership was invited to participate on the  
5 basis of their wide perspectives and different  
6 constituencies. But, of course, all of us here  
7 leave our hats at the door and we represent only  
8 the interests of the PPAC and the PTO. So, we all  
9 speak from that perspective alone. I do want to  
10 remind anybody who's either watching online or on  
11 the phone that both the agenda and the  
12 presentation materials from today can be found on  
13 the PTO website, and to the extent that anybody  
14 has any questions or comments during the course of  
15 the conversations today, we can receive e-mails at  
16 askPPAC@uspto.gov. We won't be able to answer those  
17 questions real time, but in the breaks we'll make  
18 an effort to get those questions answered for you.

19                   All right, and without further ado, what  
20 I'd like to do is introduce -- let's see, who's  
21 speaking for the PTO -- Terry? All right, Terry  
22 Stanek Rea will provide the comments for the

1 USPTO. Thank you.

2 MS. REA: Thank you so much, Damon.

3 It's an honor to be with you here once again. I  
4 am very, very proud to always participate in these  
5 PPAC meetings. These are very talented, focused,  
6 hard-working people who have the best interests of  
7 the PTO and the stakeholders in their minds when  
8 they're spending all the time away from their day  
9 jobs and families to participate here today. So,  
10 to those of you who are viewing this Webcast, I do  
11 hope you know how much time and preparation goes  
12 into these meetings, not just on the side of the  
13 PTO but by each and every one of these PPAC  
14 members. Their talents are truly appreciated, and  
15 their dedication should be appreciated not just by  
16 those of us here in the PTO but from all of the  
17 user community.

18 Now, the PPAC, we count on them  
19 providing their unique talents and keen insights,  
20 and we do follow their guidance. We take their  
21 oversight and their comments seriously, and we  
22 attempt to sort of change our direction in terms

1 of developing best practices and expanding our  
2 focus and our outreach.

3 Now, we're in a new era right now, a new  
4 era of cutting-edge tools. We're looking for  
5 innovative jobs and next-generation industries.  
6 So, our job and our task right now is quite  
7 serious, and that makes the cooperation not only  
8 between the PTO and the PPAC vital but between the  
9 PTO, the PPAC, and the entire user community. We  
10 have candid conversations here. We look at what's  
11 left to do. We try and focus and prioritize all  
12 of our many, many issues.

13 I also want to take a moment to thank,  
14 on my right, Bob Stoll and on my far left, Peggy  
15 Focarino for their leadership and insight and  
16 vision, because they, along with my boss, Director  
17 Dave Kappos, are really the drivers of the Patent  
18 side of the office, and I think they do an  
19 excellent job. Our statistics are ever, ever  
20 increasing, and those will be provided later, but  
21 I think that things are going in a positive  
22 direction, a positive slope, and we're trying to

1       increase that rate of acceleration.

2                   I have a few landmark initiatives that I  
3       just wanted to very, very quickly highlight.  
4       We're always trying to improve quality while  
5       trying to manage compact prosecution. So,  
6       whenever you hear about our acceleration  
7       initiatives, keep in mind that Bob Stoll and Peggy  
8       Focarino have created some very, very good quality  
9       metrics to be certain that we maintain the highest  
10      quality possible while being more efficient with  
11      our reviews of patent applications.

12                   We have the Green Tech Pilot Program,  
13      which is very, very successful, as well as our  
14      Peer-to-Patent Initiative. Recently we expanded  
15      our First Action Interview Pilot Program to cover  
16      all of our technology centers. To those of you in  
17      the audience, the First Action Interview Pilot  
18      Program -- if you are not familiar with it, I  
19      strongly recommend that you look on the PTO  
20      website, because you have an opportunity to engage  
21      in discussions with an examiner very early in the  
22      prosecution, and our statistics demonstrate that

1       there are less actions needed per application if  
2       we do engage in this very early dialog.

3               We also are doing an awful lot, as I  
4       indicated, with the Green Tech Pilot Program,  
5       where we're making significant investment in  
6       cleaner energy technologies. And so far with  
7       Green Tech -- that's something I'm particularly  
8       proud of -- we've had -- more than 1,900 petitions  
9       have been actually granted, and we've issued over  
10      350 patents to date. Our 350th patent related to  
11      a configuration for a new model of a wind turbine  
  
12      housing. So, to those of you who work in the  
13      green energy area, I also strongly recommend that  
14      you look at this program. You can have  
15      accelerated review of your application without  
16      paying a fee.

17              We also, I'm pleased to report, are  
18      going to celebrate the issuance of Patent No.  
19      8,000,000 on Thursday, September 8th, and we're  
20      very proud of that, and we hope that many of you  
21      will observe and read about that ceremony.

22              We also wanted to say that patents are

1 truly the vehicles for all companies and  
2 innovators, and we know how important the patent  
3 system is to you, and we know how efficient we  
4 have to be, so as I mention frequently we're  
5 always constantly retooling our IT infrastructure.  
6 We've recently modernized our petition system.  
7 The Patents Dashboard as well as the Trademarks  
8 Dashboard give you real time, live updates; give  
9 you quality metrics on a lot of what we're doing.  
10 We're streamlining our MPEP and TMEP so that once  
11 again you can see updates and changes more  
12 quickly. Our community Wiki is also being  
13 developed, as well as we're coming up with a  
14 faster set of examiner search tools where  
15 examiners will be able to identify information  
16 earlier and just to make our overall patent  
17 examination process more efficient.

18           Probably the most important thing that  
19 we're doing right now, however, is working toward  
20 communicating and advising on the America Invents  
21 Act. I do think it's time that we revised our  
22 patent laws to follow this ever- changing, rapid

1       technology and this very critical business  
2       environment. So, we are optimistic that the bill  
3       will be on the President's desk hopefully sometime  
4       in September, and we are working to build the  
5       bipartisan support so that Act actually occurs.

6                 You will be hearing from of my very  
7       talented colleagues shortly, Janet Gongola, and  
8       she's actually -- I guess you could call her the  
9       patent reform zarina right now within the Patent  
10      Office. (Laughter) And it's her job to make sure  
11      that we have a smooth, timely implementation of  
12      everything that we are to do within the Patent  
13      Reform Act. You know, it sets out an awful lot of  
14      tasks for us here at the PTO. We have a lot of  
15      changes to make, and we want to be very careful,  
16      and we want to make the best decisions possible.  
17      But we also want to make sure all the trains are  
18      running on time, on target, and that's going to be  
19      Janet's goal. So, I would pay special attention  
20      to her portion of the program.

21                 Let's see, Bob Stoll is doing an  
22      excellent job in reducing the backlog. I'm going

1 to steal a little bit of his thunder and as of  
2 yesterday our backlog is now at 682,367. So, we  
3 were celebrating breaking that 700,000 number, and  
4 now we're seeing a rapidly decreasing slope, and  
5 we're really catching up with the patent backlog.  
6 And I think that Bob Stoll and Peggy Focarino  
7 should really be applauded for their efforts now,  
8 because all of their frontloaded hard work is now  
9 coming to fruition. So, as that number goes down,  
10 I guess we'll quit celebrating at some point; but  
11 for the moment, we are still fully enthused and  
12 we'd like to see that number continue going down.

13 Let's see, I think once again just  
14 thanking the PPAC for everything that they've  
15 done, for continuing to collaborate and to  
16 communicate with us. We are going to be working  
17 with PPAC rather closely once the America Invents  
18 Act actually gets enacted into legislation. We  
19 want the guidance not only from PPAC but from our  
20 entire user community. So, please also pay  
21 special attention, as Janet will likely be telling  
22 you, to the PTO website, where we have a specific

1 site dedicated to the implementation of the  
2 America Invents Act, and we are soliciting your  
3 input and ideas early, because we're going to have  
4 to move very, very quickly when we send out our  
5 notices of proposed rulemaking.

6 And with that, I wanted to thank you and  
7 thank you, Damon.

8 CHAIRMAN MATTEO: Great pleasure,  
9 Teresa, thank you so very much. I always enjoy  
10 your comments.

11 And I'll have to make a comment of my  
12 own, Janet. "Patent reforms arena." I definitely  
13 want a copy of your business card. I need to see  
14 that for sure.

15 Actually -- I'm sorry -- I just got  
16 late-breaking news here. Whomever has a cell  
17 phone near your microphones, if you could move it  
18 away, we're getting some sort of feedback. So  
19 everybody move. (Laughter) Unclear who it is.  
20 Good. Thank you very much.

21 So, without further ado, his thunder  
22 slightly diminished, Bob Stoll will speak to us

1 from Patents.

2 MR. R. STOLL: Thank you very much,  
3 Damon. Good morning, everybody. How's everybody  
4 doing this morning?

5 GROUP: Great. Good.

6 MR. R. STOLL: Good. Well, I think it's  
7 going to be an interesting meeting today to talk  
8 about a lot of the issues facing the United States  
9 Patent and Trademark Office.

10 I first want to thank Terry for her  
11 leadership and involvement in patent issues. She  
12 has a strong background in patent issues and is  
13 engaged in everything we do, and Peggy and I both  
14 appreciate Terry's involvement and her guidance in  
15 issues related to patents.

16 And I want to thank the PPAC. We've  
17 been working very closely together on many  
18 projects. Marc helped us very much so with our  
19 quality evaluations, and I think that they are  
20 moving in the right direction, and we're seeing a  
21 lot of great things there.

22 People are consulting on all different

1 types of issues. I expect a very active year this  
2 year, particularly if, as planned, the bill AIA  
3 gets brought to the floor of the Senate in the  
4 first week -- beginning next week -- of September,  
5 which I anticipate will be brought to the floor;  
6 and I think we're going to have a lot of work and  
7 a short time frame that Janet will be talking  
8 about later.

9 I also want to talk about the fact that  
10 we are in fact dropping below 700,000 applications  
11 in our backlog. That's a big deal. We have a 4.2  
12 percent increase in filings and anticipate that  
13 through the end of the year, so we are actually  
14 making more progress than it actually seems from  
15 the numbers themselves. Our allowance rate is  
16 also going up because of our compact prosecution  
17 and cooperation between applicants and examiners,  
18 and we're now seeing about a 47.1 allowance rate.

19 So, those are the things I want you to  
20 carry away from today.

21 Patents is moving in the right  
22 direction. I expect that we'll be working very

1 hard to actually undertake more efforts. Terry  
2 said that we were very close to our goal and we'll  
3 make it by the end of the year for our COPA  
4 program. I would say we may make it by next week,  
5 and we are in discussions with our unions about  
6 maybe adding a kicker to go even further so that  
7 can actually reduce those even more before we  
8 enter the next fiscal year.

9 With that, I'd like to just turn it back  
10 over and let's get rolling and answer any  
11 questions we might have as we go along. Thank  
12 you.

13 CHAIRMAN MATTEO: Thank you very much.  
14 Appreciate it, Bob.

15 Next up we have the legislative update.  
16 On the PTO side we have Tom Stoll, and on the PPAC  
17 side -- where did he go? Oh, here he is, Wayne  
18 Soban.

19 Thank you very much. Please, if you  
20 would.

21 MR. T. STOLL: Thank you. Just wanted to start  
22 by saying I'm the quieter member of the family.

1 I'll try to speak up. (Laughter)

2 Speaking of stealing thunder, my first  
3 slide addresses H.R. 1249, and of course everyone  
4 knows it passed the House in June of this year by  
5 a vote of 304 to 117. And as was mentioned, the  
6 Senate is expected to take up the legislation in early  
7 September. Senator Reid filed a motion for cloture before  
8 recess, which means the Senate can take up that  
9 motion to invoke cloture when it returns, which would cut off  
10 debate at 30 hours and significantly limit  
11 amendments that could be filed to the bill. And  
12 so it's very likely we'll see a vote on cloture on  
13 the 6th, assuming there's no pre-season game or  
14 presidential debate that would interfere, which I  
15 don't think is going to be a problem. So, we  
16 could see the Senate vote on the bill as early as  
17 later in the week or the following week, and it  
18 could be on the President's desk by mid-September.  
19 So, that's pretty exciting.

20 And as was also mentioned, we have a lot  
21 to do under the bill. There's a lot for the PTO  
22 to do. There's a lot of rule making

1 implementation of those rules, and there are several studies,  
2 but I'm going to leave it to Janet Gongola to give you the  
3 details about, what we need to do there, and about our  
4 website page that's been created to help us  
5 collect the input from the public on the  
6 recommendations of how we should implement the  
7 legislation.

8           So, what other legislation is pending  
9 before Congress that's IP related? Well, there's  
10 S.968, which is -- it's got a great long title  
11 -- Preventing Real Online Threats to Economic  
12 Creativity and Theft of Intellectual Property Act,  
13 and it's got such a long name because that makes  
14 it have a cool acronym: PROTECT IP Act of 2011.  
15 And the reason this legislation is being enacted  
16 is because law enforcement, DOJ working closely  
17 with the Department of Homeland Security in  
18 connection with Operation In Our Sites, has been  
19 working to take down illegal websites that sell  
20 pirated content or counterfeit  
21 goods to U.S. consumers online. And in taking  
22 down these sites they discovered there has to be,

1 of course, a U.S. connection that these sites  
2 have. Most of the sites that we've been going  
3 after so far have been .net or .com and so  
4 we can go to the U.S. registry and serve a court  
5 order against them to seize the domain name, which  
6 effectively blocks all access to that site no  
7 matter where you are in the world. But we have no  
8 authority -- law enforcement has no authority at  
9 this point to go after websites that are owned,  
10 operated, and registered overseas. So, what this  
11 legislation does is provide DOJ with the authority  
12 to go into court and get an order that would  
13 require the ISPs to block access to the sites by  
14 U.S. consumers, or get an order that would require  
15 search engines to not produce the website as a  
16 search result. It also authorizes both the  
17 U.S. Attorney General and private rights holders to get  
18 an order that would require payment processors  
19 -- credit card companies and the like -- to block  
20 payment to these websites and also block ad  
21 brokers from providing additional revenue as well.  
22 So, that legislation has been marked up in the

1 Senate Judiciary Committee. They passed it on May  
2 26, and we're also expecting that the House is  
3 going to introduce a related bill in the coming  
4 months.

5 Another piece of legislation that's  
6 pending in the House is H.R. 2511, and it's titled the  
7 "Innovation Design Protection and Piracy Prevention  
8 Act," and it essentially establishes copyright-like  
9 protection for original fashion designs. And  
10 that's been referred to the Subcommittee on IP  
11 Competition and the Internet.

12 So, my next slide is USPTO Funding, but  
13 I'm going to hold off and not steal Tony Scardino  
14 and Bruce Kisliuk's thunder here. So, I'm just  
15 going to skip to the next slide. It's going to  
16 make my talk go a little quicker.

17 All right, so telework. Telework  
18 legislation passed last year, and we've been  
19 spending that time developing operating procedures  
20 that would allow PTO employees to live remotely  
21 and not have to travel back on a regular basis to  
22 the PTO. And we've been working with the unions,

1 and there are MOUs now signed with the USPTO  
2 unions. Those were signed July 5th of this year.  
3 And implementation begins within 30 days once we  
4 get approval from GSA to implement our telework  
5 program, and we're excitedly anticipating that  
6 that will happen soon, and we're looking forward  
7 to that.

8 And with that, I'll take any questions  
9 you might have and turn it back over to Jim.

10 CHAIRMAN MATTEO: No questions? Okay.  
11 So, with that, why don't we move to the finance  
12 update? Tony Scardino from the USPTO.

13 MR. SCARDINO: Good morning. Thank you  
14 for having us.

15 I kind of want to go through an overview  
16 of where we are from a funding a situation, and  
17 then Bruce Kisliuk is going to actually walk you  
18 through some slides.

19 I always like to start out with the big  
20 picture of Fiscal Year '11, '12, '13, because  
21 we're always living in two and/or three fiscal  
22 years at the same time: The current year and the

1 year that you're debating with Congress on, and  
2 then the one you're planning for, which is '13.  
3 So, for '11, today marks, obviously, the beginning  
4 of the last month of the fiscal year, so we are  
5 operating at \$2.09 billion, which is a little bit  
6 less than what we're actually going to collect in  
7 fees this year. So, we will, unfortunately, not  
8 be able to spend somewhere between 70-, \$80  
9 million of fees that we collect. If AIA passes,  
10 as we all know that's hopefully going to correct  
11 the situation we've dealing with the last couple  
12 of years, but we'll go through that in later  
13 slides here.

14 What we're really worried about or  
15 concerned about and planning for right now is the  
16 Fiscal Year 2012. It's most likely that we're  
17 going to be living under a continuing resolution.  
18 Theoretically, Congress could pass a bill that we  
19 think will have a continuing resolution. Will  
20 that be for four weeks? Eight weeks? Six months?  
21 Nobody knows. We're planning for right now within  
22 the administration I think seven weeks, but I

1 don't know if there's anything definitive about  
2 that. I think that's just right now what people  
3 are planning for. It affects our life as well as  
4 any federal agency's, but ours tremendously  
5 because the President's budget request is \$2.7  
6 billion while the CR rate would be \$2.09 billion.  
7 That's a \$600 million swing.

8           Now, many things could happen under a  
9 continuing resolution. They could put in an  
10 anomaly for us. An anomaly could be access to  
11 full fees, as we collect, as I mentioned, more  
12 than 2.090 this year. We could also get the  
13 President's budget request, some pro rata amount:  
14 2.7 billion times, let's say, with 6-month CR,  
15 we'd get half of that. Or they could -- Congress  
16 could enact something somewhere in the middle,  
17 give us just the surcharge authority, 15 percent,  
18 or they could just give us Track One authority, or  
19 they can give us none of the above. We don't know  
20 what's going to happen. Nobody does. I would  
21 argue that no one on the planet actually knows  
22 what's going to happen in this appropriation cycle

1 after the debt limit ceiling and everything that  
2 we've been going through over the last few months.  
3 So, it makes it challenging.

4 CHAIRMAN MATTEO: Excuse me, Tony?

5 MR. SCARDINO: Yes.

6 CHAIRMAN MATTEO: If I may, are there  
7 existence proofs for all of those scenarios you  
8 laid out?

9 MR. SCARDINO: Yes. In fact, we work  
10 very closely with Director Kappos and under Deputy  
11 Undersecretary Rea on things like that. We're  
12 kind of in a holding pattern right now, in fact,  
13 that you plan for the worst and hope for the best.

14 CHAIRMAN MATTEO: Actually, I'm sorry, I  
15 meant -- clearly you're planning for the different  
16 scenarios. I meant are there existence proofs.  
17 In history have all those scenarios played out?

18 MR. SCARDINO: In history at PTO or just  
19 any organization?

20 CHAIRMAN MATTEO: I'm trying to get --  
21 you laid out a number of different scenarios.

22 MR. SCARDINO: Yeah.

1                   CHAIRMAN MATTEO: I'm trying to get a  
2 sense of if they've ever --

3                   MR. R. STOLL: Some have.

4                   CHAIRMAN MATTEO: -- advanced a little  
5 bit further.

6                   MR. R. STOLL: I mean, for example, we  
7 have anomalies before. We've also not been  
8 included in anomalies before.

9                   CHAIRMAN MATTEO: Right, right.

10                  MR. R. STOLL: We've all of that in  
11 certain ways happen, probably not all together  
12 (laughter), but hopefully they'll be more  
13 enlightened this time.

14                  MR. SCARDINO: Yeah, it's difficult to  
15 speak for, obviously, a body as diverse as  
16 Congress. When people say "Congress," they're  
17 thinking well, Congress will support this or they  
18 won't. Congress has 535 members, so no one can  
19 actually predict what they're going to do. I do  
20 know that anomalies have been challenging over the  
21 last few years for all federal agencies. They're  
22 trying to pass very clean bills when they do a

1 continuing resolution, which I think puts pressure  
2 on folks in the administration and Congress to  
3 then pass an appropriations bill. But, again,  
4 that's my personal opinion, not even my CFO  
5 position.

6 So, as I mentioned, you know, there are  
7 various scenarios that we're planning for. The  
8 challenge, of course, becomes trying to meet our  
9 strategic plan goals, the administration  
10 priorities, pendency and backlog issues with  
11 patents. If we can't hire more people, we can't  
12 really meet these goals. If we can't pay for  
13 overtime, we have less productivity. So, that's  
14 where the challenge has been, and, you know, Bob  
15 reminds me in a very subtle way once in a while  
16 that it would be nice if we could turn some of  
17 these back on such as hiring in overtime. So,  
18 that's our goal. That's certainly Director  
19 Kappos' goal. Once we know -- and if AIA passes  
20 in a couple of weeks -- then we will start to turn  
21 things back on judiciously and prudently. You  
22 know, there's a lot of work to be done between now

1 and then and then after then of course  
2 implementing the bill. But if we do have the  
3 search art authority 10 days after the bill's  
4 enacted we could start charging surcharge, which  
5 means more money would be coming in and then we  
6 could spend more money.

7           So, while we're delivering all of this,  
8 we're trying to plan for Fiscal 2013. It's very  
9 challenging to do so when you don't know what your  
10 funding level's going to be in 2012. Still,  
11 that's how all federal agencies are operating  
12 right now. Our budget request to OMB is due  
13 September 12th. You've all seen or been provided  
14 drafts. We met with the Budget Subcommittee  
15 yesterday, went through the details of our budget  
16 requirements for 2013, as well as our estimated  
  
17 fee collections. We will be working within the  
18 administration with OMB. Very soon after  
19 September 12th, once we give it to them, they'll  
20 be asking us questions and things will crystallize  
21 a little more firmly, I guess, when we actually  
22 know whether AIA passes or what our funding level

1       for '12 is at least for the first couple of  
2       months. Our concerns are with the first quarter,  
3       of course, because that's when most likely we'll  
4       be living on a continuing resolution.

5               So, having said that, Bruce is going to  
6       walk us through a few more details on what I've  
7       just given an overview for.

8               MR. KISLIUK: Okay, thanks, Tony. I'm  
9       going to go through what is our standard  
10       checkbook, and it really points to our collections  
11       and our spending for '11, and then I'll talk a  
12       little bit more about our '12 and '13 plans.

13               So, on the fee collection side, of  
14       course we've been projecting ranges to allow for  
15       some of the assumptions. But of course, as the  
16       year goes on, there's a reality that it could  
17       start standing out within the range. Right now  
18       our current estimated projection on fee  
19       collections for the agency is 2,169 million.  
20       And as a reminder, we're only authorized 2,090.  
21       So, right now our projected unavailable fee  
22       collections would be about 79 million.

1           On our patent surplus, which would be  
2 another way to describe carryover, again we have a  
3 range. In July, when we had our meeting our  
4 estimate was around 40 million carryover for  
5 patents. We are in the end of the year. We're  
6 starting our, like, end-of-the-year sweeps. We  
7 anticipate that number will go up. Don't know  
8 exactly how much more, but of course anything that  
9 we can carry over from '11 into '12 will help our  
10 position, particularly in early '12.

11           And then on the obligation side, that's  
12 the split between patents and trademarks, and any  
13 gain we get in carryover from the 40 million that  
14 we estimated in July will come from the fact that  
15 we are not spending as much as we thought we would  
16 mostly due to the number of cuts and holdbacks we  
17 have, just to be conservative.

18           Tony mentioned a number of these things  
19 in '12. As we go into our plans for '12 there are  
20 a lot of unknowns. So, we are currently  
21 establishing our program area, hiring, operating,  
22 traveling, and unfunded plans in line with the '12

1 budget. We, of course, anticipate going in under  
2 a CR -- and, like Tony said, we are trying to run  
3 a number of scenarios. We are hoping for the  
4 best, planning for the worst. And, of course, the  
5 carryover we have in '11 helps our position in  
6 early '12.

7           It says there "Hold USPTO to FY10 spending levels."  
8 That's actually -- in a CR would be FY11 spending levels.  
9 It's the prior levels that are typical CR if we  
10 don't get an anomaly.

11           We did revise our '12 fee collections.  
12 Our original estimate was 2.7. We are now at  
13 2.618. And again we anticipate passage of the  
14 AIA, and there are actually two things -- either  
15 15 percent is in the AIA should that pass; it is  
16 also specifically pointed out in the draft House  
17 Approps language, the 15 percent. So, there is a  
18 possibility that if we don't get AIA we could  
19 still get the 15 percent in Appropriations  
20 language. That's just right now on House side.  
21 We don't know about the Senate side.

22           And we did meet with the subcommittee

1       yesterday on the '13 and we'll be having further  
2       discussions on the '13 budget, and Tony will  
3       mention the timing, so we do have it due to OMB so  
4       that there's kind of a timeline on the process for  
5       FY13.

6                       That's all I have. Thank you.

7                       CHAIRMAN MATTEO: Thank you very much.  
8       Okay, so then why don't we move to the discussion  
9       of the America Invents Act? We have a change of  
10      players here. We'll give them a moment or two.

11                      And joining us will be Janet Gongola,  
12      the Patent Reforms arena, and Azam Kahn. Welcome.

13                      MR. KHAN: Thank you. I'm just going to  
14      start out really quickly. I know everyone is  
15      excited to hear from Janet, so -- but I wanted to  
16      join Janet today first to offer to this committee  
17      my services. Director Kappos and Deputy Director  
18      Rea have asked me to help coordinate, from the  
19      front office, interactions with this committee as  
20      we move, hopefully, through the implementation  
21      process here in the coming weeks, months, years  
22      ahead.

1                   And so I am Azam Kahn. I'm the Deputy  
2 Chief of Staff to the Under Secretary. And as I've  
3 reached out to this group offline, I wanted to  
4 make that offer here today to coordinate both  
5 substantively as well as operationally with this  
6 committee as we move into operations. I'll be  
7 working very closely with Janet on, really, the  
8 whole package that she's about to present, and  
9 without further ado I will turn it over to Janet.

10                   Thanks.

11                   MS. GONGOLA: Well, thank you very much  
12 for inviting me to attend today and present about  
13 our implementation efforts on the America Invents  
14 Act. I also very much appreciate Deputy Director  
15 Rea's support and confidence in me, as well as  
16 Director Kappos'. We want to make this a  
17 collaborative effort between the agency, our PPAC,  
18 as well as our stakeholders. So, with this, I'd  
19 like to start; as soon as my slides are available,  
20 I will begin to talk about. My focus is on the  
21 process that we intend to follow.

22                   I won't talk too much about the

1 substance of the various provisions, in part  
2 because we are still working out the details of  
3 how we will be implementing the various  
4 provisions. It would be premature for me to talk  
5 too much about substance at this point, but I want  
6 everyone to understand the process that we will  
7 follow, particularly where we will need input from  
8 our PPAC as well the public at the large.

9 CHAIRMAN MATTEO: And this is a work in  
10 progress, correct? The process that you follow --  
11 they will co- develop collaboratively.

12 MS. GONGOLA: The process is completely  
13 a work in progress.

14 CHAIRMAN MATTEO: Right.

15 MS. GONGOLA: And at this point if the  
16 public or PPAC has any suggestions, I welcome  
17 them, because we want to keep the trains running  
18 on track to meet our various implementation  
19 deliverable dates.

20 CHAIRMAN MATTEO: So, you'll find we're  
21 not particularly bashful about taking advantage of  
22 offers such as Azam and you have made? (Laughter)

1       So, we'll definitely be reaching out to you for  
2       logistical and resource support and, Janet, of  
3       course, working with you collaboratively to help  
4       you make this happen and the reality where you can  
5       embrace the PPAC feedback and, in particular, the  
6       feedback that we can get from our different  
7       constituencies.

8                   MS. GONGOLA: Thank you. I would expect  
9       nothing less --

10                   CHAIRMAN MATTEO: And you'll get nothing  
11       less.

12                   MS. GONGOLA: -- and I very much  
13       appreciate your willingness to do that for us.

14                   You all have my contact information on  
15       the last line I believe. So, please, don't  
16       hesitate. I give you my e-mail address, my  
17       telephone number. I'm available to you at any  
18       point in time that you want to reach me.

19                   Okay, now that our slides are available.  
20       Okay, I won't go into a lot of the history,  
21       because Tom Stoll has explained the status of the  
22       America Invents Act. In anticipation of the Act

1       passing sometime in the month of September, we  
2       have begun gearing up for implementation. Since  
3       some of the challenges that we face -- we are  
4       going to be asked to implement numerous provisions  
5       simultaneously. I count approximately 10  
6       different rulemaking and other ancillary  
7       activities, 7 studies where the agency is  
8       responsible for leading them, 2 studies where the  
9       agency will serve as consultants, and 4 distinct  
10      programs that we must get up and running within a  
11      certain period of time.

12                 Now, turning to time, the implementation  
13      of the America Invents Act is staged. On the side  
14      I list for you -- there's a period of three  
15      windows. One I'm calling the Date of Enactment  
16      window; the next window is a 12-month  
17      implementation; and, finally, the last window is  
18      18 months. So, the implementation efforts won't  
19      happen all at once. Applicants will not have to  
20      change their practices all at once. It will be a  
21      slow rollout over a period of time so that  
22      everyone has a chance to understand what changes

1 are being taken and what how they can participate  
2 in those changes.

3 Now, we also will be asked to coordinate  
4 extensively within the PTO as well as outside of  
5 the agency. Coordination efforts within the  
6 agency involve multiple business units, as well  
7 with our unions. We will be engaged in efforts to  
8 have teams, which I'll talk about momentarily,  
9 comprised of various business unit representation  
10 so that everyone's on board as to what is  
11 happening with our implementation efforts.

12 And then externally on the side I list  
13 the various agencies outside the PTO that we must  
14 collaborate with. This particularly arises in  
15 connection with the studies that we will run.  
16 Certain studies ask us to be involved with the  
17 Small Business Administration, the Attorney  
18 General, the Department of State, and the U.S.  
19 Trade Representative. I'll talk more about that  
20 when we hit the slides. But this isn't just a PTO  
21 effort. Other agencies must get involved to aid  
22 us in this implementation.

1           And then, finally, we have numerous  
2 operational matters that we will be confronting:  
3 Staffing, automation changes, guidance and  
4 training to not only our examiners but to the  
5 public at large so everyone is on the same page as  
6 to what is required in how our rules and  
7 regulations will be changing.

8           So, how do we prepare ourselves for  
9 making these implementations? Well, we have  
10 organized the agency in a hierarchical structure.  
11 At the top of the structure is what we are calling  
12 our Patent Reform Task Force. A task force is  
13 being headed by Mr. Kappos, and we are planning to  
14 have weekly meetings to discuss issues that affect  
15 all of the business units. We also would like the  
16 business units who partake in those meetings to  
17 sort of be the ambassadors for patent reform,  
18 carry the message in the implementation activities  
19 back into their units so that there is consistency  
20 across the agency, and that all business units  
21 understand what's being required and the deadlines  
22 for those requirements. We want this effort to be

1 complementary throughout the agency and never at  
2 odds with each other. So, the task force is  
3 designed to ensure that that will happen.

4 At the next level down we have what is  
5 called the core team. The core team is made up of  
6 the leaders of the three working groups: Patents,  
7 the Board, and Finance. The core team is  
8 responsible for filtering out some of the  
9 decisions that would rise to the level of the task  
10 force and coordinating between the three  
11 principally affected areas on the patent reform  
12 provisions. We envision the core team meeting on  
13 an as-needed basis, perhaps multiple times a week,  
14 to ensure that we have the consistency that I'm  
15 talking about throughout implementation efforts.

16 And then, finally, the working group  
17 level is the nuts and bolts. Those are the  
18 numbers of the agency who will be preparing the  
19 rulemakings, preparing the guidance documents,  
20 making the MPEP revisions that will be required  
21 for implementation, as well as conducting all of  
22 the internal and external training that would be

1       involved. I will be involved at all levels of  
2       this to ensure that we have consistency and that  
3       the communication channels are open between the  
4       working groups, the core team, and the task force.

5               Now, I talked a little bit about the  
6       staged implementation. This way it gives you a  
7       better picture -- No. 5 -- of exactly what  
8       activities will be happening at what points in  
9       time.

10              Now, I won't talk about the specific  
11       provisions that are going to be staged in this  
12       rollout, but what is important to understand is  
13       that the -- I'm calling these the Group 1, and  
14       this becomes important when I go down and talk  
15       about some timelines that I'll show you in a  
16       moment. But the Group 1 activities and  
17       rulemakings, not all -- what's important here is  
18       not all of them are rulemakings. Some of them  
19       will involve internal guidance documents, MPEP  
20       updates, or simply no action on the part of the  
21       agency at all.

22              For example, the first, the

1 Re-examination Transition for the Threshold, that  
2 will be a rulemaking where the agency goes out  
3 directly with a final rule explaining the change  
4 in the threshold that's required by statute from a  
5 substantial new question of patentability to a  
6 reasonable likelihood that an examiner would find  
7 at least one claim unpatentable. The next three  
8 in that first column -- Tax Strategies Deemed  
9 Within the Prior Art, Best Mode, and Human  
10 Organism Prohibition -- we expect to go out  
11 straight with guidance documents for our examiners  
12 on those areas. A final rule is not required.

13           The next one, Patent Term Extension, the  
14 timing for filing a patent term extension  
15 application, that does not affect our examiner  
16 population. It affects a very small group within  
17 the Office of Patent Legal Administration who  
18 handles patent term extension applications. So  
19 that change will be captured in due course through  
20 an MPEP revision.

21           The remaining actions on this slide,  
22 except for prioritized examination, will not

1       involve, really, action on the part of the agency  
2       at all. These are statutory changes that go into  
3       effect on the date of enactment or in the short  
4       windows thereafter. Prioritized examination is an  
5       exception; that's what you are all familiar with.  
6       It's our Track One. And we have a final rule in  
7       the works. We've gone through the rulemaking  
8       process already for Track One.

9               So, turning to Group 2, this group will  
10       involve affirmative rulemaking. So, we will be  
11       following the APA process for rulemakings. We  
12       will engage in the Notice and Comment rulemaking  
13       process through a notice of proposed rulemaking, a  
14       comment period, followed by a final rule. And  
15       each of those final rules will have a delayed  
16       implementation date so that we might educate the  
17       public as to what the final rule requires before  
18       it goes into effect. The first several items --  
19       the first six items on the list will be handled by  
20       the Patents Working Group, and the remaining three  
21       items on the list will be handled by the Board  
22       Working Group.

1           Now, the last group of rulemakings is  
2     Group 3, and again I mention these might not all  
3     involve rulemakings. Some of these might involve  
4     agency guidance documents. For example, "first  
5     inventor to file," at this point in time we do not  
6     envision going out with a rulemaking for it.

7           However, for derivation proceedings we do. And  
8     incidentally, we are running the derivation  
9     proceeding rulemaking process in line with the  
10    other contested cases that the Board will be  
11    handling. So, that's running on roughly a  
12    12-month schedule even though it won't become  
13    effective until the 18-month point.

14           And then, finally, on the "statutory  
15    invention registration," for that one we expect to  
16    go out straight with a final Federal Register  
17    notice repealing the provisions that allow for  
18    statutory invention registration. It's not a  
19    frequently used procedure within the agency, so we  
20    feel confident in going out straight with a final  
21    rule. Notice and comment rulemaking will not be  
22    needed for it.

1           So, from the rulemakings now we move  
2       into the studies where the agency is charged with  
3       leading. I've broken them down on the slide,  
4       you'll see, by color. The first two, three  
5       studies appear in black font. Those are the  
6       studies that must be completed within the first 12  
7       months after enactment. So, for us those are our  
8       immediate priority. The remaining studies listed  
9       in blue, those have delayed -- I don't want to say  
10      delayed but due dates that fall after the 12-month  
11      window when the bulk of our substantive patenting  
12      rulemakings will be complete. So, we will begin  
13      focusing on them after the 12-month date.

14           For these studies I should also mention  
15      that we envision a process where the public is  
16      intimately involved. For the International  
17      Protection for Small Businesses and Prior User  
18      Rights studies, those are due at four months after  
19      the date of enactment. And in those studies we  
20      envision going out with Federal Register notices  
21      seeking the public's input very early on within  
22      that 4-month window. We will need the public's

1 assistance with these studies, because much of the  
2 information being required for us to study does  
3 not exclusively fall within the PTO's bailiwick.  
4 The public at large can be of a great help here to  
5 the agency, so we want to solicit the public's  
6 input.

7           And we also intend, separate from the  
8 Federal Register notices, to conduct public  
9 stakeholder meetings where the public has a chance  
10 to, separate from written comments, provide verbal  
11 comments to us so that we can learn about these  
12 areas that we're asked to study from the people  
13 who are best and most familiar with those areas.

14           The Genetic Testing study we envision  
15 during --

16           CHAIRMAN MATTEO: Excuse me, Janet, just  
17 a quick question on the previous slide. So --  
18 back to the next one, I'm sorry, you hadn't  
19 switched yet. So, the report due at four years,  
20 which is the one on the implementation of the  
21 America Invents Act by the PTO --

22           MS. GONGOLA: Yes.

1                   CHAIRMAN MATTEO:  -- there were a number  
2                   of elements there.  Some of them I would expect,  
3                   like effects associated with the impact on  
4                   innovation, et cetera, competitiveness.  But it  
5                   seemed like the first part of that said that it  
6                   would be four years before you're reporting about  
7                   the PTO is implementing the America Invents Act.  
8                   Are there other interactions or will that be the  
9                   sole point of guidance for how you're implementing  
10                  it?

11                  Go back to the previous slide.  I'm just  
12                  reading -- there we go, on the very bottom.

13                  MS. GONGOLA:  Oh, the last report  
14                  requires the Implementation study?

15                  CHAIRMAN MATTEO:  Right.  So, it's going  
16                  to be up to four years before you report out to  
17                  anybody how this is being implemented?

18                  MS. GONGOLA:  The due date for that  
19                  study is four years after the date of enactment.  
20                  But I'm certain that the agency is going to be  
21                  assessing its efforts at implementation and how  
22                  its various rulemakings are affecting the public,

1       how they're operating informally before then. But  
2       the official due date for that study is not until  
3       four years after enactment.

4               MR. KHAN: I think it's also worth  
5       noting that the regular congressional oversight  
6       that the agency participates in currently, I  
7       imagine it will be up to the congressional  
8       oversight folks what they want to ask about, but I  
9       would assume they would focus significant portions  
10      of that oversight on America Invents. So, that  
11      would be a formal reporting to Congress, just not  
12      in the context of a study.

13              CHAIRMAN MATTEO: Okay, fair enough.  
14      Just on the surface having read that, it seems,  
15      though, it's going to be a long while.

16              MR. KHAN: I say that having had the  
17      same question.

18              CHAIRMAN MATTEO: Good. Thank you.

19              MR. ADLER: I have a question on the  
20      Prior User Rights study. Did I hear you correctly  
21      say that you were going out to the public in this  
22      country to get their impressions of how this works

1 in other countries or are you planning to go and  
2 talk to people in those countries in which this  
3 type of situation presently already exists?

4 MS. GONGOLA: I think the entity -- it's  
5 both. I said the Federal Register study that we  
6 -- Request for Comments that we will publish,  
7 certainly anyone can read that, but largely  
8 targeting the audience in the United States. And  
9 then informally through our attaché program,  
10 through our contacts with other patent offices  
11 throughout the world we will be considering,  
12 because other countries do have greater experience  
13 with prior user rights than the United States, so  
14 we will be tapping into their experience as well.

15 MR. ADLER: (inaudible) through the  
16 governments in those countries, like the IP5  
17 thing, or are you actually going to go and seek  
18 comments from companies or inventors that have  
19 actually had experiences with prior user right  
20 determinations in France, for example? I don't  
21 understand how you actually do that, but --

22 MS. GONGOLA: I think we're working

1 through the details right now of exactly how we  
2 will tap those other countries for their  
3 experience.

4 MR. R. STOLL: We would talk with the  
5 governments. We'd also solicit input from  
6 intergovernmental associations and from  
7 associations like FICBE, which has representatives  
8 across the world.

9 MS. GONGOLA: And certainly if you have  
10 suggestions to how we --

11 MR. ADLER: That's what I actually was  
12 thinking about, but I hadn't heard that. Okay,  
13 thank you.

14 MS. GONGOLA: Other questions on the  
15 studies?

16 MR. BORSON: Yes, thank you. Regarding  
17 the providing second opinions for genetic or  
18 diagnostic testing, how do you see that being  
19 played out? And a similar question to the last  
20 one about prior user rights, where do you expect  
21 to find input? Who do you expect to assist the  
22 office with some of the policy considerations

1 outside the matters that are handled directly by  
2 the office?

3 MS. GONGOLA: Well, for that study, like  
4 the other studies, we will definitely go out with  
5 the Federal Register notice seeking comments from  
6 the public at large. We likewise will hold  
7 roundtables. We haven't nailed down the specifics  
8 of what additional groups we might solicit input  
9 from. So, if you have suggestions in that regard,  
10 you know, please feel free to let us know, because  
11 that study has a nine-month due date. We haven't  
12 focused a huge amount of effort on it yet. We're  
13 just gearing up to do so. You'll see when I  
14 covered the timeline, it's our plan within the  
15 first couple months to develop our Federal  
16 Register notice so we have time to think about  
17 what information we request from the public.

18 MR. BORSON: Yes, there is certainly a  
19 large international interest in this issue. There  
20 are some countries that have statutory changes  
21 that either have been finalized or are being  
22 considered, and I was wondering whether you also

1 had the same idea to reach outside the United  
2 States.

3 MS. GONGOLA: Well, we're certainly open  
4 to suggestions and glad to do so. To the extent  
5 that they can provide other countries -- other  
6 governmental agencies can provide information that  
7 will enable us to complete an efficient and  
8 effective study, we're certainly glad to do that.  
9 Again, if you have suggestions for us, please let  
10 us know what groups you think would be good to  
11 contact.

12 MR. BORSON: Yes, I will.

13 MS. GONGOLA: Okay. Okay, then I'll  
14 move on to the studies where the agency is not  
15 lead but the agency is consultant for. And there  
16 are two of them. Both of them have due dates at  
17 around 12 months from enactment. And so the first  
18 is a First-Inventor-to-File on Small Businesses  
19 and Patent Litigation. These studies are tasked  
20 to other agencies, but to assist these other  
21 agencies in completing the studies, we intend to  
22 send a detail or offer a detail to the other

1 agencies so that that will enable them to tap into  
2 our experience, if they like, in completing these  
3 studies.

4 MS. LEE: Excuse me, is that -- are  
5 those studies in which you anticipate getting some  
6 input from -- on the public or is that primarily  
7 conducted internally by the PTO?

8 MS. GONGOLA: For the studies where we  
9 are consultant, we won't be leading the charge --

10 MS. LEE: Right.

11 MS. GONGOLA: -- so that the other  
12 agencies will have to determine how they want to  
13 run those studies. Hopefully, they take some  
14 guidance from the way we've chosen to run the  
15 studies by going out with the Federal Register  
16 notice, having public roundtables. But we will  
17 not be in control of those studies ourselves.

18 MS. LEE: Got it, thanks.

19 MS. GONGOLA: Okay, so for the --

20 MR. SOBON: One suggestion which you may  
21 already be thinking about, but it would be helpful  
22 at least on your implementation website to have

1 information about those other studies as they're  
2 progressing so that people -- sort of a one-stop  
3 shop. People can see in those other agencies what  
4 they're doing. It would be very helpful I think.

5 MS. GONGOLA: Precisely. We are  
6 thinking very much alike. We intend to use, and  
7 I'll speak to it in a moment, our microsite as  
8 one-stop shopping for all information related to  
9 patent implementation of AIA.

10 MR. SOBON: Great.

11 MS. GONGOLA: So, the last -- this slide  
12 covers the programs that the agency must  
13 implement. The first two programs, again, are  
14 those that we must have in the works within the  
15 first 12 months after effective date. The first  
16 study is a pro bono one, which directs us to work  
17 with various IP law organizations to establish pro  
18 bono programs to assist independent inventors,  
19 small businesses in pursuit of patent  
20 applications. One form of that, we have a program  
21 that we have running in Minneapolis called a low  
22 bono-type program, and we're looking for

1 opportunities to expand the low bono-type  
2 programs, as well as pro bono efforts and we will  
3 be contacting various IP bar organizations to  
4 solicit input and support from them to effect this  
5 specific provision. The other one, the Diversity  
6 of Applicants, asks us to set up methodologies to  
7 study the diversity of our applicant population.  
8 We're hoping to maybe work with the Department of  
9 Census to tap into the information that they have  
10 already collected on various applicants.

11 Now, the one caveat here with these  
12 studies: That the information we're collecting  
13 will not be used for purposes of advancing certain  
14 applications through the process or delaying  
15 others based upon diversity of information.

16 MR. ADLER: The applicants are not U.S.  
17 citizens, so you --

18 MR. R. STOLL: Half.

19 MR. ADLER: So, your database is missing  
20 the other folks from around the world if you only  
21 focus on Census data.

22 MS. GONGOLA: Right, Census is not the

1       only place, but it's certainly a starting place  
2       for us to collect data, and your point's very well  
3       taken. It would be less than our population.

4                Okay, this side is a projected timeline  
5       that at least gives you a rough idea of the  
6       periods of time where we will have various  
7       activities ongoing. And I know it may be  
8       difficult for you -- because this slide is small  
9       on the screen it's hard to read the font, so I'll  
10      kind of walk you through it. But most of this  
11      information is captured on the preceding slides,  
12      but I want -- so that the public understands  
13      exactly what's happening where, I'll try to cover  
14      it for you.

15               I guess my -- here we go. So, the  
16      purple box at the top of the slide -- and at this  
17      point in time, because we do not have an active  
18      legislation, I'm going according to months: Month  
19      1, month 2, month 3, et cetera. Once we know the  
20      date of enactment, assuming that to be the case,  
21      then we can go in here and place specific dates of  
22      exactly what will be happening in each calendar

1 month. So, the purple box at the top of the slide  
2 reflects what I'm calling the Group 1 Rulemakings  
3 and Other Activities. Those actions that must be  
4 in place within the first -- and it's 60 days  
5 after the date of enactment.

6           The light blue timeline might be of  
7 greatest interest to the folks in this room. This  
8 is the timeline we project for what I called the  
9 Group 2 Rulemakings, the heavy-duty substantive  
10 patent rulemakings, and I'll walk you through this  
11 timeline carefully so that we understand the  
12 deeds, at least the ballpark of the deeds.

13           So, in the window of months 1 to about  
14 3-1/2 we will internally be preparing the NPRMs  
15 for the various rules. We haven't determined yet  
16 how we will package. You know, I said we have  
17 roughly a dozen rulemakings to engage in. I don't  
18 know if we're going to come up with a package that  
19 has four rulemakings grouped as 1, 10  
20 individually. We're still working out those  
21 details. But all of the 12- month rulemakings  
22 will be operating on the same timeline. That's

1 the point to take home in terms of planning for  
2 the preparation of public comments that you want  
3 to submit to the agency. So, months 1 to 3-1/2  
4 we're preparing and going through the internal  
5 clearance process to release the NPRMs. Around  
6 month 3.7 or so to the 4-month mark, the  
7 rulemakings will be undergoing the clearance  
8 required by the Office of Management and Budget.  
9 OMB will be clearing them.

10 Then right around the four-month time  
11 point, we will be releasing the Notices of  
12 Proposed Rulemaking in the Federal Register. That  
13 will then trigger about, you know -- I'm sorry,  
14 the slides -- I can't -- not the best with  
15 graphics, but the little gap here means to jump up  
16 and look at the top line. That's a key date.  
17 Around four months is the NPRM publication date.  
18 Immediately following it, as soon as they publish,  
19 a 60-day public comment period opens up for all of  
20 the rulemakings. So, the point here to be mindful  
21 of, that will be for all 10, 12 substantive patent  
22 rulemakings that will be coming out. We're

1 running in parallel here, not a staggered date --  
2 not staggered dates that, you know, month 1 or  
3 these two, month 2 or these two all at the same  
4 time.

5 And then around the -- just past the  
6 six-month mark, that -- and certainly before that,  
7 but that's when the public comment period will  
8 close, the agency will then begin to prepare the  
9 final rules, taking the public comment into  
10 consideration, and going through the clearance  
11 process that we need to go through internally with  
12 the final rules.

13 Now, we certainly will be monitoring the  
14 public comments as they are coming out and taking  
15 them into consideration on an ongoing basis. All  
16 of the comments will be made available to the  
17 public on our microsite, so as things are  
18 developing the public will be able to monitor that  
19 development.

20 Right around the nine-month time point,  
21 we project releasing our final rules to the Office  
22 of Management and Budget for clearance. And then

1 around the 10-month marker where you see the next  
2 gap, that is where the final rules will publish in  
3 the Federal Register. And from just the 10-month  
4 mark to the 12-month mark, that is our delayed  
5 effective date period, during which time we will  
6 be training the public, training our examiners  
7 about the final rules.

8 Now, the blue box underlying all of  
9 this, starting at the 10-month point, the agency  
10 will -- at that point we will have some idea of  
11 what the final rules will look like, so we will  
12 begin to engage in our internal memos that we need  
13 to write to the examiners.

14 Our guidance documents, MPEP updates,  
15 preparing examiner training, facilitating our  
16 finalization of automation changes that are needed  
17 to implement the final rules -- some of that will  
18 be going on earlier than the seven-month point,  
19 but certainly heavy-duty on at seven months. That  
20 is where our focus will be, pushing the final  
21 rules out the door for the public, as well as  
22 preparing internally to implement them.

1                   Now, the series of orange boxes beneath,  
2                   these reflect all of the studies that we will be  
3                   conducting within the first 12 months, so I don't  
4                   know, would you like me to walk through the  
5                   details of these studies?

6                   Okay. So, the first two studies -- the  
7                   Prior User Rights Study and International  
8                   Protection of Small Businesses -- they're roughly  
9                   running on identical tracks. They both have a  
10                  four-month due date.

11                  So, shortly after enactment sometimes  
12                  within that first month, ideally first couple of  
13                  weeks, we will publish our Federal Register  
14                  notice; there's going to be separate notices, but  
15                  notices to solicit the public to give us input  
16                  about those studies.

17                  And then we envision from month 2 to  
18                  month 3, roughly a 30-day comment period within  
19                  which the public has the chance to give us their  
20                  feedback. We will also simultaneously be holding  
21                  somewhere in that public comment window, probably  
22                  mid-window, public roundtables, ideally East

1 Coast-West Coast, so we have a chance to hear from  
2 the public.

3 Then starting at month 3 through the  
4 middle of month 4 we will be preparing our study  
5 results. So, internally considering the public  
6 feedback that we received and building that into  
7 our reports to Congress. And then at the  
8 four-month due date we will produce our studies.  
9 We're going to have a mid-three-month to  
10 four-month internal clearance process that the  
11 studies will go through and produce for Congress  
12 at the four-month due date.

13 Now, for the genetic testing, that study  
14 is not due until the nine-month point, so our  
15 start date is going to be protracted a little bit,  
16 given resources that we need to focus on in the  
17 first couple of months. As you see above, in the  
18 blue, months 1 to 2-1/2 are going to be spent on  
19 heavy-duty preparation and the substantive Notices  
20 of Proposed Rulemaking.

21 So, in the period of months 1 to 2 we  
22 will be preparing our Federal Register notice for

1 the genetic testing study. At the three-month  
2 point we will publish that Federal Register notice  
3 in the Federal Register so that the public will  
4 have a chance to start providing us feedback.

5 And then we're going to have a little  
6 bit longer comment period here from four- to the  
7 six-month point, because we are afforded more time  
8 by the Act. We don't have it until the 9-month  
9 due date, so we can have a 60-day public comment  
10 period here during which we will again be  
11 conducting public roundtables, ideally East  
12 Coast-West Coast, in order for the public to give  
13 us additional feedback.

14 And then from the six-month to the  
15 nine-month point we will be preparing our study  
16 results, delivering them to Congress at the  
17 nine-month point, and built into this period is a  
18 period for internal clearance of the genetic  
19 testing study.

20 And, finally, in the red boxes at the  
21 very bottom, what we have here are the due dates  
22 for the two programs that must be implemented

1 within the 12-month window. Upon date of  
2 implementation the pro bono study needs to be up  
3 and running. And then at the six-month window the  
4 Diversity of Applicants program needs to be up and  
5 running. So, we're protecting them.

6 What you might not see on this timeline  
7 is a schedule for how we plan to exercise our fee  
8 setting authority under Section 10 of the Act that  
9 is effective on the date of enactment. But  
10 obviously we're not going to have all the fees  
11 available on the date of enactment.

12 On our microsite we have projected there  
13 -- if you check it out, there's an 18-month  
14 timeline. Our goal for implementation of fee  
15 setting is 12 months. We are working to take 18  
16 months to 12 months in assessing whether that's a  
17 doable thing, given the number of steps additional  
18 from a regular rulemaking that are required.  
19 There will be PPAC hearings involved. There will  
20 be oversight activities from the Office of Budget  
21 and Management and from the Department of  
22 Commerce. So, right now we are engaging with

1       those three organizations to talk about whether we  
2       can meet our 12-month goal for this rulemaking.

3               So, I haven't listed it separately on  
4       this slide. It's a little too premature for us to  
5       do that at this point. But I wanted to explain  
6       that we haven't forgotten about it. It is part of  
7       our process. It's a work in progress. So, for  
8       that reason, I don't want to show hard dates in  
9       stone until we have them nailed down for purposes  
10      of avoiding any confusion as to what schedule  
11      we're running on.

12              So, questions about the timeline.

13              MR. ADLER: I have a question about the  
14      blue timeline with regard to PPAC collaboration.  
15      Do you anticipate that within the first  
16      three-month period that you would be seeking our  
17      input on those rulemaking proposals?

18              MS. GONGOLA: We have felt it time for  
19      PPAC to become involved in the rulemaking so they  
20      know what the rulemakings are about, and we had an  
21      opportunity, so yes. In short, the answer's yes.  
22      We've built them -- I've not shown it on the

1 timeline for sake of trying to simplify the  
2 timeline but we absolutely do plan on engaging  
3 with PPAC.

4 MR. ADLER: Really when to when?

5 MS. GONGOLA: In the time period that we  
6 show, around the three-month mark after we have  
7 our rulemakings to the point where we are able to  
8 show them to you, where we develop some things,  
9 we've talked with the unions, we've worked out  
10 labor relations issues, at that point we're going  
11 to be involved in our PPAC.

12 MR. ADLER: Okay.

13 MR. BORSON: Yeah, if I might just  
14 follow up on Marc's comment that we'd be very  
15 happy to work with you, but we do request that we  
16 get the information in enough time so that we can  
17 go through our own internal conversations and then  
18 provide you with some cogent remarks.  
19 Historically, some of the rulemakings that have  
20 gone through in the last year or two have been  
21 done in a rapid way, perhaps because the OMB  
22 approved them very quickly, very rapidly during

1 their process, and in a couple of cases we have  
2 not really had an opportunity to comment on these.  
3 And so I think maybe Marc's point is that we would  
4 like to have a timeline in which we know when to  
5 expect these pre-publication proposals so that we  
6 would have at least two weeks, at a minimum, to be  
7 able to provide our own comments.

8 MR. ADLER: Thank you. I was being  
9 nuanced there. (Laughter)

10 MS. GONGOLA: Well, I appreciate that  
11 feedback, and we have felt a period of time when  
12 you -- you will have 30 days to look at those.

13 MR. BORSON: So, okay, 30 days. That's  
14 very nice. Thank you, Janet.

15 MR. KHAN: Yeah, and I think it's worth  
16 noting also that I mention my role here at the  
17 beginning. Director Kappos asked me to do this  
18 sort of in direct response, I think, to some  
19 concerns that you were alluding to, so I'll be  
20 making sure that that happens for everyone here.

21 MR. ADLER: Let me -- just for your --  
22 just to explain a bit, I mean, a number of those

1 proposals have been -- post-grant opposition,  
2 third-party submissions -- have been being  
3 discussed among the patent organizations for about  
4 five years, and we do have some folks on PPAC who  
5 have some experience in the details of how that  
6 might actually work might be of some assistance to  
7 you.

8 MS. GONGOLA: Well, maybe I should  
9 mention also we're -- we have a microsite up and  
10 informal comments can come to us at any point.  
11 You have my phone number. You can contact me.  
12 You have my e-mail address. If you have thoughts  
13 at this point in time, that's one of the things  
14 when I come to -- I want to emphasize. We do want  
15 to hear them orally so we can build them in from  
16 the ground up.

17 MR. ADLER: Go ahead.

18 MR. R. STOLL: Well, let me reiterate.  
19 We want comments now, today, because we will be  
20 putting up sort of a straw man in what we put out  
21 with our Federal Register notice. The more input  
22 we get, the better that will be, the less changes

1       that may need to be made.  So, I would urge you as  
2       soon as possible to put in as extensive of  
3       comments as you can.  And I recognize also that  
4       organizations like AIPLA have many, many different  
5       committees looking at every aspect of this and may  
6       have to take a little bit longer, but as soon as  
7       we get information, we are starting to review it  
8       for drafting Federal Register notices, and we need  
9       it right away.

10               MR. ADLER:  I was -- thank you, because  
11       that's what -- was what I was hoping you'd say,  
12       because I know that hopefully they're listening  
13       and they're busily working on providing you these  
14       comments now.

15               CHAIRMAN MATTEO:  Actually, I think we  
16       have a question from the audience.

17               MR. GODICI:  From the audience.

18       (Laughter)

19               CHAIRMAN MATTEO:  Mr. Nick Godici.

20               MR. GODICI:  And a couple of comments.  
21       First of all, this is really good information.  I  
22       am working with some of the folks at AIPLA and

1 some of the other organizations to try to organize  
2 comments on the rule packages. And the one thing  
3 that -- and we talked earlier, so Janet knows this  
4 -- the one thing that would be helpful for the  
5 folks on the outside is if we knew how you were  
6 going to group the packages so we knew, you know,  
7 if there's going to be 5, there's going to be 10,  
8 and what content is going to be in each one of  
9 those, so that we can organize our committees on  
10 the outside to both comment to the formal package.  
11 But, as Bob said, maybe even, you know, give you  
12 some input before your timeline, for your release.  
13 So, we do -- any information you can give on how  
14 you package those (inaudible) will be helpful to  
15 us.

16 I also have a specific question, and  
17 this may be for Bob. The immediate -- when the  
18 legislation is passed I think it's about 10 days  
19 or so you can begin collecting Track One fees.

20 MR. R. STOLL: And the 15 percent  
21 surcharge.

22 MR. GODICI: Got it. (Laughter) The

1 question is can you spend it? But then -- but the  
2 question a lot of clients have is when will we be  
3 able to take advantage of Track One? Is the  
4 rulemaking finished such that 10 days later we can  
5 start filing Track One applications? That's the  
6 question.

7 MR. BAHR: I mean, it was ready to go,  
8 Nick, on May 4th of this year, so I think we've  
9 gone through rulemaking. My understanding is that  
10 the bill states that it comes into effect 10 days  
11 from signing. So, I think we are planning to do  
12 10 days from signing.

13 MR. GODICI: So, the final rules that  
14 were published earlier were the ones we --

15 MR. BAHR: (off mike)

16 MR. GODICI: Okay. And then the last  
17 thing -- did I understand correctly that the whole  
18 fee -- reorganization of fees is going to be on a  
19 12-month instead of an 18-month timeline?

20 MS. GONGOLA: Presently on our website  
21 we feature an 18-month timeline. We are working  
22 toward getting that timeline toward 12 months. I

1 mean, that 12 months is our goal. We'd like to  
2 see 12 months. But we are taking the steps now to  
3 investigate whether that's possible. It very well  
4 could be 12 months. That was what we would like.  
5 If it's not possible, we would have to slide into  
6 12+ months.

7 MR. GODICI: Would you follow a timeline  
8 similar to this with a notice --

9 MS. GONGOLA: Similar but not identical.  
10 There will be various -- many, many additional  
11 steps in the timeline.

12 MR. GODICI: Okay, thanks.

13 MS. GONGOLA: But similar. It certainly  
14 -- all of the milestones that you see on this  
15 timeline will be in effect for the fee setting  
16 timeline. There will be additional ones as well.

17 MR. GODICI: Got it. Okay.

18 MR. ADLER: I have a -- oh, go ahead.

19 MS. KEPPLINGER: I think, Nick, to your  
20 question, part of the challenge with the fee  
21 setting authority is that it adds the additional  
22 layer of PPAC evaluation along with public

1       hearings. So, that complicates that timeline  
2       quite a bit more to get it done in the 12 months.

3               MS. GONGOLA: There's also an addition  
4       to PPAC hearings and a report. There's a  
5       requirement for involvement of OMB and the  
6       Department of Commerce. That adds another layer  
7       that we don't have in this timeline for the  
8       regular rulemakings under the APA. So, those are  
9       the additional steps that I'm referring to. So,  
10       when I say this timeline certainly will be in  
11       place, there will be other steps overlaid on it.

12              MR. ADLER: I have, really, a question  
13       for Bob about -- really, Tony brought this up and  
14       we just heard it. If you have the authority and  
15       the intention of imposing the 15 percent surcharge  
16       but you don't have the authority to access all the  
17       money that you might collect above what your  
18       budget is or the projected budget under the  
19       teaming resolution, what impact would that  
20       necessarily have on how the public perceives the  
21       surcharge? I mean, we don't mind paying the money  
22       if you actually get the money, but we don't want

1 to pay the money if it goes to somewhere else.

2 MR. R. STOLL: Michelle, hit me if I'm  
3 wrong, but my understanding is the 15 percent  
4 surcharge for '11 would only be probably effective  
5 for 2 weeks, so it wouldn't be significant. And  
6 then our budget for '12 includes the 15 percent  
7 surcharge.

8 SPEAKER: Correct.

9 MR. R. STOLL: So, not big. Maybe Mark  
10 is getting to a slightly different issue --

11 MR. ADLER: You're already out \$80  
12 million in '11. In other words, you collected  
13 more money than you're actually authorized to  
14 spend.

15 MR. R. STOLL: Correct.

16 MR. ADLER: There's -- assurance has  
17 been given that you'll, even under the House  
18 version, be able to access in '12 money that you  
19 collect. I'm worried going further in, you know,  
20 super committees and budget cutting under '13,  
21 that you'll end up with more money than you  
22 actually can use.

1 MR. R. STOLL: Marc, I'm worried, too.

2 MR. ADLER: All right, so we're all  
3 worried.

4 (Laughter)

5 MR. R. STOLL: It's a public relations  
6 problem --

7 MR. ADLER: No.

8 MR. R. STOLL: -- that you potentially  
9 have.

10 MR. ADLER: It's also --

11 MR. R. STOLL: It's also a functioning  
12 problem that we're going to have.

13 MR. ADLER: Right.

14 MR. R. STOLL: Okay.

15 MS. GONGOLA: Any more questions on  
16 timing? Okay.

17 So, opportunities for public comment, I  
18 want to specifically talk about those, because, to  
19 your point, Mr. Adler, we want the public and we  
20 want PPAC to be involved early and as extensively  
21 as they want to be. So, we have --

22 MR. ADLER: Nay.

1 MS. GONGOLA: Pardon me?

2 MR. ADLER: Within the confines of our  
3 ability to provide guidance. That's a different  
4 issue. Go ahead.

5 MS. GONGOLA: Okay. So, to date we've  
6 conducted two stakeholder meetings to basically  
7 share the information that we're sharing with you,  
8 not to this degree but some of it, to encourage  
9 the public to give us their feedback and explain  
10 to them how to do it. One meeting was held --  
11 both were held in August. One was held with large  
12 organizations: AIPLA, IPO, BIO. The second was  
13 held with independent inventors, universities, and  
14 small businesses. So, we've asked them, give us  
15 your feedback now. And we've made available the  
16 means to do so through our microsite, which I'll  
17 talk about in the next slide.

18 Now, separately, apart from before  
19 enactment, what can people do after enactment to  
20 give public feedback to us? Well, we're going to  
21 be engaging, as I talked about, in the notice and  
22 rulemaking process. That's the means by which the

1 public gives formal comments to the agency. It  
2 will be posted on the microsite. They will be  
3 taken into consideration as we receive them on a  
4 rolling basis and certainly as we build our final  
5 roles.

6 Now, we will conduct public roundtables  
7 for the NPRMs, for the final rules, for the  
8 various studies. I talked about that already.  
9 We've created a separate e-mail address:  
10 Aia\_implementation@uspto.gov. This is the e-mail  
11 address by which the public, at any point in the  
12 process, can provide feedback directly to the  
13 agency. It comes to my inbox and I route the  
14 comments to the respective working group who the  
15 comment pertains to so that they receive the  
16 feedback on an ongoing basis. We're not waiting  
17 until the end. Every comment we receive is being  
18 posted likewise on the microsite.

19 And then finally we have a microsite.  
20 This is intended to be one-stop shopping, as we  
21 suggested earlier, for anything related to patent  
22 reform implementation. This is Phase 1 of the

1       microsite that you see on this slide. It contains  
2       information about historic events as far as the  
3       legislation goes. You can read copies of the  
4       bill. You can see the administration statements  
5       in response to Congress' efforts. It also  
6       contains some information about different Group 1,  
7       Group 2, Group 3 rulemakings, a rough timeline.  
8       So, you can look on there for documents now.

9                 We are planning for Phase 2 at this  
10       point. Phase 2 is going to look much different  
11       than Phase 1, because we will have much more  
12       information to share at that point. We envision  
13       including drilldown views, because as we grow each  
14       page is going to need a sort of hierarchy  
15       management. So, we're going to have a patents  
16       page, a board page, each working group a finance  
17       page where all of the related information for  
18       those groups' activities will be posted.

19                On the main page we will have  
20       announcements of up and coming events, various  
21       roundtables that are taking place so everyone  
22       knows the specifics of the roundtables, how to

1 attend. We'll have a comment box so the public  
2 can submit comments.

3 We're creating a registration e-mail  
4 address so that if you go on and subscribe every  
5 time there is an event related to AIA  
6 implementation, you will receive an e-mail from  
7 the agency notifying you of what the event is so  
8 you can be informed and partake.

9 We will have our timelines posted on the  
10 main screen so that if anyone wants to know a  
11 specific point what the agency is doing, they can  
12 simply consult the timeline.

13 So, any other suggestions that you might  
14 have for what you feel that you would use as PPAC  
15 or that you think the public would use, as we're  
16 in our development stage for Phase 2 please let us  
17 know. We want to make that available. Any tools  
18 that you think, to the extent it's possible within  
19 the scope of automation parameters, we will  
20 definitely investigate those tools.

21 So, with that, I encourage you,  
22 emphasize, please submit your comments if that's

1 the one thing that you take from the presentation  
2 today. We want the public to be involved. We  
3 want your comments early so we know what you're  
4 thinking, so we can tap into that resource as we  
5 begin after date of enactment, certainly somewhat  
6 before we've started up, but our heavy-duty  
7 lifting to implement these rules in the stage  
8 fashion of 60 days, 12 months, and 18 months. Any  
9 additional questions for me?

10 CHAIRMAN MATTEO: Actually, you were  
11 talking about participation by the public and ask  
12 and you shall receive. We have some real-time  
13 questions from the public. You may or may not  
14 have the answers to these, but I just want to  
15 parrot them forward to you for comment.

16 First is how will independent inventors  
17 be selected for pro bono assistance? And if you  
18 don't know now and there are places you can point  
19 them to in the future, that would be very helpful.

20 MS. GONGOLA: So, the details of how  
21 independent inventors will be selected for  
22 assistance we've not worked out at this point, but

1 as far as where they can look for information on  
2 that, the microsite.

3 CHAIRMAN MATTEO: Okay. Is running all  
4 12 rulemakings at once imposing a large burden on  
5 the public?

6 MS. GONGOLA: Well, running --

7 CHAIRMAN MATTEO: Think you know -- we  
8 know that there --

9 MR. R. STOLL: There are a lot more  
10 public than there are PTO folks. You should  
11 realize that.

12 MS. GONGOLA: Running rulemakings on a  
13 12-month timeline is definitely going to be  
14 challenging. We admit that. However, under the  
15 confines of a 12-month effective date, there's not  
16 a lot of leeway for us here.

17 CHAIRMAN MATTEO: Correct, and I believe  
18 that's also the answer to the next question.  
19 Thirty-day comment period for the study seems very  
20 short for the public. Everything seems a bit  
21 rushed with this system, for which you have no  
22 empathy at all, I'm sure. (Laughter) Need more

1 time for public review.

2 MS. GONGOLA: We appreciate the need for  
3 public review, so to the extent that they'd like  
4 more time, please give us your comments now if you  
5 have thoughts on these studies. We have a 4-month  
6 window to run the studies, so we feel that 30 days  
7 is as generous as we can be in order to be able to  
8 create an effective study -- write an effective  
9 study.

10 MS. REA: Yeah, I'd like to add just one  
11 comment, that Janet and the core team and the task  
12 force, we are working as quickly as possible to  
13 organize our thoughts and share them on the  
14 microsite and the website as quickly as possible.  
15 So, we do have great bandwidth here and great  
16 talent here. But of course we require input from  
17 PPAC and the user community, and we realize this  
18 creates undue pressure on everybody, but as we  
19 anticipate the Act to appear in its final form we  
20 are required to act within a certain period of  
21 time, and we are doing everything possible to  
22 ameliorate or minimize the pain to the user

1 community, because we want your comments. So,  
2 anything that you can do we appreciate what AIPLA,  
3 IPO, the ABA, everything that people are going to  
4 be doing right now -- and our recommendation is to  
5 break things up as we are doing here within the  
6 PTO, because for one individual to amass the  
7 entire act and the full to-do list is  
8 overwhelming. So, to those of you out viewing  
9 this webcast, your input on any one area would be  
10 fantastic, and Janet will take it and take it  
11 seriously. Thank you.

12 CHAIRMAN MATTEO: And actually maybe to  
13 further that point, given the burden on the  
14 public, is it possible or do you plan to aggregate  
15 comments? It's difficult enough to absorb the  
16 acts themselves, but it's also useful and  
17 interesting for the public to see who's commenting  
18 on what, where, where the most comments are  
19 focused. So, will you have a way for the public  
20 to see and aggregate comments -- comments about  
21 aspect A, B, or C, or comments A+, you know, 4A,  
22 -A, things like that? Because otherwise, if it's

1       just this rolling blog -- and anybody who's been  
2       on a blog or something like that -- it's  
3       impossible to see and digest it all.

4               MS. GONGOLA:  So, the way we plan to  
5       structure the blog, it's going to be broken down  
6       into the Patents area, the Board area, and the  
7       Finance area.  Then within the Patents area it  
8       will be broken down into the various rulemakings  
9       that are being run.  So, then if -- and then what  
10      the public wants to know, like supplemental  
11      examination, what are the comments about it, they  
12      can look on that part of the microsite and see all  
13      the comments related to supplemental examination.  
14      They're not going to have to sort through all of  
15      the comments to try to figure out in 10,000 pages  
16      where are the comments about supplemental exam.  
17      To the extent we can do this based upon how the  
18      comments are submitted from the public -- and to  
19      that end, a comment might appear on the microsite  
20      in multiple places, the same comment, if it's  
21      touching upon different subject matter within the  
22      same letter or e-mail submission.

1                   CHAIRMAN MATTEO:  So, what if --

2                   MS. GONGOLA:  Is that an -- is that what  
3                   you're asking?

4                   CHAIRMAN MATTEO:  That would be a  
5                   partial answer.  Do you envision this being  
6                   searchable, so, if I'm interested in all comments  
7                   about X, Y, and Z?

8                   MS. GONGOLA:  That's a very good  
9                   question.  I can't answer that.  I'm a bio person,  
10                  and I don't know much about automation.  So, I  
11                  have to defer to the IT folks to --

12                  CHAIRMAN MATTEO:  Well, as luck would  
13                  have it, John Owens, I think, is the next one on  
14                  deck, so we'll --

15                  MS. GONGOLA:  Well, how convenient for  
16                  John.

17   (Laughter)

18                  CHAIRMAN MATTEO:  We won't forget you,  
19                  John, wherever you are.

20                  Okay, but the specifics of how you do  
21                  that I'm not as concerned with, but the notion  
22                  that in the spirit of transparency I think if the

1 public can see who's commenting on what, that sort  
2 of cross-pollination can be very useful.

3 MS. GONGOLA: Right, and then the same  
4 goes for the PPAC report. We plan on making that  
5 available in connection with fee setting so that  
6 the public can see the PPAC's report and comment  
7 on it as well as the rulemaking itself.

8 CHAIRMAN MATTEO: Excellent. We look  
9 forward to that. Comments anyone else? Very  
10 good. Well, Janet, thank you very much.

11 MS. GONGOLA: Thank you, and please do  
12 contact me if any issues arise and you want to  
13 have a chat about patent reform. I'm most  
14 available to you.

15 CHAIRMAN MATTEO: Thank you very much.  
16 So, let's see here. Okay, we're almost exactly on  
17 time. Why don't we take just a 15-minute break  
18 and reconvene at 10:45?

19 (Recess)

20 CHAIRMAN MATTEO: -- attention. I'd  
21 like to see if we can get ourselves reconvened.  
22 Will the members please make their way back to the

1 table?

2 Welcome back, everybody. Reconvening  
3 the Public Session of the Public Advisory  
4 Committee. Next up we have John Owens, who will  
5 speak to us from the OCIO.

6 Please, John. Thank you.

7 MR. OWENS: Thank you, sir. Good  
8 morning. So, I'm going to give you a little bit  
9 of an update, and there's a possibility that Mr.  
10 Landrith is indisposed. If he is available, he  
11 will step in. If not, I will fill in his shoes.

12 So, the production and deployment of the  
13 Universal Laptop, if you remember, began on March  
14 28th on schedule. Production deployment started  
15 140 per week. We're up to 200 and we're moving to  
16 255 per week in the fourth quarter -- fiscal  
17 quarter. Projected number deployed at the end of  
18 the fourth quarter, which was the scratch goal to  
19 reach for Mr. Kappos, was 5,000 or approximately  
20 50 percent of the employees.

21 So far, the following organizations are  
22 complete, particularly concerning patents TC 1600,

1       2900, 2100, 2600, and 2800. We get better and  
2       better at doing these. Certainly there is always  
3       the odd case of folks that are having issue. That  
4       is, of course, true. But we have noticed as we  
5       have gone along we've gotten a lot better at  
6       deploying them, people are better at accepting  
7       them, and we are better at supporting them. So,  
8       this is a major change. Remember, we modified  
9       some 91 automated information systems in the  
10      previous 12 months. This is the deployment of all  
11      of those changes, a massive amount of change.

12                   How are you doing, Dave?

13                   MR. LANDRITH: I'm good.

14                   MR. OWENS: And we are on track, on  
15      target, and I think for those that settle in with  
16      the Universal Laptop we have particularly, in the  
17      last quarter, gotten an extraordinarily  
18      overwhelming, positive view of the environment.  
19      Now, that does not mean we haven't had our hiccups  
20      with certain deployments that are unrelated to the  
21      Universal Laptop that people sometimes confuse as  
22      being part of the Universal Laptop. Obviously,

1 the Universal Laptop is a change. People don't  
2 always adapt well to change. But I did want to  
3 note that even though we are deploying some other  
4 80 environmental changes in systems outside the  
5 Universal Laptop, a lot of people confuse the  
6 Universal Laptop as actually the cause of their  
7 issue when in fact it is not. And we are working  
8 to minimize the impact of any of those application  
9 changes, particularly in the OACS/eDAN  
10 environment, as well as PALM, which continues to  
11 improve, but we still have issues maintaining  
12 under its current load and is on a separate track  
13 to undergo continuous improvement and enhancement.

14 Before I hand everything over to Mr.  
15 Landrith, our portfolio manager for Patents  
16 End-to-End, I'd like to know if anyone would like  
17 to ask me any other questions.

18 MR. BUDENS: Yeah, just quick, John.  
19 One of the hassles we have had was the help desk  
20 and stuff, and I know that you'd hired some  
21 additional people to bring on, and I was wondering  
22 if those people are now on line. Are we improving

1 on the help desk response and stuff?

2 MR. OWENS: So, with the influx of  
3 change, you know, some 80 projects finished this  
4 year, 70 more in flight and all the change with  
5 the laptop, we did see an increased call load.  
6 That increased call load did overwhelm our current  
7 help desk resources, and we found some money in  
8 the organization. Actually, Patents came to the  
9 rescue in this, and we doubled the working staff  
10 and Tier 1 help desk.

11 I need to explain to you how help desks  
12 work a little bit for those of you that don't  
13 know. Help desks are usually -- you can look this  
14 up on a Wiki -- separated into three tiers. Tier  
15 1 is the most basic tier. This is where if  
16 someone comes into the help desk they also have  
17 the largest amount of churn. People come from  
18 outside with basic skills on how to coach people  
19 through using Office and standard products and so  
20 on and so forth, but not the 91 custom  
21 applications we provide here to the USPTO  
22 employees. So, COLD -- we call it COLD --

1 replaced 20 new -- literally doubled -- the number  
2 of people we had on the daytime help desk, on the  
3 help desk. Now, actually, their added value up  
4 front was very minimal. We needed to push them  
5 through the extensive training, which will take  
6 them till today actually, September -- actually, I  
7 think it's the end of this week, where we will  
8 give them all the basic training.

9           Now, the way this works in industry is  
10 new people come on Tier 1, you take your best and  
11 brightest and move them over to Tier 2, and your  
12 best and brightest from Tier 2 move to Tier 3, and  
13 each level gets exceptionally more involved and  
14 more educated on how things work. So, we met the  
15 need to answer the phone, which we were failing  
16 at. We now answer the phone and issue tickets.  
17 We categorize the calls, and of course one would  
18 guess that the Tier 2 help desk for more  
19 complicated help backed up. That's normal. It  
20 happens. We are now, once the training is  
21 completed at the end of this week, moving people  
22 from Tier 1 to Tier 2, and that will bring that

1 down, and then we will move people from Tier 2 to  
2 Tier 3, all of which takes a couple of months of  
3 training, because you can't find anyone just out  
4 of the blue -- I wish I could -- that came here  
5 pre-trained in all of our custom applications.  
6 It's just impossible to do.

7           So, with that tiering, which is common  
8 in industry and certainly the one we use, as well  
9 as the training times, it looks like Tier 2 will  
10 be increased probably by December -- is our  
11 current plan -- of the appropriate level, and Tier  
12 3 also in the same time frame, because we're going  
13 to move some of the folks to Tier 2 to Tier 3.

14           So, the answer, Robert, is we're now  
15 taking all the calls. We're meeting our SLAs for  
16 that. We are issuing tickets. Some people are  
17 less than satisfied with our response times, but I  
18 will tell you that our SLAs are a little different  
19 than a lot of people think. Our Service Level  
20 Agreements call for a very quick turnaround time  
21 to answer the call -- under a minute -- and we are  
22 now meeting that again -- well under a minute, by

1 the way. But our SLAs, which are published on our  
2 internal website for all employees, to answer Tier  
3 2 calls and Tier 3 calls are four hours on  
4 average. And of course we are looking up next  
5 year after conversations with Bob and forward from  
6 -- you know, continuing to fund an enhanced group  
7 of people in these areas to lower those to a wait  
8 that I think people would expect. But that is the  
9 current level of funding. A lot of this does  
10 relate directly to funding. More funding, more  
11 people; more people, more people trained; more  
12 people trained, more people to answer the help.

13           There's a balance there, though. How  
14 many people do you have sitting around when you  
15 have a lull, and how many people do you have  
16 active when you have a lot of change? And the  
17 amount of calls is directly related to the amount  
18 of change. We certainly don't want to go too far  
19 the other direction, because then we'll be paying  
20 for resources we don't use. So, it's a balance.  
21 And unfortunately, staffing in the area does take  
22 time -- three to six months on average, and that's

1       pretty much an industry norm.

2                     Did that answer your question? Any  
3 other questions before I hand it over to --

4                     CHAIRMAN MATTEO: Yeah. Actually, Marc,  
5 why don't you go first?

6                     MR. ADLER: Yeah, thank you, okay. How  
7 -- what's your anticipated life for these laptops?  
8 When do you think you're going to have to go  
9 through this again? I mean, we always have to buy  
10 new computers every 18 months or 2 years or  
11 something. I mean, do you have a -- can you use  
12 the lessons that you learn from this deployment to  
13 memorialize them so then you do this the next time  
14 you can speed this whole process up and stuff like  
15 that?

16                    MR. OWENS: Well, a couple of things.  
17 Absolutely, we are learning. You have to remember  
18 that the bulk of the people that were here when we  
19 did this last time some eight, nine years ago are  
20 not here anymore. So, it was a big learning  
21 curve. I mean, I had previously told you all that  
22 the desktops were seven-plus years old. That was

1 the last time we really changed, not to mention --  
2 if you remember when I first got here we hadn't  
3 even patched XP Service Pack One. You know, we  
4 went through those exercises to move to Service  
5 Pack Three to learn. When we started deploying,  
6 we started slow. We certainly learned a lot.

7 Now, as far as the process goes to  
8 upgrade, certainly it started slow. We're up to,  
9 you know, some 50 a night. But you also have to  
10 understand this just isn't handing someone a new  
11 laptop. It involves a technician sitting down  
12 with each and every employee and manually moving  
13 their files, making sure all their data is moved.  
14 And, if you remember, XP was very loosey-goosey  
15 about where it would allow you to store things.  
16 So, that's pretty much a custom job where a  
17 technician sits down with an examiner and custom  
18 moves their data. That takes a lot of time.  
19 Doing 60+ of those a night, we're hauling. I  
20 mean, that's not -- actually, we're not moving  
21 slow at this point. We were at the beginning, but  
22 not --

1                   MR. ADLER: I'm talking about the  
2 future. I wasn't talking about the --

3                   MR. OWENS: So, we had documented and  
4 instilled and used our Tier 3 employees through a  
5 rotational program, as well as our contractors, to  
6 do this work. So, we have institutionalized the  
7 lessons learned.

8                   Now, overall, we have baked into the  
9 capital replacement budget -- replacement plan  
10 every four years. Now, what does that mean? That  
11 means that a few people will get the new piece of  
12 equipment in three, and some of them will get it  
13 in five.

14                   MR. ADLER: That answers it.

15                   MR. OWENS: Doing it all in one year, to  
16 be completely honest, has been a little nuts.

17                   MR. ADLER: Yeah, you answered my  
18 question. You have a four-year cycle for --

19                   MR. OWENS: Four-year cycle and are  
20 learning.

21                   MR. ADLER: Okay, thanks.

22                   CHAIRMAN MATTEO: That was actually my

1 question. You got a two-fer.

2 MR. OWENS: Good deal.

3 CHAIRMAN MATTEO: Good.

4 MR. OWENS: Yes, absolutely, and I think  
5 if you've looked at the progression of how quickly  
6 we're doing these and working toward that stretch  
7 goal of 5,000 employees, you've seen that increase  
8 as we've learned and optimized our knowledge. We  
9 certainly get less calls and complaints than we  
10 first had. I'm sure Robert will tell you, you  
11 know, the first few people it was a little shaky,  
12 and then things kind of smoothed out, and I think  
13 it was on both sides. The expectations change as  
14 well as, you know, the work was better. We're  
15 just getting better.

16 So, speaking of change, I'd like to turn  
17 it over to David Landrith, our Patents End-to-End  
18 portfolio manager, to talk about the wonderful  
19 changes that are coming with Patents End-to-End.

20 MR. LANDRITH: Thank you, John. This is  
21 our timeline. Hopefully, this is beginning to  
22 look familiar. What's key since the last time

1 we've spoken is we have completed the Sprint 3 for  
2 the back-end, which is the shown as Sprint 3 demo on the  
3 timeline. That was successful. We are now  
4 underway with Sprint 4, which is our issue-resoluton  
5 sprint, which will be completed on September 16th.  
6 At that point, we'll move to deployment so  
7 that we're on track for September 30th release date.

8           What we also see there, at the bottom,  
9 the August 2011 deployment of PATI, so that has  
10 been deployed to two working groups. That  
11 represents tremendous success, because it's able  
12 to push text versions of the patent application,  
13 specifically the spec, claim, and  
14 abstract, to the examiners. It is also our first  
15 step toward developing an in-house OCR capability,  
16 which we hope to leverage going forward in the  
17 other PE2E projects. It also provides automated  
18 creation of the claim tree as well as some very  
19 high-quality analytics that we are hoping will  
20 improve the ease with which examiners can make  
21 quality reviews.

22           Also, on the timeline planning

1 is scheduled to begin in October, but we've actually  
2 begun planning for this Fiscal Year '12 well in  
3 advance of that.

4 So, going over the front end, the  
5 initial implementations are complete. We are, at  
6 this point, resolving issues that have arisen,  
7 working kinks out of the system, and refining  
8 minor details of the user interface. Again, what  
9 they are delivering are fully functional web-  
10 based applications with stubbed-out services. And  
11 so that allows us, on the back end, to create the  
12 production-level services -- all the services that  
13 feed the front end, connecting the front-end  
14 to database engines, search servers, and the like,  
15 leveraging the technology stack and the  
16 resources it provides.

17 We are, again, on track for our  
18 September release, and we have, as I mentioned in  
19 a previous slide, completed the deployment to two  
20 art units of the PATI application.

1                   So, the front-end summary, this provides  
2                   some detail to what I mentioned before. We're  
3                   continuing to work out the kinks.

4                   And the last point, as of last week the  
5                   physical model for the front end is actually  
6                   complete with what we're going live with in  
7                   September. So, that's production ready.

8                   And this is a screen shot that shows the  
9                   implementation that we've done on the front end,  
10                  with the case table of contents on the left. And  
11                  we have a claims tree and a claim analysis tool.  
12                  The feedback that we've been getting from the  
13                  examiners on this has been very positive. We have  
14                  gotten some important critical feedback that we've  
15                  been able to incorporate using the sprint cycle  
16                  that we've been deploying this with.

17                  CHAIRMAN MATTEO: Excuse me, David.  
18                  Just by way of example, so you have a claims  
19                  analysis tool. Is that something that you de novo  
20                  developed in-house? Are you leveraging  
21                  third-party software or analytics?

22                  MR. LANDRITH: So, that -- there's a

1 couple of components. This relies on a structured  
2 representation of the claims that we are getting  
3 from a vendor that we have developed in-house to  
4 specify what that structure should look like. I  
5 think you've heard me refer to XML schemas before,  
6 and that's what those are.

7 So, we have then developed in-house a  
8 viewer that transforms that structure into what  
9 you see here. So, the other part there is the  
10 narrow column on the left reads "Notes" at the top  
11 so that you can attach structured statuses along  
12 with comments that would, you know, constitute  
13 anything from the examiners' thoughts to a  
14 potential argument or a piece  
15 of analysis that they would put in an Office  
16 Action, and that would be something they could  
17 attach to claims or specific text within a claim.  
18 And all of that we have developed in- house using  
19 industry standard tools.

20 Does that answer your question?

21 CHAIRMAN MATTEO: I think it may. So,  
22 that's analytics in and around the structured data

1       whether it comports with a standard or a spec  
2       versus, for example, metro language analytics  
3       vis-à-vis the content of the claims?

4               MR. LANDRITH: Right. We are not  
5       performing natural language analytics.

6               CHAIRMAN MATTEO: Okay.

7               MR. LANDRITH: What we're looking to  
8       do is structure the content into specific, logical  
9       groupings. Our next major piece of  
10       functionality is going to be Office  
11       Action, and so we created this with  
12       that in mind so that the analysis that  
13       examiners do within this tool can be  
14       promoted into Office Action text that will fill  
15       out template content and make the transition to an  
16       Office Action more fluid.

17               CHAIRMAN MATTEO: Okay, so it promotes  
18       the relevant data in whatever the structured  
19       format, okay.

20               MR. LANDRITH: That's right. Does that  
21       answer your question?

22               CHAIRMAN MATTEO: That does, yes. Thank

1       you.

2                   MR. OWENS:  I would like to say that any  
3       future use of tools purchased or developed  
4       internally to further enhance this, like natural  
5       language matching and so on and so forth, has  
6       certainly been contemplated.  It can happen later.

7                   I'd also like to point out, though --  
8       David is very modest -- this is eight weeks of  
9       actual honest-to-God development run internally by  
10      our folks with vendor assistance.  We are in  
11      charge.  And he's done an incredible job of doing  
12      this in keeping our constituency, both the  
13      examiners and POPA, involved every step of the  
14      way.  And I know, Robert, you've been in it almost  
15      every sprint if not all three sprint finishes, and  
16      certainly when David's done I'd like to hear what  
17      you have to say.

18                   CHAIRMAN MATTEO:  Go ahead.

19                   MR. LANDRITH:  Thank you, John.  So, the  
20      user involvement in the front end, as John alluded  
21      to, has been very intense.  
22      We do design sprints every two weeks we

1 have focus groups to run the new features that  
2 we've implemented in the front-end by examiners.  
3 This includes both members of examiners from the  
4 CRU, which is a pilot audience for release, as  
5 well as examiners from the core. And this is also  
6 used as an opportunity to get input on future  
7 features.

8 We also do a major holistic user  
9 evaluation every six weeks where we go over the  
10 entire front-end from soup to nuts. We have a  
11 User Advisory Council. As John mentioned,  
12 we've been heavily engaged with the union to make  
13 sure that they're up to speed on what we're doing,  
14 and we have a green light for them. And, as I  
15 mentioned, the reactions have been very positive  
16 and the critical feedback that we've gotten is  
17 something that's been very important to leverage  
18 during the sprint process to improve the outcome  
19 of the product.

20 So, the back end, this is the -- what  
21 John had mentioned is basically eight weeks of  
22 development efforts. We have -- the technology

1       stack has been vetted and finalized. This is the  
2       platform that we're going to be going ahead with.  
3       We'll be adding additional things, as John  
4       mentioned, for -- as we require them for  
5       additional features.

6                 Internal development began in June. Our  
7       procured development kicked off a little later  
8       than we'd hoped, two weeks. It doesn't seem like  
9       a lot, but within a time-frame of development that  
10      we're talking, it was something we had to make  
11      accommodations for. As of today, the first,  
12      second, and third sprints are complete with  
13      successful demos, and we are on track for the  
14      September 30th release.

15                The XML schemas at this point, actually  
16      as of yesterday evening, we have the complement of  
  
17      XML schemas finalized that will be going live  
18      within production. And we are going to then be  
19      reviewing that set for improvement and expansion  
20      on an ongoing basis at fixed intervals. It looks  
21      likes probably quarterly, but we're still nailing  
22      that down so that we can continue to improve the

1 quality of the content that we have.

2           The high-level physical architecture, we  
3 actually have that completed now for QA  
4 and staging. We're working on the release  
5 environment. We have the development QA  
6 and staging environments built out, and the  
7 logical and physical models are complete  
8 through production.

9           So, we just completed, as of yesterday,  
10 our second document-conversion trial. We have 49 full cases  
11 that have been converted from images into XML. Our third trial,  
12 then, began yesterday or today, depending on how you calculate  
13 when the last one ended. But the -- we are  
14 leveraging the substantial knowledge that we  
15 gained from the first two. We've finalized the  
16 schema, and so the third sprint is really going to  
17 be a test for what we're going to see live in  
18 production. That's going to involve the  
19 conversion of 20 additional cases, and then we  
20 will be set to have production quality data to  
21 feed the system on an ongoing basis, both the  
22 conversion of existing cases as well as the

1 continuous integration of new data that arises in  
2 the case over time.

3 Any questions?

4 MR. ADLER: I have a question. On your  
5 timeline slide you listed a number of milestones  
6 that were delayed due to funding request issues,  
7 down there on the bottom. Since we want you to  
8 get the funding that you need to do the projects,  
9 could you identify what benefits these would -- or  
10 what benefits these would have to users and the  
11 public or to the examiners if you actually were  
12 able to have completed these or, stated the other  
13 way, what are the negatives that the public isn't  
14 getting the benefit of because the money was not  
15 available to you? Did I say that clearly enough?  
16 I mean --

17 MR. LANDRITH: Yeah, I think I  
18 understand. So, the budget crunch came at a time  
19 when we were actually in the process of defining  
20 the scope, and so there was never actually a scope  
21 that was defined before that. So, the items that  
22 we cut off were -- some of them were along the

1 lines of expanded functionality, like advance work  
2 on the Office Actions and advance work on Search  
3 in order to line those up. Other areas where we  
4 cut back were infrastructure-wise. We had planned  
5 on deploying in a cloud. We decided to go with a  
6 virtualized environment. The difference there is  
7 that instead of having an elastic infrastructure  
8 that can grow with usage, you build to peak. It's  
9 a build-to-peak usage. So, since we're going  
10 ahead with a smaller pilot audience,  
11 building-to-peak usage proved to be less expensive  
12 than deploying in a cloud. So, we made some  
13 changes that way.

14 And the larger impact, though, has been  
15 our ability to get items locked and loaded in  
16 advance for Fiscal Year '12, and those would be  
17 items like Search, Office Actions, and  
18 improvements to the Applicant/Office interface.

19 Did you want to add anything, John?

20 MR. OWENS: Sure. Basically what we did  
21 is we punted a bunch of things downfield. I mean,  
22 there's no other way about it. We had a very

1 strong directive with OMB and conversations with  
2 Vivek Kundra and Mr. Kappos. And that goal was to  
3 get into the hands of a small group of real  
4 examiners the tool this year and have it function.  
5 We picked the CRU, because they're not on  
6 production time. They are examiners. They  
7 understand the tools. They have no automation  
8 today whatsoever. It was a big win for everyone.  
9 And no matter what, when we were playing with the  
10 money and trying to figure out what we could or  
11 could not do, that remained the focus.

12 Now, the tangential things that David  
13 mentioned still do hurt. I mean, we will  
14 eventually have to port our virtual environment to  
15 a cloud environment to gain elasticity. That will  
16 take time and money. We will still have to  
17 engineer the products and services that we wanted  
18 to have pre-engineered for implementation this  
19 year. So, delay in next year, '12, for some of  
20 those things will happen. But we kept on target  
21 for the goal of this year.

22 MR. ADLER: I'm -- maybe I didn't state

1 my appreciation for the work that you did in view  
2 of the dynamics of the situation. That's -- I'm  
3 taking that as granted; that's good. What I'm  
4 trying to help you develop is a narrative for  
5 would the additional money that you weren't able  
6 to use have led to shortening of a re-examination  
7 determination if you had gotten it? In other  
8 words, if these things were in place faster, would  
9 a re-exam go from two years to a year? In other  
10 words, we need to be able to make a story that  
11 explains why you're using -- not from the internal  
12 workings, but from the impact on the operation, if  
13 you actually were able to do all this stuff  
14 faster.

15 MR. OWENS: What you're really talking  
16 about is would I be able to implement patents and  
17 faster and would it have a more positive impact to  
18 the examination core.

19 MR. ADLER: Yes, and what would they be?

20 MR. OWENS: And I don't -- I do not know  
21 what the impact of providing these advance tools  
22 and operations and text to the examiner will have

1 impact. I do know that in conversations with Mr.  
2 Kappos, our focus is not on the reduction of  
3 examination time; it's for Patents to deal with.  
4 We are providing good and stable tools that  
5 implement features and functions that assist the  
6 examiner in performing their job. That's the  
7 focus that we have.

8 So, could one draw a corollary? I'm  
9 sure, but I am not going to draw that corollary  
10 without extreme assistance from Patents.

11 MR. ADLER: Do you think that that would  
12 be a useful thing for somebody to create a  
13 narrative like that -- maybe not for them, they're  
14 busy doing all the work, but maybe for somebody  
15 else to explain why this work is good?

16 MS. KEPPLINGER: I already wrote one,  
17 Marc, from what they said that -- by putting  
18 there. I mean, at least to some extent, what they  
19 said was that functionalities, a search, Office  
20 Actions, and improvements in Office Actions were  
21 delayed, and they'd hear the cloud instead of --  
22 they had used virtual instead of cloud. So, I

1 think we can turn the first part into -- quality  
2 enhancement was delayed because of the search and  
3 the Office Actions, and those things would have  
4 been conveyed to the public, and they're delayed.  
5 Yeah.

6 MR. BUDENS: That's where I would go on  
7 with that, too, and I think that as we've gone  
8 through -- you know, in reference to John's  
9 comments we've been involved in this, too. And  
10 what we've seen so far is, No. 1, pretty  
11 impressive, because I've never seen anything get  
12 developed this fast and actually kind of look like  
13 it's going to work in all the years -- so, you  
14 know, there's still a ways to go, but I've got to  
15 give them credit, for the sprints have been  
16 impressive. But I think we're -- I would see this  
17 really having more impact, too -- is in the  
18 quality of examination, because the tools that  
19 it's going to give us are things we've been  
20 lacking in the current tools, which is the ability  
21 to go in and search the spec and search the claims  
22 and search the whole doggoned application with

1 tech searching so we can find what we need, you  
2 know, quicker; find if it's there; et cetera. And  
3 I think that's what we saw in the demonstration  
4 here just this past week that they put on for POPA  
5 leadership. It has some very useful tools in it.  
6 I think they are going to be very well received by  
7 the examining corp.

8 MS. KEPPLINGER: I'm confident --

9 MR. ADLER: It's true. I'm trying to  
10 just help them help make the case. That's all.

11 MR. OWENS: And I appreciate that.  
12 Drawing the conclusion of what was delayed and,  
13 therefore, without the money I think you hit it on  
14 the head. We delayed the work that we wanted to  
15 do to enhance the functionality of Patents  
16 End-to-End of the things listed on the bottom of  
17 the chart and moving to an elastic environment.  
18 Those are the things that were delayed. We wanted  
19 to have money for them. We had early planned on  
20 doing those things, and now we're not. We didn't  
21 miss the goal. The goal is still met, but we  
22 didn't meet it the way we wanted.

1           But judging impacts so we get the full  
2 story on the examiner environment is going to be a  
3 very difficult thing until examiners start using  
4 the environment. And then we add all of those  
5 features and functions and tools. I don't -- I'm  
6 not the type of guy that guesses. I'm a much more  
7 analytical person, so I'm reluctant to say but I  
8 think it would have -- if you wanted that study,  
9 which I believe would be useful, it would really  
10 have to be done in close cooperation with Bob  
11 Stoll and in Patents to find out what impact this  
12 had on examiners. And certainly I agree with  
13 Robert. Quality is a big impact that we're trying  
14 to hit.

15           MR. BORSON: If I might follow up on  
16 that, I think that there's a narrative to tell  
17 about improving quality and decreasing pendency,  
18 and I think that things are in place now to  
19 quantitize at least some of those through the  
20 objective measures of quality and timeliness. I  
21 think there is an opportunity here to leverage  
22 last year's comments and the work that we did last

1 year on the quality initiative and the pendency to  
2 actually create some data around that. And maybe  
3 if there is somebody in Patents that can help find  
4 out some objective data, as well as examiners like  
5 it -- yeah, they understand there's a learning  
6 curve -- but if they end up being able to  
7 demonstrate that pendency for Office Action goes  
8 down, the quality of the Office Action goes up.  
9 It would be very nice to have that. That would be  
10 the data to support the narrative.

11 MR. OWENS: You know, just as an aside  
12 -- and I'm sorry Robert had to leave -- we are  
13 releasing PATI this year, which was an enhancement  
14 to the current tools, which brings text to a  
15 couple of groups, and we hope to expand that. We  
16 will learn a lot from that. We will learn how  
17 examiners use text, which is something we don't  
18 know. We know how they use pictures, but we  
19 really don't know how they use text. Patents  
20 End-to-End is a good guess at how they use text --  
21 pardon?

22 MR. ADLER: They know how to use text.

1 They find the sentence that they're looking for  
2 and --

3 MR. OWENS: Yeah, but right now they use  
4 a picture to do that. How they use and manipulate  
5 text, the copy and pasting between windows, and so  
6 on and so forth can't be done today. So, we are  
7 learning, even with this early initiative, based  
8 on the tools that we have today, how the examiner  
9 will operate. And that feedback will get  
10 incorporated dynamically into the Patents  
11 End-to-End sprints, which is something that  
12 shouldn't be overlooked.

13 CHAIRMAN MATTEO: So, can I ask a  
14 question that maybe is resident in that, that you  
15 may have tacitly answered but I didn't catch?  
16 Back to Marc's nuances again. Maybe I missed it,  
17 but, so, a lot of this ties into workflow and  
18 process. You can't architect the system around  
19 the patent system if you don't know the workflow  
20 and the process. How tightly coupled are you  
21 working with the process reengineering effort? It  
22 didn't sound as though you spoke to workflow or

1 optimization of workflow in this discussion, so  
2 can you make explicit what your interaction is  
3 there?

4 MR. LANDRITH: Yeah. We've been meeting  
5 with them at least weekly, with the business  
6 process reengineering team. Because we had such a  
7 short planning and development cycle, we have  
8 sought to avoid workflow issues in the CRU release  
9 and center the functionality, you know, kind of  
10 nested in an area where the workflow occurs around  
11 it rather than implementing workflow. But in  
12 Fiscal Year '12, that's going to be a major area  
13 that we push toward both in terms of the features  
14 that we embrace. For example, Office Actions is  
15 going to represent an umbrella of features that  
16 are tied very tightly to workflow as well as  
17 specific workflow items that exist as features in  
18 and of themselves.

19 CHAIRMAN MATTEO: So, I hate to keep  
20 beating on this, tied to or collaboratively  
21 co-developed with?

22 MR. LANDRITH: It's going to be a

1 combination. They've been working on a lot of  
2 things for a long time that have been queued up  
3 and are, you know, kind of waiting to be  
4 implemented in Patents, and that's the kind of  
5 stuff that we'll be taking from them. They'll be  
6 handing off to us new items in areas for  
7 improvement. We'll also have the opportunity to  
8 introduce new parameters by virtue of the  
9 technology that we're bringing to bear will be  
10 working collaboratively with them.

11 CHAIRMAN MATTEO: Okay, so I think the  
12 last point hit my question. Okay, great, thank  
13 you.

14 MR. OWENS: Very tightly coupled is the  
15 way I would describe it. And I know Ben's been  
16 involved in this, but very, very tightly coupled.  
17 They not only take a seat in part of the  
18 development of the new stuff to help us get  
19 feedback and work with us, but as they come up  
20 with new ideas -- and one of the biggest things,  
21 as you saw, next year to tackle will be Office  
22 Actions, and that will be huge to have their

1 involvement in. And it is a major piece that I  
2 certainly would be more than happy to see replaced  
3 out of our current system.

4 So, the answer is yes, very tightly  
5 coupled. There isn't a thing that they don't come  
6 up with or design or optimize that we don't then  
7 take and work together with them as an  
8 implementation.

9 CHAIRMAN MATTEO: Great. Thank you very  
10 much. Did you have -- John? David? Did you have  
11 anything else?

12 MR. OWENS: That's all for us.

13 CHAIRMAN MATTEO: Okay.

14 MR. OWENS: Unless you have questions.

15 CHAIRMAN MATTEO: Any further questions  
16 from the floor? Ben? Wayne?

17 Okay, great. Well, thank you,  
18 gentlemen, very much.

19 MR. OWENS: Thank you.

20 CHAIRMAN MATTEO: Excellent work. Thank  
21 you very much.

22 And our final presenter -- I'm sorry.

1 Oh, I'm sorry, Esther, I didn't see you. Esther  
2 has a question.

3 MS. KEPPLINGER: I had a question.  
4 Actually, it's for Mick. He was leaving, but he  
5 had a question about, for example -- and it's to  
6 the legislation. The legislation currently has  
7 provisions for charging, for filing an application  
8 that's not electronic. But there are definitely  
9 plenty of times when the system goes down and  
10 people are forced to file via paper when they  
11 would ordinarily have filed electronically. And  
12 so the question is what -- are you going to have  
13 provisions in place for that sort of eventuality?

14 MR. OWENS: So, actually, I don't know  
15 who noticed, but -- I'm kind of proud of this --  
16 we actually modified our current EFS web  
17 environment to -- even if our system goes offline  
18 here to continue to take applications. So, you  
19 should have seen a significant decrease in  
20 complaints from your offices, and certainly the  
21 public in general, by not being able to receive  
22 electronic filings.

1 MS. KEPPLINGER: It may be that they  
2 didn't realize that, that when the system was down  
3 they could still file, because I know they do a  
4 lot of filing, and he was saying it just last  
5 week. I think the system was down and they had to  
6 submit a number of cases. So, that's very  
7 helpful. Thank you.

8 MR. OWENS: Because we keep track when  
9 the system is down and we're still getting  
10 filings. If there are instances where we're not,  
11 I certainly want to know about those, because it's  
12 kind of like when the system goes down and we have  
13 to reset it, we watch the bucket that all the  
14 filings go in, and there are filings going in  
15 there. So, if someone can't get there, I'm  
16 certainly very interested in knowing when they  
17 can't -- date, times, and whatever -- and I can  
18 find whatever's broken. But we have made a  
19 significant increase. Mr. Kappos and Mr. Stoll  
20 made it clear to me that, you know, as good as the  
21 current system is, it's not good enough and we  
22 needed to plug that hole. I mean, we can't lose

1 the rights of the filer at all, and that's going  
2 to become more and more and more important.

3 As far as, you know, an emergency type  
4 of thing, both systems break and which we try to  
5 avoid, then we are going to have to have some  
6 accommodation in there, obviously, if the data  
7 center would be affected on a grand scale --  
8 weather, earthquake, hurricane, et cetera. There  
9 may be times where because we don't -- we have not  
10 had funding to complete our BCDR work, our backup  
11 disaster recovery work, obviously, offsite of this  
12 location, we will have to have an accommodation  
13 made. But I have a representative on the team  
14 that's talking about the proposed legislation and  
15 what needs to be done to our electronic systems  
16 for that, and certainly that will be tied into  
17 that conversation on how the -- you know, if some  
18 disaster were to happen. But if people have  
19 examples of where it's not working in the last few  
20 months, I certainly would need to know specifics,  
21 and I want those down, because that's a bug.

22 CHAIRMAN MATTEO: Okay, thank you very

1 much.

2 MR. OWENS: Thank you again.

3 CHAIRMAN MATTEO: All right. So, our  
4 final presenter for the afternoon will be Jim  
5 Smith, chief judge of the Board of Patent Appeals  
6 and Interferences.

7 Welcome, Jim.

8 MR. SMITH: Good morning. I see from  
9 the schedule that my time has expired. I guess  
10 you're allowing me to continue.

11 CHAIRMAN MATTEO: Yes, by all means  
12 please do.

13 MR. SMITH: My name is James Smith,  
14 James Donald Smith. I'm the new chief judge of  
15 the Board of Patent Appeals and Interferences,  
16 soon with AIA to be renamed the Patent Trial and  
17 Appeal Board. So, we'll have to do some acronym  
18 adjustment at the appropriate time.

19 Just to tell you a little bit about me,  
20 my previous position was as chief IP counsel,  
21 Baxter Health Care in the Chicago area. Prior to  
22 that in earlier portions of my career I served as

1 a licensing executive for a mobile devices  
2 company. Also worked in patent litigation for the  
3 bulk of my career. But I think quite nicely  
4 buried somewhere in the back of my professional  
5 history is a little time at this office as an  
6 examiner, so that certainly is helpful in terms of  
7 some perspective setting for me. And I also spent  
8 a time as a federal judicial clerk for former  
9 Chief Judge Michel. So, I know we have at least  
10 one other such person in this group who clerked for Judge  
Michel.

11 This is an exciting time for the Board.  
12 You may not know, so I will tell you, this is the  
13 150th year of the Board's existence. Going back  
14 to 1860, there was the enactment of the  
15 legislation that brought about the Board, which  
16 was put through Congress and signed by then  
17 President James Buchanan. It was in the  
18 following spring of 1861 that Abraham Lincoln  
19 himself appointed the first three members of the  
20 Board. So, my way-long-ago predecessor, the first  
21 chairman of the Board of Examiners-in-Chief was,  
22 in fact, an Abraham Lincoln appointee and a

1 prominent patent lawyer with whom Lincoln had  
2 actually tried a patent case.

3           So, we at the Board, I think this year,  
4 are feeling a special energy that comes in part  
5 from our long and storied history, and I guess  
6 we're feeling energy also from some of the  
7 challenges that we are facing and additional  
8 challenges we soon will be facing. A little more  
9 on that in a while.

10           Let me just say about the Board and some  
11 of what's happened since Abe spent some time  
12 thinking about it. His original appointment was  
13 of three individuals to the Board. In early July  
14 the Board, for the first time, topped the number  
15 100 of administrative patent judges. That sounds  
16 like a big number, and in some ways it would seem  
17 that way to any number of people, President  
18 Lincoln included. But it's really a small number  
19 in comparison with, really, the challenges we're  
20 facing.

21           Some of how we get to that hundred  
22 number includes recent addition of a large number

1 of patent attorneys who were assisting the work of  
2 the judges, but who themselves have since  
3 qualified for and been appointed to serve as  
4 judges. We think that's a significant development  
5 for helping us with our current inventory of  
6 cases. We think it's particularly a useful  
7 development because the bulk of the patent  
8 attorneys who now have become judges at the Board  
9 have been at the Board for two or more years and,  
10 therefore, very much have been able to develop the  
11 skills and to have been tested in their ability to  
12 carry out the duties of the Board.

13 So, when you last may have looked at the  
14 total number of judges, it may have been more in  
15 the low 70s range. We're now, as I say, in the  
16 hundred range, which includes those former patent  
17 attorneys and several appointments to the Board  
18 from outside the office and folks who previously  
19 were not affiliated with the Board. That gets us  
20 to a hundred total, which, fortunately, also  
21 includes two of our most productive former judges  
22 who have rejoined in their retirement years, not

1 carrying what one may consider a full load, but  
2 being very productive. They essentially probably  
3 will provide to us what it is the equivalent of a  
4 full load anyway.

5 We expected to receive in Fiscal Year  
6 2011 13,200 new cases roughly, and what has in fact  
7 happened is that we are on track to, and we're very  
8 close, of course, to the end of the fiscal year  
9 and can give this number with some certainty:  
10 We're much more likely to come in at about 14,000  
11 cases filed before the Board in the fiscal year.

12 The significance of that really comes to  
13 light by comparing it with the flow of cases out  
14 of the Board, which is to say our disposition  
15 rate. We had expected to decide about 6,900 cases  
16 in this fiscal year or slightly higher. We  
17 probably will come out more than slightly higher  
18 at about 7,300 cases decided, which is certainly  
19 good in terms of improvement of output. But, as  
20 you can see against the incoming number, it,  
21 unfortunately, causes our inventory to continue to  
22 grow. Looking back, say, in the last 30 days or

1       so, our inventory of cases -- and I prefer to use  
2       that terminology rather than some other  
3       terminology that often is used -- our inventory  
4       was about 23,000 cases. We think the year will  
5       end with it more at about 24,000 cases.

6               All this suggests quite strongly that  
7       there is a need for additional resources, and we  
8       envision, in fact, that additional resources will  
9       come to the Board at some not-too-distant point.

10              In anticipation of this, one of the  
11       things we already have done in recent times is to  
12       reposition, rework some of the leadership of the  
13       Board. We have appointed new lead judges whose  
14       roles now also include more of the tasks  
15       associated with personnel management and  
16       evaluation of performance and the like. We think  
17       that's an important precursor to our growth,  
18       because it means there will be more leaders in  
19       place to defray the load of managing a  
20       substantially larger board and handling all of  
21       those tasks that OPM and the Office of Human  
22       Resources and others require of us in terms of

1 effective human resource management.

2           And, in fact, with the anticipation that  
3 we will grow in a way that will be aided by our  
4 new lead judges, position announcements are  
5 already out for the hiring of many more  
6 judges. To some extent, whether we can move  
7 forward with that at the pace we would like to  
8 depends again on whether we get the additional  
9 resources. But in any event, we have set  
10 ourselves up in terms of both the internal  
11 reorganization and the posting of the  
12 announcements so that that growth can come.

13           In fact, looking more specifically at  
14 the kind of growth we expect and need over the  
15 course of the next 12 to 24 months, the Board  
16 essentially needs to double in size. And it might  
17 sound a bit audacious to contemplate a board that  
18 roughly now has a hundred judges and about a  
19 hundred support staff being an organization of not  
20 200+, but 400+. But we view this as not so much  
21 audacious as it is necessary.

22           As you are aware and have heard reviewed

1       in some detail earlier, the America Invents Act  
2       brings to the Board four new types of proceedings,  
3       and those proceedings will add to the load of the  
4       Board. And, in fact, even before those  
5       proceedings come to the Board we have significant  
6       responsibilities, as Janet Gongola described, with  
7       regard to the development of new rules,  
8       infrastructure, training in order to support those  
9       new proceedings. A significant amount of the work  
10      involved in that has to be done by judges who are  
11      already at the Board, which diverts their  
12      attention from deciding cases. And all of what  
13      I've said just speaks to the new challenges, which  
14      drive growth, without mentioning the fact that we  
15      have twice as many cases coming in now as we're  
16      able to decide, which demands growth even if there  
17      were no America Invents Act and new  
18      responsibilities arising from it.

19                Another area receiving attention at the  
20      Board is consistency in Board decisions. This is  
21      not an unrelated topic to what I've been  
22      mentioning so far. A large board means lots of

1 cases being decided by lots of people. The more  
2 cases and the more decision makers, the greater  
3 the challenge of maintaining consistency at the  
4 Board.

5           You will see it follows from the numbers  
6 that I've given you that the Board decides 600+  
7 cases per month with 3-judge panels, which means  
8 that we have 3 dozen or more panels in any given  
9 month. The ability of any one judge or panel to  
10 keep track of the several hundred other decisions  
11 in that month or in previous nearby months and the  
12 work of the several different panels is a  
13 challenge. We will increasingly try to focus the  
14 attention of the judges in areas where there is  
15 perceived to be inconsistency or where consistency  
16 may not have arisen but likely would because the  
17 law is in flux, and definitive approaches to  
18 certain areas have not necessarily been honed yet  
19 so that we can minimize the amount of  
20 inconsistency that might ensue.

21           Let me also speak to IT support systems.  
22 You will have heard -- you have heard, now, some

1 information about the things that have been  
2 ongoing from the chief information officer.

3           Let me point out -- and this again will  
4 be no surprise -- it follows from what you know  
5 about our operation that some of what we do is  
6 different than what the rest of the agency is  
7 doing, which means we have particular, distinct  
8 demands with regard to our information technology  
9 needs, as an example, because our decisions are  
10 rendered by three-judge panels and they work  
11 interactively and iteratively, the need to  
12 deliver information to them jointly and to allow  
13 manipulation of files and drafts and records is of  
14 a unique character, which means that those kinds  
15 of needs are not necessarily included in the  
16 general package of needs, for example, by the  
17 examining core, which drives the need for the  
18 Board to be both very forward- thinking and very  
19 assertive with regard to having its needs  
20 addressed by the IT organization at the agency.

21           And it also drives at times  
22 consideration of solutions to challenges which

1 don't come from the internal IT organization but  
2 come from outside vendors, for example, where our  
3 use of them is overseen by the IT office at the  
4 agency and where we work with people there.  
5 We benefit from a very IT-sophisticated  
6 group of judges at the Board and administrators as  
7 well who participate in the discussion of these  
8 issues and forecasting our needs and working with  
9 the CIO to develop our solutions.

10 In recent times there is more of a sense  
11 that some of the Patent End-to-End solutions will  
12 in fact be adaptable to Board needs, so we're very  
13 excited about that and continue to work with them  
14 on those things and to try to keep the judges on  
15 the Board generally involved in the process,  
16 because at the end of the day the solutions  
17 delivered have to work for the target audience or  
18 the efforts are not particularly effective.

19 Currently, we think the number of  
20 paralegals and legal assistance and other support  
21 personnel at the Board are adequate for our needs  
22 and even can accommodate some additional growth.

1 This is very good, because we expect and need the  
2 growth. But, in short order, if we grow the judge  
3 number in the way I've described them, we'll need  
4 to revisit the number of paralegals and other  
5 support staff. That will come in time.

6 In terms of the interaction between the  
7 Board and other parts of the agency, one thing  
8 ongoing, starting, in fact, next week is a round of  
9 special assignments of examiners to the Board, the  
10 idea being, really, a two-way flow of  
11 information and learning, allowing the examiners  
12 to spend some time with us, participate in our  
13 activities by assisting the judges on the cases  
14 and then being able after their special  
15 assignments are over to return to the core and  
16 share with their examining colleagues more about  
17 what we do and how we do it so that, hopefully,  
18 the whole process gets to be smoother over time.  
19 And we certainly hope to learn from the examiners,  
20 just to get a refresher sense of the examiner  
21 perspective, on how cases are handled at the Board  
22 and the best way to do that so that we can do our

1 little part in -- or not so little part in terms  
2 of the quality of examination.

3 Let me speak lastly to our recruitment  
4 again of new judges, and I'll speak to the  
5 recruitment because contemplation of it has given  
6 me the opportunity, after being here for about  
7 four months now, to ask whether the things that  
8 drew me here, in terms of what service at the  
9 Board means, are in fact things which I would urge  
10 on the recruits who we most want to see accept  
11 positions at the Board.

12 We of course want only the best people  
13 who we think can do a quality job at the Board to  
14 be the people who make it through the selection  
15 process and who we then persuade to be here. I  
16 can tell these people, after my time being here,  
17 although short, that the reasons to be here are  
18 very good, that the Board is a collegial place,  
19 that the work of the judges is very interesting  
20 and intellectually engaging. I can say, as has  
21 been said many times by various people at the  
22 agency, that the teleworking program is an

1 effective, useful program for the purposes it  
2 seeks to advance, and it enhances the quality of  
3 the work experience, interestingly  
4 teleworking provides freedom in a number of ways  
5 to the judges and other people at the Board who  
6 take advantage of it, but it provides that freedom  
7 from the workplace by in fact connecting people  
8 very well to the workplace.

9 I think we have a very good sense at the  
10 Board that teleworking works for us, because  
11 judges get together, as an example, in a  
12 meaningful and regular way even though they're not  
13 all officed next to each other in a real sense. I  
14 think virtually they are officing together and the  
15 telework program has demonstrated the extent to  
16 which that is true.

17 Another couple of things that I think  
18 are really good about the Board experience and  
19 make it something I am quite happy to point to for  
20 quality recruits is that our case inventory, among  
21 other things, indicates that the people want us to  
22 do something, and they want us to do a lot of it.

1 That is an affirming, and continues to be an  
2 affirming, thing for our sense of our mission at  
3 the Board. It's not merely that we have many  
4 cases coming in but that they are coming in at an  
5 even greater rate.

6 Lastly I would say this. One of the  
7 nicest things about being at the Board is that it  
8 changes my life from being one who merely awaits  
9 decisions to being one who gets to make them, and  
10 that's refreshing, at least for someone who spent  
11 most of his professional career more looking for  
12 decisions and advocating for them rather than  
13 being able to make them.

14 CHAIRMAN MATTEO: Great. Thank you very  
15 much. It's the first time we've had someone from  
16 the BPAI here at the PPAC meeting, so I think  
17 everybody probably enjoyed the presentation as  
18 much as I did.

19 We're a little over time, but if there  
20 are a few questions from the floor, we'd like to  
21 entertain them.

22 MR. BORSON: You know, I had one

1 question. First, thank you very much, it's a  
2 pleasure to meet you. I wanted to ask you about  
3 the interplay between the inventory that you have  
4 at the Board and the role of Patents in making  
5 decisions prior to appeal. I know that this is an  
6 area of interplay. There have been programs at  
7 the Office previously -- technology specialists,  
8 quality assurance specialists, and the like -- who  
9 would be able to assist the examination process in  
10 sorting out some of the issues that otherwise  
11 would have had to go to the Board of Appeals. And  
12 so I think this is an opportunity for us and for  
13 Patents to address the issues about what can be  
14 done by way of keeping your workload from  
15 increasing to an unsustainable level.

16 I understand that your vision is to  
17 increase the ability and capacity of the Board to  
18 handle these cases, but on the other hand there is  
19 an opportunity for Patents to assist the process  
20 and maybe allow cases to be resolved prior to  
21 getting it to your level. Do you have any  
22 comments and, Bob, do you have any?

1                   MR. SMITH: I'm happy to defer to  
2 Commissioner Stoll.

3                   MR. R. STOLL: It's a very good  
4 question, and there's a lot of merit to it. We  
5 are currently working very closely with the Board  
6 to see how we can reduce the number of appeals  
7 going to the Board, recognizing that we placed a  
8 lot of different initiatives in place, so we are  
9 already doing more compact prosecution, early  
10 interview, early finding of allowable subject  
11 matter, discussions with the applicant. So, I  
12 think we are working in manners that are already  
13 currently reducing what's going to the Board.

14                   We do have the problem that are what  
15 doesn't -- Jim doesn't want to say: A backlog of  
16 cases at the Board. And we're actually looking at  
17 those as well to see whether or not all of them  
18 are properly there. So, our two groups are  
19 working together looking at different issues to  
20 see whether we can't hand them back at the corps  
21 if they're inappropriately at the Board, but still  
22 expediting prosecution so that the applicant

1 doesn't feel like we're just churning at this  
2 point in order to do something. So, we're looking  
3 at those issues.

4 We're looking at maybe changing our  
5 appeal process review at the examination level,  
6 bringing folks outside of the examiner chain of  
7 command to take a look at the actual case as it's  
8 being decided to move forward in that process.  
9 So, there are many things going on right now.

10 And, Mr. Chief, if you want to add or  
11 change anything I said, feel comfortable doing so.

12 MR. SMITH: I would certainly agree with  
13 you with respect to the collaborative work going  
14 on now between the examining core and the Board to  
15 see what opportunities exist for refining the set  
16 of cases to make sure that the cases that the  
17 Board comes to decide -- panel to the Board comes  
18 to decide are, in fact cases where the cases -- any  
19 given case is really ready for proper decision,  
20 that the record facilitates a decision and there's  
21 not something that should have been done prior to  
22 the appeal coming forward.

1           I would also say this, and it is  
2           somewhat less meaningful in terms of an immediate  
3           turnaround of any number -- any inventory number.  
4           But ultimately the function of the Board really is  
5           to write decisions that help examiners do their  
6           job so that only the right cases come to the  
7           Board. That is, it's, in part, an instructional  
8           feedback loop.

9           One of the difficulties with the current  
10          inventory is that it means it's not on-time  
11          instruction, sort of three-year-delayed  
12          instruction. But to the extent that the  
13          instruction is still useful and not only in  
14          specific cases faced by a particular examiner  
15          whose case was on appeal but, more broadly, even  
16          as we decide cases we should, in fact, be helping  
17          to reduce the number of cases that are not rightly  
18          at the Board at any given time.

19          CHAIRMAN MATTEO: Let's make it just a  
20          couple of questions since we are over.

21          So, Esther and then Catherine, and then  
22          we'll call it a day.

1 MS. KEPPLINGER: Excellent, excellent  
2 initiatives. I think if you offered also the  
3 opportunity for interviews, real dialogue in some  
4 of those appeal conferences where there's an  
5 opportunity for exchange because oftentimes it  
6 gets -- you know, the examiner's position gets  
7 misrepresented both for the cases that are at the  
8 Board -- you might be able to get some of the  
9 backlog out if you offer those kinds of interviews  
10 and real dialogue. So, I think that they're good  
11 things.

12 MS. FAINT: I'm also an interlocutory  
13 attorney with the Trademark Trial and Appeal  
14 Board, and I wanted to say welcome back to the  
15 PTO.

16 MR. SMITH: Thank you.

17 MS. FAINT: But also I had two  
18 questions. One is the structure at the TTAB. We  
19 have interlocutory attorneys who decide  
20 non-dispositive motions, and I know that at the  
21 BPAI you have patent attorneys, but I don't think  
22 their function is quite the same as ours, and in

1 -- but I wondered if you were thinking of  
2 increasing that. You didn't mention them as a  
3 level of support that you were thinking of  
4 increasing.

5 MR. SMITH: Let me say that the answer  
6 I'm about to give is certainly subject to  
7 correction by two experts sitting in the room:  
8 Judge Michael Tierney and Vice Chief Judge Jay  
9 Moore. So, stop me, judges, if I misstate this.

10 I did not mention interlocutory matters  
11 particularly, but a large number of them are  
12 actually decided by judges in our contested cases  
13 and interferences area. In fact, I'd say a  
14 regular and ongoing part of the work they do, it  
15 is sort of part and parcel with the judging job.  
16 So, we staff that pretty robustly. I didn't  
17 mention the patent attorneys who are  
18 supporting judges in their decisions, but they  
19 also help in a way with interlocutory-type  
20 decisions.

21 A large number of petitions decisions,  
22 for example, are delegated to the chief judge from

1 the director of the agency, and we have a number  
2 of patent attorneys who assist me with that  
3 function on a day-to-day basis. So, we have quite  
4 a bit of interlocutory support built into the way  
5 we're doing the judging thing. But I say that all  
6 subject to correction of our experts in the room,  
7 who seem to be nodding.

8 MS. FAINT: All right. And my other  
9 question was if you foresee increasing of the role  
10 of the Board in mediation in ACR, which I think is  
11 a little bit different from this other discussion  
12 about the pre-appeal conferences, but actual  
13 mediation and settlement of cases or fast-tracking  
14 of cases.

15 MR. SMITH: Well, I think mediation is  
16 certainly a possibility as something to explore.  
17 I think the role of the Board -- in doing it, we  
18 need to look at it very carefully because, at the  
19 end of the day, we have judges who we want not to  
20 have become involved in a discussion that's  
21 distinct from the record we're presented with,  
22 because we are a tribunal of error and want to

1 have a record that is essentially fixed and where  
2 we're opining on things that have already  
3 happened. So, our -- the mechanisms by which we  
4 engage the parties in the dispute are very  
5 carefully regulated.

6 CHAIRMAN MATTEO: Okay. Well, Jim,  
7 thank you very much. We'll hope this isn't your  
8 last appearance here.

9 MR. SMITH: Thank you.

10 CHAIRMAN MATTEO: Very much enjoyed it.  
11 And I'd like to thank once again all of the  
12 presenters from the Patent Office for their  
13 diligent and great work that went into the  
14 presentations and, in fact, that underlie all of  
15 the presentations that were made today.

16 Thank you all to the audience who have  
17 chimed in and given us questions and to those of  
18 you who are listening.

19 And what I'd like to do now on the theme  
20 of thanks, for those of you who aren't aware, PPAC  
21 members are appointed by statute to three-year  
22 terms, and coming up very shortly in October is

1 the end of the term of several of the members of  
2 the current PPAC. Those members are Marc Adler,  
3 who's with us today, and Maureen Toohey, who  
4 should I hope still be with us on the telephone.

5 MS. TOOHEY: I am, Damon.

6 CHAIRMAN MATTEO: Wonderful. So, what  
7 I'd like to do is, on behalf of myself and the  
8 entire PPAC, thank you both for your great  
9 efforts, marvelous contributions, continued  
10 inspiration. It has been, personally speaking, a  
11 great pleasure and privilege to have worked with  
12 you both, and I look forward to working with you  
13 again in different capacities.

14 And what I'd like to do now --  
15 unfortunately, Maureen, you're not here, so you'll  
16 get yours virtually or in the cloud I guess is the  
17 preferred method now, but, Marc, if you can up, we  
18 have a little plaque to present to you.

19 MR. ADLER: All right.

20 CHAIRMAN MATTEO: Here you go.

21 MR. ADLER: Oh, thank you very much. I  
22 guess it's a photo op event.

1                   SPEAKER: The whole purpose of being  
2 here.

3                   MR. ADLER: Thank you. Thank you,  
4 Damon.

5                   CHAIRMAN MATTEO: Great pleasure.

6                   MR. ADLER: Say one thing before I  
7 leave?

8                   CHAIRMAN MATTEO: You can absolutely say  
9 what you'd like.

10                  MR. ADLER: I want to thank everybody  
11 from the Patent Office and my colleagues on PPAC.  
  
12 It's been an interesting experience for me and  
13 it's been hopefully helpful to everyone as well  
14 as, you know, to PPAC as well as in the Patent  
15 Office. I think the nature of the collaboration  
16 with PPAC has been started in a different way than  
17 it may have been in the past and should be  
18 continued. There are a lot of good folks on both  
19 sides who want that to happen, and I hope that  
20 some of our initial work on the quality effort  
21 won't get lost in your attempts to deal with the  
22 AIA implementation and that it should be a goal,

1 number one, at the end of the day anyway. And I  
2 want to thank you all for your hospitality and  
3 your good graces for putting up with some of my  
4 more direct non-nuanced discussions about some of  
5 your issues. But it's all meant -- it's all been  
6 meant in a positive and constructive way, and I  
7 just wanted to thank you all. And I won't be  
8 disappearing, so you'll still see me around but  
9 not within PPAC. So, thanks a lot.

10 MR. R. STOLL: We at the PTO greatly  
11 appreciate your efforts, and I expect that we'll  
12 be hearing from you and from Maureen on many more  
13 issues at the Patent and Trademark Office, maybe  
14 more quickly.

15 SPEAKER: (off mike)

16 MR. R. STOLL: That's what I mean.  
17 (Laughter) Thank you for your help.

18 CHAIRMAN MATTEO: Maureen, would you  
19 care to say anything?

20 MS. TOOHEY: I'm not sure how well you  
21 can all hear me, so I'll keep it very brief, but I  
22 just want to echo Marc's comments and greatly

1       thank everybody at the Office and all the members  
2       at PPAC for just a fantastic three years. It's an  
3       amazingly committed group and think it was a great  
4       honor to be a part of it, and I look forward to  
5       helping in any way that I can in the future.

6                   CHAIRMAN MATTEO: Thank you again,  
7       Maureen and Marc. Very much appreciate it. It's  
8       been our great pleasure.

9                   So, with that I would like to draw to a  
10       close and formally adjourn the public session of  
11       the PPAC. We'll take a group vote to decide  
12       whether we want to enter Executive Session. There  
13       are certain pre-decision or confidential matters  
14       that we need to discuss, so if you would by a show  
15       of hands. Affirmation for the Executive Session?  
16       All right, so moved.

17                   With that I'll adjourn the Public  
18       Session, and thank you all, once again, on the  
19       phone, here in the building, and wherever else you  
20       may be. Bye-bye.

21                   (Whereupon, at 12:01 p.m., the  
22       PROCEEDINGS were adjourned.)

1 \* \* \* \* \*  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

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.

-- - - - -

Notary Public, in and for the Commonwealth of  
Virginia  
My Commission Expires: July 31, 2015  
Notary Public Number 258192

