PARTICIPANTS:

PPAC Members:
DAMON C. MATTEO, Chair
D. BENJAMIN BORSON
LOUIS J. FOREMAN
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MICHELLE LEE
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Union Members:
ROBERT D. BUDENS
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VERNON A. TOWLER

Also Present:
DAVID J. KAPPOS, Under Secretary and Director of the USPTO
PEGGY FOCARINO, Deputy Commissioner of Patents
JANET GONGOLA, Patent Reform Coordinator
BRUCE KISLIUK
DAVID LANDRITH, Portfolio Manager
JOHN OWENS, Chief Information Officer
ANTHONY SCARDINO, Chief Financial Officer
JAMES SMITH, Chief Judge, Board of Patent Appeals

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MR. MATTEO: Good morning, everybody. If we could all take our seats. I'd like to formally open this public session of the U.S. Patent and Trademark Office Patent Public Advisory Committee. My name is Damon Matteo. I'm the chairman of the committee. And what I'd like to do is offer a formal roll call. If we can just move perhaps to my right, starting with Mr. Kappos.

MR. KAPPOS: Dave Kappos, director of the USPTO.

MR. BORSON: Ben Borson, member of PPAC.

MR. SOBON: Wayne Sobon, PPAC.

MS. LEE: Michelle Lee, PPAC.

MS. GONGOLA: Janet Gongola, patent reform coordinator.

MR. MEYERS: I'm Randy Meyers of the Patent Office Professional Association sitting in for Robert Budens today.

MS. KEPPLINGER: Esther Kepplinger,
MR. FORMAN: Louis Forman, PPAC.

MR. MILLER: Steve Miller, PPAC.

MS. FOCARINO: Peggy Focarino, USPTO.

MR. MATTEO: Thank you very much, everybody. And just by way of a reminder, PPAC is constituted based on our broad industry experience and our different personal and private affiliations. But while we're here, we speak with and only the USPTO, an innovation community of the United States interest. So with that, I'd like to begin the meeting formally. The agenda has been handed out to the PPAC members and is available on the PTO website, under the PPAC section. In addition to that, as time allows, we'll be taking questions from the public, and those can be sent to ppac@uspto.gov. Hopefully someone will be gathering those questions, and at the breaks, we'll be able to answer some questions from the public. Unfortunately, we won't be able to do that real time, but as I said, during the breaks we'll be able to do so.
So without further ado, I would like to turn the microphone over to Mr. Kappos, who will be providing some opening remarks on behalf of the USPTO. Mr. Kappos.

MR. KAPPOS: Okay, well, thank you very much, Damon, and good morning, everyone. Thank you for joining us here at the USPTO, whether you're on web cast or in the room here fairly early on a Thursday morning, getting started here at about 8:00 a.m. It's great to see our PPAC team and a lot of PTO colleagues here and to be able to engage in continued open discussion and get great advice, questions, comments, both from members of the public and from our Patent Public Advisory Committee. I'd just like to mention a few things this morning, first of all, to thank the PPAC for your service and for your willingness to engage the PTO at a level that I think is far deeper, more nuanced than in the past. I think that it is to the benefit of the U.S. innovation community first and foremost, secondly, to our agency in enabling us to do a better job, to more
quickly adapt our processes and practices to keep up with what's going on in your businesses and your client's businesses, small and large, all over the country, and indeed, globally.

So I think this entity, the PPAC, which has been important since its inception, has taken on a new found importance in view of everything we're trying to reengineer, rethink, reinvent, reimagine, choose your word or words, at the USPTO. I thank you for being willing to engage with us at the level that you are.

All of this is made more exigent by the passage of the America Invents Act now several months ago, which has taken the notion of the PPAC and its relationship both to the U.S. innovation community and to the USPTO to an entirely new level with quite substantial new responsibilities that have been placed on the PPAC, not the least of which is the fee setting related responsibility.

So I think a major challenge for us together, the USPTO, the PPAC, and indeed, the
U.S. innovation community is going to be to effectively implement this legislation its first time through, setting a precedent, I hope, for effective implementation on an ongoing basis, but important feature and a critically important feature is going to be that fee setting feature. We are doing our best here at the PTO to come up with first passes of all of the regulations. And you'll hear from Janet in a little while. I think you'll be seeing as many as ten NPRM's coming out next month now I guess, since it's now December 1st. And we'll be looking for great guidance and input from the PPAC, indeed, from the U.S. Innovation community on those.

But perhaps most critical, and certainly one of the most visible, if not the most visible of all of the new sets of rules is going to be the fees. We're doing our level best to think them through initially as we really need to do from a cost for service perspective, from a good policy perspective. But the PPAC is going to play an incredibly important role in bringing kind of a
basing and leveling and view of the entire U.S.
and, in a way, global innovation community to help
us in the number of iterations we're going to be
making on the fees to get them right.

So I just focus on that to say if
there's anything we're going to be relying on the
PPAC for, looking to the PPAC for, of a brand new
nature here in implementing the AIA, it's going to
be help on those fee setting provisions. I don't
mean that exclusively, but I mean that as clearly
a focal point.

So a couple of other things I'll mention
and then I'll stop. So the AIA is, you know, I
don't need to tell the people in this room, a
very, very big piece of legislation. Janet will
talk about that more in a little while. We are
very focused on effectively implementing it, and
by effectively, I mean thoughtfully, good policy,
listening to our IP community, the PPAC and all of
the small companies, and individuals, and
universities, and medium sized companies, and
large entities that are sending us input, and they
are sending a lot of input, and it is really, really excellent.

In order to get this legislation right, I believe a couple of things are going to need to happen. Number one, we're in an era where the government can't do this alone. Just like responses to major natural disasters, it's clear that things are happening so big and so fast that there's no entity no matter how capable it is that can handle them alone.

I believe the new model of the 21st century for effective governance is going to involve much more collaboration between government and citizens, in this case, a specific citizen community, that's the USPTO's user community and it starts with the PPAC and then it includes all of the others that I've mentioned.

The AIA is no different. We're going to implement this legislation effectively only if we work well and we are all part of its implementation, the USPTO, the PPAC, the user community. And I know it's hard work, it's a lot
of work. A lot of us here at the PTO are taking it on. We know you'll take it on in the PPAC. We need the whole USIP community to take it on, too. I really believe this is just part of a larger national and global trend where there needs to be a new manner of thinking about the role the government plays and the role that citizens play in making our country effective, and it's got to be a lot more collaborative than it was 10 or 20 or 30 years ago. We just don't have all of the solutions.

But I think we benefit in the IP community because we've got a really good functional working relationship between our agency and our constituency, and so I don't say these things with any trepidation or with any concern, I say them with optimism. I think if we keep running the plays that we've been running between the USPTO, the PPAC, and our entire user community, we can and will implement this legislation extremely effectively.

So with that said, the other thing that
I wanted to mention is that we're also aware that there's no way, no matter how much we all cooperate and how hard we all try and how thoughtful we all are, that we will get this all exactly right in one year in the case of the provisions that go into effect after September 16, 2012, or in 18 months in the case of those provisions that go into effect after March 16, 2013. So what I mean to say by that is that we accept that this -- while we're going to try to be as perfect as we can, this process is going to be iterative and it is going to go on beyond the initial round of changes, beyond, for instance, putting in place and in play the post grant provisions, just as one example.

We accept that there will be an iteration component to this and we're not afraid of that. We, in fact, think that that will be the strength of getting a great implementation over time. It will be all of our willingness to learn from how things go initially and cycle back and iterate on them. So I say that so everyone knows
that, you know, we don't think we're doing this
once and then we're all done and we're going to,
you know, go off golfing or something like that.
This is all going to be done as round
one, followed by round two, followed by however
many other rounds we need to have to get each of
these provisions where they make sense for the IP
community, they drive clear, high quality, fast
results at low cost, they're simple, they're not
putting burdens where the burdens shouldn't be,
they're implementable by the USPTO, they're
appropriate for our community.
So the last thing I wanted to say is
just some thanks to some key members of the USPTO
team who are here. I start with Janet Gongola,
who was courageous to come over from the
Solicitor's Office where she has been a star for
quite a few years to take on the now I'll say
really daunting role of running our implementation
of the AIA. Janet is doing an absolutely
fantastic job. I think I could speak for the
whole agency and say we couldn't be more thrilled
to have her leading that effort. So, Janet, thank
you for that, and you all will get to interact
with Janet more in just a minute.

Secondly, I'd like to congratulate and
thank new incoming Commissioner for Patents, Peggy
Focarino, my partner and colleague for all the
time that I've been here and a truly fantastic,
gifted public servant who I believe and am sure
has 100 percent of the confidence of our entire
patent examining corps, which is really important,
has got the right teaming relationship, honest
adult functional relationship with our important
Patent Office Professional Association Labor
Union, and has got the currency with the entire
intellectual property community, from knowing the
system inside and out for so many years. I could
not be more thrilled to have Peggy as my partner.

We'll, of course, miss the current
commission who's retiring, Bob Stull. Bob did an
absolutely fantastic job in his time as
commissioner, so we wish him well in his next
endeavors. But, Peggy, I'm just thrilled.
Congratulations on your soon to be completed appointment, and thanks for taking on that role. And then lastly, I'd just like to say, since I see a lot of PTO colleagues here, thanks for your continued efforts, leadership. We're implementing this legislation and improving this agency as a team, and I truly believe that it is the entire team, you know, all of us at this agency and our public advisory committee's and our community that are doing this together, so thanks for your leadership and support for all of us here at the PTO.

So, Damon, with that I'll stop. I'll try and stay a little while longer.

MR. MATTEO: Thank you very much, Dave. On behalf of PPAC, I'd like to thank you for your kind remarks. And I guess also on behalf of PPAC, I'd like to say that we're all equally earnest in our desire and our intensity to work with the PTO, to attack the challenges in front of us and the new ones that have been posed by AIA, in particular, the fee setting authority. And we're
looking forward to increasing the community cooperation and, frankly, collaboration between the two groups, the PTO and the PPAC.

As I mentioned when we first started, PPAC was constituted with the notion of different constituencies, different regions, and as surrogates for each of those constituencies and regions, we're certainly willing to do that. But also one of the more important functions of PPAC is a bridging function between the PTO and the innovation community at large. So I'm looking forward to working as a surrogate, as an individual, and I think all of us are looking forward to being participants in the process. So thank you again for the opportunity. I know we're all looking forward to it.

And what I'd like to do now is start with congratulations, but then turn the microphone over to the brand new commissioner for Patents, Ms. Peggy Focarino.

MS. FOCARINO: Thank you. Good morning, everyone. It's a pleasure to be here with you
this morning, and I'm happy to be here to discuss progress and issues within the patent's organization. Members of PPAC, you bring a wealth of experience to our organization. We really appreciate your insights and dedication to helping us solve our most pressing operational and policy challenges, and as you know, we have many of those. I'd like to welcome our newest PPAC member, Michelle Lee, and I look forward to working with you, Michelle.

Many important changes have taken place since we last met in September. Most notable, obviously, is the passage of the America Invents Act. So we have Janet Gongola here, our patent reform coordinator, who will discuss the details of the implementation of this really important law.

We released several Federal Register notices, and Janet will be briefing you on that and other related policy issues. The Track 1 program started with the enactment of the AIA. And we have, to date, received a total of 1,501
applications, 648 of these this fiscal year, and
several of these have already had a notice of
allowance mailed in them, so that's really great
news. And Bruce Kisliuk will brief you on our
operational highlights. But I'd like to just say
a few words about our recent progress. Our
backlog reduction campaign, which is called
Clearing Out the Oldest Patent Applications, or
COPA as we affectionately call it here, has
produced outstanding results. The current backlog
of applications awaiting first action by our
examiners dropped to 667,477 applications. So we
made a huge dent in our backlog, but also in
clearing out the oldest applications.
So that effort that we undertook
beginning last year will continue this fiscal year
because the program was such a great success. And
we will have another campaign to clear out 260,000
of the oldest patent applications. So it's a real
stretch goal, but we think we've got the right
processes in place to do that and we're really
well positioned to do that.
Another related program to this effort is called our PPOP effort, which is our Patent Pipeline Optimization Program, and that's an initiative that addresses applications which have significantly slowed or delayed prosecutions in them. And we've had great success in locating these applications and getting them back on track and moving them to disposition. So we continue to make good progress despite the rise in application filings.

Our attrition rate has remained extremely low, it's under 4 percent. Our hiring efforts have resumed and we've got a great hiring team in place and they're out as we speak and also conducting a big job fair now. And we are hiring up to our goal of 1,500 examiners this year. So we have a great progress and we have a great process in place to be able to have a successful hiring year. So overall, the patents organization is working more efficiently, but we continue to look for ways to improve our processes and we will need your input and guidance for sure.
So I'm now going to turn the discussion over to Janet, who will give you the agency's progress and the AIA law implementation. But I want to thank you for your guidance and support, and I really look forward to working with all of you over this next year. Thank you.

MS. GONGOLA: Good morning, everyone. Thank you to PPAC for inviting me to come back again this month and give you an update on our implementation efforts. Before I begin, I want to express sincere appreciation to Director Kappos and Deputy Commissioner Focarino for their confidence in me, as well as the entire PTO team, to achieve the implementation that we want for our 21st century Patent Office.

What I'd like to do today is to update you on where we stand with the various rulemakings, studies and programs that the America Invents Act requires us to put into place in varying time periods. So at any point, I hope if you have questions, you will feel free, interrupt, ask any questions that you have, and I'll walk you
through in a sequential fashion. So the progress of our rulemakings, we have 19 statutory provisions in the America Invents Act that implicate Patent Office operations. Now, there are many others that implicate litigation related matters, but we are focused on those that implicate patent operations.

Of those, this is kind of my report card slide, seven of the provisions have been implemented to date, seven more will be the subject of Federal Register notices to issue in mid to late January. And then two additional ones will be the subject of Federal Register notices that will come out on a 17-month time frame. And I'll break down these notices in particular as we go on. And then lastly, three final provisions will be part of our rulemaking that spans across an 18 month time frame. Okay. So I hope -- you all have copies of the slide sets in your packet, so if you're having difficulty reading the text, I would refer to the slides that you have. Now, this slide features the seven provisions that we
have implemented to date. They range from the
change in the standard for interparties
reexamination to the institution of or maintenance
of a prohibition on patenting human organisms to
the 15 percent surcharge transition to prioritize
the examination.

In the second column I provide for you
an identification of the documents that we used to
implement the specific provision. And all of
these documents can be found on our micro site.
The one person I want to call out and give you a
little more details on the progress report,
Commissioner Focarino referred to it, is
prioritized exam.

So on the slide, you have the statistics
for the number of prioritized examinations that we
have done last fiscal year, around 550, and the
number we have received to date this fiscal year,
around 850, and this data is current as of the
middle of November. You'll note that we have
issued -- of those that were filed last fiscal
year, we've issued eight patents so far.
Now, implementation of the seven provisions that are on the 12 months timeline. You've previously heard me talk about these provisions as the Group 2 Bucket. They're listed on the slide. There's seven provisions here. These seven provisions are going to translate into nine Federal Register notices to come out in January. And let me explain to you how the numbers are going to check.

So the first four provisions relate to Patent Office operations. And then there's oath and declaration, supplemental exam, citation of prior art in a patent application, and citation of prior art in a patent. There will be a one-for-one correspondence between the provision and a Federal Register notice. Now, for the last three, those relate to our contested case proceedings, interparties review, post grant review and a transitional program for covered business methods. Those three notices will be covered in five Federal Register notices, and here's how the breakdown will happen.
There will be an umbrella notice that will cover what I liken to the rules of civil procedure for proceeding in one of these contested case proceedings, generic rules that deal with issues like how to make the filing, page limitations, font size.

Then there will be three specific packages directed to the nuances of these particular procedures. So the time for post grant review, 9 months after the patent issue, interparties review, 10 months to the life of the patent. Details like that will be covered in the specific packages.

And then finally there will be a fifth package that will come out devoted to the definition of technological invention. We're pulling that definition into its own package because we appreciate there is a lot of controversy over how we may define that term, so we want to isolate it in its own rule package in the event there would be a litigation challenge down the line. That aspect would not entangle our
procedural type processing steps.

Now, here is the timeline for implementation of our 12-month permission. We talked about this timeline last time I met with you, but I've broken it out on this slide, graying out the points in time where we've passed, and the line indicates where we currently sit. Now, I'm going to go over some of the steps here with you because I'll cover other timelines, and you'll see that the steps, in large part, will be the same for each of our future rulemakings.

So currently we are preparing our Notices of Proposed Rulemaking. That process entails the actual drafting of the notices, as well as our internal clearance of those notices. Internal clearance involves review by the business units, the law division and the director's office. Once we complete our internal clearance, which will happen in mid December for these seven packages I talked about, we will move into a phase of OMB review of our packages. When we release the packages to OMB, this marks the point in time
we will share them with PPAC, as well as our
unions formally, although the unions have been
involved by having team members on each of the
groups that are preparing the rule packages.

OMB has agreed informally that they will
review our packages in one month's period of time.

This is a very ambitious goal, we realize that,
particularly with the holiday period coming up.
Assuming we meet that goal, then our Notices of
Proposed Rulemaking will publish in mid to late
January. I say mid to late January to give us a
little bit of wiggle room there to allow for
slippage due to the holiday period and OMB review.

Now, once we release the notices, we will move
into a 60-day public comment period. During this
period, we have planned to do road shows from east
coast to west coast to talk to the public and
educate you about the scope of our proposed rules.
So stay tuned for more information on locations
and dates for those road shows.

Once the comment period closes in mid to
late March, the Patent Office will go into a
period that I like to call hibernation, where we will begin preparing our final rules, taking all of the public's comments into consideration that we've received both in written form and through our road shows.

And then the process will start again. We'll engage in preparation of our proposed -- our final rules, we'll clear them internally, end of June we will release them to OMB for their review, and then after OMB, again, 30-day period. In late July, our notices will publish in the Federal Register.

There will be roughly a six-week or so, depending on how things go timing wise, delayed effective date on our final rules. During this delayed effective date time period, we will educate the public, training our examiners on the operation of our final rules, so that on the statutorily required effective dates for group two, September 16, 2012, we will have the rules in place and ready to be operational. Now, as Director Kappos indicated, we recognize those
rules might not be quite perfect, so then we'll
open another comment period, which I'll talk about
a little later.

Now, if we move to the next slide, I
want to talk about now implementation of what I
call our 17-month timeline. The two provisions
operating on this 17-month timeline are our fee
setting authority and the subsidiary provision of
the definition of micro entity.

Now, our fee setting authority became
effective on September 16th. However, to exercise
it, we must engage in the rulemaking process. And
for the micro entity provision, the definition of
the micro entity also went into effect on
September 16th, but the 75 percent micro entity
discount is not available until we exercise our
fee setting authority. That's why I've tied these
two provisions together.

So now if we move to the next slide,
you'll see the detailed timeline for exercising
our fee setting authority in rulemaking.
Essentially the steps are the same that I went
over for a 12-month timeline with a couple of
exceptions here. You'll see them, I've marked
them below the timeline. The first involves the
PPAC public hearing dealing with our proposed fee
schedule.

After the President releases the
President's budget at the beginning of February,
the second Monday of February, we will release our
fee setting information to the public. Within 30
days of the release of that information under the
terms of the America Invents Act, PPAC is required
to hold a public hearing. So I'm placing the
public hearing in late February to early March.
And the second additional step is during the
period for public comment, which will run after we
publish our proposed rules in mid June. It will
run from mid June to mid August.

Somewhere in the middle of there, PPAC
will deliver their report on the public hearing
that was held in time for the public to be able to
not only comment on our proposed rules, but have
the guidance of PPAC and be able to comment on the
PPAC report, as well.

Otherwise, all of the remaining steps on the timeline are identical to those steps I shared for the 12-month timeline. And in the end, we would expect to publish our final rules associated with both the fee setting, as well as the micro entity provisions at the beginning of December of 2012 with a delayed effective date close to 60-day delayed.

Now, what are we going to do associated with the micro entity? Well, we've come to the conclusion through a lot of public dialogue that there are varying provisions related to micro entity that need much more clarification. For example, the definition of the term "applicant," is that definition applied on an individual inventor basis or does the definition apply to an inventive entity in the aggregate? These sorts of questions will have to be sorted out, and we intend to use the rulemaking process that I show on this slide to make those distinctions.

MR. MATTEO: Excuse me, Janet. With
respect in particular to the PPAC interactions,
the public hearing, the report, et cetera, it
sounds like a lot of this timeline is influx and
perhaps some even know the structure is influx.
What can we count on from the PTO in terms of
advanced notice for timing of the public hearing,
for example, specificity as to what it should
embrace to be appropriate, et cetera? So what
kind of guidance and when would you be able to
give that to us?

MS. GONGOLA: So the date for the PPAC
public hearing is roughly set and we're going to
work out next week the exact timing for all of
these events. As it turns out, the road show --
we're hoping to coincide several events together.
The road shows that I alluded to for our proposed
rules will happen right around the time of the
PPAC public hearing, so we're hoping to aggregate
some events as we move from east coast to west
coast.

We had initial conversations kind of
yesterday with a few folks from PPAC,
brainstorming ideas for how we want the public hearing to be structured, what support you would like from the Patent Office, what information we can provide to you ahead of time. So I think now is the time that we -- your visit initiated those conversations, and we will be keeping in very, very close touch over the next month to two months to figure out exactly the details for the hearing. And we welcome any suggestions of things that you would like us to do to have ready that will help and facilitate the hearing.

To kick it all off, yesterday we had the conversation that we will issue a federal registry notice once we settle on the dates to inform the public of the location of the public hearing and how to participate as a witness in those public hearings.

MR. MATTEO: Okay. So one of the issues is, the timing, at least vaguely, aligns with a PPAC meeting that's already scheduled. So if and to the extent there's going to be a conflict or if and to the extent there's some sort of synergistic
interest in trying to get the two aligned, that's
something we'd like to have advanced notice of.

MS. GONGOLA: That's absolutely
possible. Thank you for bringing that up.

MR. MATTEO: Sure.

MS. GONGOLA: That's great.

MR. MATTEO: Thank you.

MR. MILLER: I have another question.

On the micro entity, there is fee setting with the
micro entity, but will those fees be set according
to the top timeline or the bottom timeline?
Because I would worry that there would be another
hearing for the micro entity fees.

MS. GONGOLA: All of the fees will be
set according to the top timeline. The micro
entity -- the statute indicates that the fees that
we set under our fee setting authority will apply
for both small entities and micro entities to all
fees associated with filing, searching,
maintaining, appealing, there might be a couple
other ones in there, a patent or a patent
application.
So the process or the actual dollars for the fees that apply to a micro entity will be covered by the top timeline. Then the details of sorting out finite aspects of the definition itself will be under the bottom timeline.

However, the timelines are identical in terms of what's happening when. Notices of proposed rulemaking come out at the same time, same time for public comment, same window for PTO to work on our final rules, final rules will issue at the same point in time. The only difference is, at the top timeline, we have our PPAC hearings and PPAC report required for fee setting.

MR. MILLER: Yeah, my only concern was that, on the bottom timeline, it said review of fee setting for the micro entities, and I guess it's just automatic because it's 75 percent of whatever fee is set, is that right? So there isn't really a need for a PPAC hearing on micro entity fees, right?

MS. GONGOLA: No.

MR. MILLER: It's just you're making the
definition of who qualifies then?

MS. GONGOLA: That's exactly right.

MR. MILLER: Okay. That's the clarification I needed.

MS. GONGOLA: And that second box, I embarrassingly note, should say "micro entity and PRM." Thank you for catching that for me.

Other questions on the fee setting timeline? No, okay. Well, then let's move on to our implementation under an 18 month timeline, a first inventor to file, derivation, and then the repeal of statutory invention registration.

Now, notice I put in asterisks after 18-month timeline. We're not going to take 18 months to engage in the rulemaking process. And to be honest with you, the three provisions listed on this slide will not entail intensive rulemaking. We're not going to be issuing a huge number of rules associated with first inventor to file. For the most part, we will be addressing first inventor to file through the guidance and training that we give to our examiners. There
will be a few rules, but nothing heavy duty. And then the derivation proceedings will borrow heavily from the contested case rules that we will be making under the 12 month timeline, meaning the general umbrella sets of rules, what I liken to the rules of civil procedure will apply to derivations. But we are building our derivation proceedings up from ground zero. We're not taking interference platform and simply imposing that structure on derivation. We're starting from ground zero and building it up in a way that we believe, through your public input, would make sense.

It is possible if we're able to accomplish it that we may move the derivation proceeding onto the 12-month schedule. I list it here at the 18-month because it's not required to be in effect until March 16, 2013. So this one is in a little bit of flux at the current time.

And then for the statutory invention registration, there will be no proposed rulemaking there. We intend to go out straight with the
final rule. So in the end, what we have, I call it 18 months because these provisions are due to be in effect 18 months from the date of enactment. But the timeline itself, if we go to slide 10, is actually a 14-month timeline.

In January, after we release the Notices of Proposed Rulemaking for provisions that are due at 12 months from the date of enactment, that's the trigger date to begin the rulemaking process for provisions that are needed 18 months from the date of enactment. All of the steps you see in that process are the same that we talked about for both the 12-month provisions, the two for the 17-month, and then this timeline here. So the key dates are the boxes in orange. Early June we will issue our Notices of Proposed Rulemaking, and then mid January of 2013 we will issue our final rules with about a 60-day delayed effective date. We allot a little bit more time, 14 months instead of 12, in order to give a little bit more room to OMB to do their reviews, but the steps are the same.

Now we'll move on to our studies.
MR. MATTEO: Janet, just a quick calibration question. So, for example, the influx of additional work is going to be an issue for PPAC vis-à-vis some of the meetings that we need to have. Is it real to expect OMB to be able to deal with a great influx, or, on the margin, is this a great influx of additional duties for them, all these reviews?

MS. GONGOLA: OMB is normally part of the rulemaking process, so they're accustomed to doing reviews. I think the largest challenge for them will be to review the ten packages we will be sending over in mid December under a 30-day timeframe that they've agreed to do. That is going to be a challenge for them.

MR. MATTEO: Exactly.

MS. GONGOLA: Normally there is no timeline under which OMB works. And through our general counsel, Bernie Knight, because he's explained to them that many of the provisions have certain dates by which they have to be in effect under the terms of the act, OMB has agreed to try
to achieve a tight timeline for us.

MR. MATTEO: Okay. Thank you.

MS. GONGOLA: Any other questions?

Okay. For our studies, we're required to complete
seven studies as the lead agency under the terms
of the act. I list those studies for you on this
slide. Two of them are in progress. Now, there
are two additional studies that we are required to
consult on, but those studies are being
administered by other agencies, so I'm not
including them on our report card.

The first study that we have ongoing is
the International Patent Protection Study. We've
been asked by Congress to look at ways to help
small businesses secure international patent
protection for their invention. Specifically, our
request is to help them figure out ways to
creatively finance the filings that are needed
around the globe, perhaps maybe a revolving loan
program, a grant program, some type of
subsidization on their filing fees.

We're working with several other
government agencies, principally the Small
Business Administration on this study. What we've
done so far, and this is the protocol that we will
follow for all of the studies, we published a
Federal Register notice on October 7 informing the
public that we plan to have hearings to solicit
the public's input on these studies. And then we
also noticed the opportunity to provide written
feedback to the agency. We held two hearings in
late October, early November, a total of 12
witnesses provided testimony, and then our comment
period closed on November 8th, and we received 19
written comments. What we're doing right now is
taking all of the information that we've collected
from the public and assembling the report that we
must provide to Congress by January 14th.

We were very fortunate to have much
public support for these studies and we've
received a great deal of very valuable input
that's going to help us complete our reports in
this process.

Now, similar prior user rights, same
protocol. For this study, we've been asked to research how prior user rights operate in other countries. And we're working with several other agencies on this study, the secretary of state, trade representatives, and attorney general.

We, again, published a federal registry notice, conducted one public hearing where we had six witnesses give testimony, and we've collected, as of our close date of November 8th, 28 written comments. Now, again, assembling all of that information in a report due to Congress on January 16th.

Now, an upcoming study that we're focusing on next is the genetic testing study. Congress has asked us to evaluate ways to provide a second confirmatory genetic test when there is a genetic patent -- a patent covered gene out there, along with licensing to an exclusive first type of testing. We plan to issue our Federal Register notice for this study announcing a hearing, seeking written comments late January. And then we're planning, as I alluded to earlier, to
combine the hearings for this study with our road shows and the PPAC fee setting hearings, now, not on the same day, but at the same block of time as we move from east coast to west coast. So we intend to have two hearings, one in Alexandria, one towards the west coast for this study, and we will be seeking comments from mid January to mid March, with the report date due in mid June to Congress -- progress reports on our program.

The act requires us to have four different programs running across the dates listed for you on this slide. I'd like to talk about two of those programs in particular. The pro bono program, it was required to be in effect on the date of enactment, and there is a program that we have running in the state of Minnesota by which patent attorneys are connected through a clearinghouse with under-resourced, independent inventors and small businesses to help them secure patent filings.

Now, we are in pursuit of programs in other cities across the country, so a task force
has been formed that the Patent Office is participating in. We're not leading the task force, but we are participating in the task force. And we've gotten great interest from varying cities across the country, so we're eager to have this program expanded and help independent inventors and small businesses across the country.

The last program I'll talk about is satellite offices. Under the terms of the America Invents Act, we must have three satellite offices in operation by 2014. So we have issued just this week a Federal Register notice seeking the public's input on where to place our satellite offices.

The first office is going to be located in Detroit, and we intend to have it running during Fiscal Year 2012. We have two more offices planned and that's what we want the public to help us figure out, good locations for those offices. The Federal Register notice seeks the public to give us information that will help us make that determination. Considerations like
workforce availability, cost of living, number of patent filings coming out of a certain region of the country so we can get a sense for the utilization of the office in that area. So the public has the opportunity from now until the end of January of 2012 to give us feedback on the locations for our satellite offices.

I'd like to tell you a little bit about our micro site that we've talked about throughout many of our speaking engagements. This is the principal way by which we communicate with the IP community about our implementation activities. We house all of our implementation documents on this website. The slide lists for you many of the new features that we have added onto the site since we last spoke. A couple that I'd like to talk about, we write progress reports for the Department of Commerce on a monthly basis about our implementation activities. We post for you those progress reports so you can see exactly what we are telling the Department of Commerce about the scope of our implementation. And basically every
one of the topics we covered today, rulemaking, studies and programs we discuss in our progress reports to Commerce.

Second, we have all of the information from our public hearings. We have a recording of the public hearings, transcripts, all of the comments on the public hearing that we've received posted on the website for everyone to be able to view.

We compiled the full legislative history for the America Invents Act, every hearing document before Congress, every report, every person's witness testimony is available on the micro site.

Finally, we have a subscription center. This is what a report on our subscription center looks like. If you go onto the micro site, you can subscribe to receive a monthly newsletter for us to give you updates on the scope of what we've done in the last month. We issued our first report this week. We have 3,000 subscribers on our subscription center to date. So if you'd like
more information, join, and I'll tell you every month what we've added to the micro site so you know to go on and look for new features.

We've also done throughout the past two months since enactment extensive public outreach. The map shows you the dots of various cities, and sometimes there's multiple cities under these dots, they're starting to collect, of where we have traveled to give presentations about the America Invents Act.

As of last week, we've done 66 presentations to the public. This map is on the micro site, so if you want to know exact details of where we've been, you can click on a particular region of the country and a table will come up to show you where we've been and where we have so far planned to continue to go within that region.

We feature that same information on our announcements and events column on a weekly basis. So if anyone wants to know or learn more about the act, they can find out where we'll be and when.

Now, this breaks down further what
you're seeing on the map in terms of percentages as to what regions of the country that we've been to. The one that I might point out to you is where I have listed all 11 percent. Those encompass webinars. I can't tell you -- let's see, 83 percent of all of the presentations we've given have been in person, and the balance have been through webinar, so that represents the webinars. And we reach from East Coast to West Coast, that's why I include it under the category "All."

The last topic that I'd like to cover is our public comments. We are extremely grateful to the public for having submitted the number and quality of the comments we've received to date. There have been 163 comment submissions and they have been extensive. We received some submissions that have drafted actual proposed rules for us, 77 pages of proposed rules for us. And I can tell you that we have taken all of this public feedback into heavy duty consideration.

We, in fact, at one point received very
large submissions around the middle of November, which triggered us to have Sunday meetings to talk about the scope of those comments. And we also took our contested case provisions back into the drafting stages as a result of those comments. There are many wonderful ideas within the comments that we wanted to incorporate into our rules. So we stopped our timeline and have gone back, I don't want to say completely to the drawing board, but we've gone back in and made some major changes in response to the feedback that we've received.

Now, on the site, I want to tell you a little bit about the nature of the comments, because I believe everyone is probably curious, what are people saying to the agency. So the first pie chart breaks down generally the categories, broad categories for which input has been given. So 29 percent of the comments have related to the patent provisions, supplemental exams, citation or prior art in a patent application, and a patent itself, and oath and declaration.
Contested cases, 37 percent of the feedback on post grant review, interparties review, the transitional business method and derivation, 14 percent on fees, and then 20 percent on other. And other, if you look on the micro site, you can see the categories. But I've aggregated if we've gotten just one or two comments, too small to really categorize individually.

Then the comments by organization, 47 percent of the comments to date have come from individuals, 31 from practitioners, 9 percent from companies. And then the breakdowns get smaller: IP organizations, 8; academic, 1 percent; law firms, 4 percent.

Now, here's a finer breakdown of the comments by specific topic areas. So we've taken the categories of patents, contested cases and fees budgetary issues and broken them down even finer for you. So, for example, third party submissions, 5 percent; first inventor to file related to prior art, 6 percent; generic first
inventor to file, 7 percent; transitional business method, 7 percent, post grant review, 14 percent; interparties review, 11 percent; micro entity, 5 percent; and fee setting authority, generally 6 percent. The other captures the remaining categories. So you can see that the feedback we've gotten has been diverse and across the board. It's kind of heavy in the first inventor to file and the contested case areas, but it has been across the board.

Lastly, I want to clarify the scope of the public comment window. We continue to want to receive input, however, we have to manage that input. And now that we have multiple timelines in place: The 12-month timeline, the 17-month timeline, and the 18-month timeline asterisks. I don't want there to be confusion for the public on when they have the availability to give input to the agency.

So for the comments in the first window of time that we're dealing with now, interparties review, the ones that will be making rules coming
out for mid January public release, for the most part, these provisions, before the proposed rules, are closed, response to proposed rules not applicable. Now we're at the final rule stage for interparties exam, tax strategies, et cetera.

So for those, if you have comments about how we've already implemented these provisions, please continue to give that feedback to us. For fee setting and micro entity, we are receiving comments about our proposals, what you'd like to see, your thoughts and ideas on how our fee structure should be set between present and mid March, and then we will engage in the comment period in response to our proposed rules from mid June through mid August, and then obviously in response to final rules not applicable.

And then lastly for prioritized exam, the surcharges, we have already implemented those, so nothing for proposed, nothing for response to propose. We are at the final stage, so the public is open to comment on how we have implemented those provisions.
For the group two, I think I misspoke earlier, so these are the ones for the January end -- it's actually group two. So before the proposed rules, that period is now closed. We're under internal review. We will soon be going into OMB review. So to the extent the public has comments on these provisions, they should submit those comments in the comment windows that open in response to our Notices of Proposed Rulemaking mid to late January to mid to late March. And then final rules not available yet.

Last, for group three, first inventor to file, derivation, statutory invention. We have not started yet on our rulemakings, we will be doing that in January, so the comment period is open before the proposed rules take effect until -- from now until mid March of 2012. And then in response to our proposals and final rules, not applicable. So these charts are going to be on our micro site so the public knows if they want to give us feedback, when we're taking that feedback and how to submit the feedback to the agency. So
that wraps up what I'd like to talk about with you today as far as our progress report.

Are there any questions further?

MR. MATTEO: Any questions? No. Well, thank you very much, Janet.

MS. GONGOLA: Okay. Thank you.

MR. MATTEO: Thank you. And what I'd like to do now is introduce Tony Scardino who will speak to us about the financial situation.

MR. SCARDINO: Good morning. It's a pleasure to be here. A lot has happened obviously since we met in September with the passage of AIA. In the CFO world, that means a lot of things to us like everybody else in the USPTO, but fee setting authority has brought with them many, many, many challenges, but just as much excitement. We are really happy to have the ability, of course, to match costs with revenues.

So before I go through some of the challenges that's bringing us in '12 and '13, I wanted to just reflect for a second on -- the last time we met, we had Bruce Kisliuk as the acting
deputy CFO, and since that time, we've now hired
Frank Murphy, he's right -- somewhere right here
as the deputy CFO. Some of you got to meet him
yesterday. But I know he's looking forward to
meeting the rest of you and working closely with
everyone over coming months and years. But I also
want to thank Bruce for all of his efforts. It
was a tremendous opportunity to actually work very
closely with Bruce and learn a lot from him
personally, as well as I know, you know, all the
folks in OCFO really appreciated having a guy who
really has such a great work ethic and knows so
much about our patent operations. So I have to
thank Bruce publicly, as well as privately, I've
done so many times.

So we will now go through, hopefully,
here we go, kind of the usual presentation. We
kind of like to go chronologically of where we
ended in '11 and go through '12 and '13. I'm sure
it's no surprise to anyone when you see here that
2011 was a great year in the sense of we collected
a lot of fees. It wasn't such a great year that
we couldn't use all the fees.

The challenge there, of course, is --

it's always difficult in the beginning of the year
to estimate how many fees you're going to collect.

I think we did a pretty good job of it actually,
and we were proceeding at pace; our estimates were
right on the money until enactment of AIA.

And we had predicted ahead of time that
there would be a lot of patent holders that would
take advantage, let's say, a little bit of the
fact that 10 days after enactment, our fees were
going up with the 15 percent surcharge. So we
experienced what we call a bubble of -- we had
really, really high fees from September 16th, high
fee collections coming from September 16th to
September 26th. So that helped contribute to,
you'll see, $208.9 million worth of collections in
excess of our appropriation. That money was
unavailable to spend. So, you know, our total
spending was lower than we would have probably
liked. But the real challenge was brought forth
for 2012. A lot of those fees that were collected
at the end of '11 will not be collected in 2012. We're calling it a “trough.” So our estimates have now gone down for 2012 in terms of fees we're going to collect. But Congress was very supportive of the President's 2012 budget request, and they appropriated $2.706 billion, or $2,706 million, as the chart says.

We worked with Congress and updated them on our fee estimates. And as they noted in the conference report, they recognized that, but they also still wanted to give the USPTO the full advantage of the President's budget request, and if fees do come in at that level, we'll get to spend them to that level. So we got great support up on the Hill, but the challenge is, we are not going to collect fees to that level, at least that's our belief right now.

Our current estimate actually is closer to somewhere between 2.45- and $2.5 billion. And a lot of that is due to folks paying at the end of last year, as well as some other administrative operations that we were going to
change a bit to raise some fees when we first made
our estimate to get to $2.7 billion. So our
challenge now is working with all business units
and Director Kappos and Deputy Rea; just how do we
actually in an environment where we have many
things we need to get done, such as hiring and IT
upgrades, to meet our patent pendency and backlog
goals how do we get there knowing we've got less
money than we thought we would have this year.

I don't want to give anyone the wrong
impression. This is a really good story for
USPTO. Our budget is going up tremendously from
'11 to '12, so we're very excited and very
thankful. Having said that, our budget is
supposed to be such that it's requirements based.

We knew what our requirements were to
get to patent pendency and backlog by 2014 and
'15, and we're not going to be able to hire as
many people as quickly as we wanted to. We're not
going to be able to do some of the IT upgrades as
fast as we wanted to because we are going to have
less money than we thought we would have. But
again, our budget is growing tremendously from 2011.

MR. MATTEO: So, Tony, can you put some specificity around this? So that sort of marginal swing intended to anticipation of the increase, vis-à-vis the 15 percent, year over year, what does that represent in terms of --

MR. SCARDINO: The 15 percent surcharge probably equates to about $250 million.

MR. MATTEO: No, I'm sorry, I'm actually asking a different question. It seemed you were intimating that there was some front end loading time shifting of applications and that was going to create --

MR. SCARDINO: Or maintenance fees.

MR. MATTEO: I'm sorry, yes.

MR. SCARDINO: More likely.

MR. MATTEO: Fees in general, I misspoke.

MR. SCARDINO: Yeah.

MR. MATTEO: Fees in general. So can you give me or help quantify how much that is versus the trough that you think you're going to
anticipate in 2012?

MR. SCARDINO: It's probably between $110 and $130 million is that folks paid in advance at the end of last year.

MR. MATTEO: So you think it's about -- on the order of 100?

MR. SCARDINO: At least $100 million, yes.

MR. MATTEO: At least $100 million, okay.

MR. SCARDINO: So --

MR. MATTEO: That's helpful. Thank you.

MR. SCARDINO: Yeah.

MR. MATTEO: Oh, sorry, Wayne.

MR. SOBON: So to help me understand this, so there was the carryover from last year of now 177 million?

MR. SCARDINO: Correct.

MR. SOBON: And you're estimating actual new fees of around 2.5 billion. Are you allowed to use that carryover to the full appropriated amount of 2.7?
MR. SCARDINO: Absolutely.
MR. SOBON: So you can add the past from last year?
MR. SCARDINO: Right. That money is already appropriated, already available, so this year's 2.7 billion isn't affected by that at all. We can spend 2.7 plus that carryover.

MR. SOBON: Oh, I see, okay.
MR. SCARDINO: We just won't collect that much.

MR. SOBON: Right. So you're roughly assuming you'll collect probably something like 2.7 billion?

MR. SCARDINO: No, collect will be --

MR. SOBON: Well, plus the carryover.

MR. SCARDINO: Plus the carryover, so we'll have --

MR. SOBON: The carryover plus the new collection?

MR. SCARDINO: -- right, in terms of cash on hand, almost --

MR. SOBON: Cash in hand.
MR. SCARDINO: -- 2.7 billion.

MR. SOBON: Okay.

MR. SCARDINO: Now, there are many reasons why we don't spend all of our carryover, and, you know, but through fee setting, you'll help us work through that to a greater degree, but we need an operating reserve for a variety of reasons. So we can go through that in a little more detail later. So right now our challenge, as I said, for 2012, is, we are working on developing a spend plan which will go to Congress, and, you know, lay out roughly how we're going to spend our money for 2012, understanding that Director Kappos is a strong believer that we do need an operating reserve, so we're trying to maintain something similar to what we brought into this year to go into next year, this being 2013.

So how do we have a spend plan where we roughly spend 2.45-, $2.5 billion instead of our anticipated spend level that was closer to 2.6 billion this year, so that's kind of where we are in terms of internally. We're trying to find -- I won't
even call them cuts, because our budget grew
tremendously from 2011, they're just reductions
from our proposed spending level for 2012.

And in the midst of all that fun, we are
actually still working with the Office of
Management and Budget on our 2013 budget. OMB
just passed back, it's an annual process where
they pass back to all agencies, just on Tuesday,
what you're going to get for 2013, i.e., what each
agency will be funded at as part of the
President's budget request the first Monday in
February. I'm not allowed to publicly share the
details of that pass back other than to say that
we've received a tremendous amount of support
within the administration, it was a very positive
pass back, we're not appealing it, which is very
odd, most organizations it's part of the process,
you appeal the pass back, so we are working
closely with OMB to develop the President's budget
request for USPTO, and you'll all get a copy of
that in January to review. I think that's it.

Any questions, thoughts?
MR. MATTEO: Questions from the members?

No. Tony, thank you very much.

MR. SCARDINO: Sure. Thank you.

MR. MATTEO: So with that, I'd like to adjourn. We'll take a brief break and return here at 9:30 East Coast time.

(Recess)

MR. MATTEO: Welcome back, everybody.

We're about to resume the Patent Public Advisory public session. And what I'd like to do now is introduce Dana Colarulli, who will give us a legislative update. Dana, if you would, please.

MR. COLARULLI: Good morning, Damon. Thank you very much. Good morning, members of the Committee. I'm here to give our regular legislative update. And I'm happy to report very good things. For the last two years, I've come in front of this Committee and reported on the progress of patent reform and some of the challenges that we're still to overcome. You know, we now have a bill in place that's, as you all know, extremely significant to the agency,
changing operations. Peggy and her team have a number of challenges ahead of her. And I know you heard from Janet Gongola this morning on all of the things that the patent reform implementation team are doing.

Well, none of that can happen without solid funding, but I'm happy to report we have good news in that realm, as well. And I know Tony Scardino reported this morning where we think that fee projections are trending. It's a very different conversation than we were able to have really any time in recent years. And I think -- I hope I'm reiterating some of the things that Tony had said.

I think we're in a better financial position than we really have been in terms of being able to plan on a multiyear basis than almost any time during the history of being a fee funded organization. So things are very, very bright.

We have our full-year appropriations this year. We are appropriated at a number
significantly higher, as Tony reported, than our expected collections, trending now likely slightly under 2.5. The Committee report that appropriate us noted that we had expected to collect around that number.

That higher appropriations level will protect us going into the next fiscal year, especially in the case of a continuing resolution. Our spend rate will be at a higher rate. So all of the things that we know we need to get done in the next year, as Janet reported this morning, even beyond. We can start in earnest making plans and not holding back on some of the things that we know we need to do, some of the things we know we should do to be able to implement the plan well.

So from the legislative perspective, we have -- it's all good news on patent reform and implementing the new authorities that the recent legislation brought. So, you know, from that, I'll -- I won't go through this slide too much. This is some of the things in terms of implementation, because I know that Janet Gongola
went through in more detail the status of a lot of
these moving balls.

There's a last bullet on there I'll
note, not directly related to implementation of
patent reform, but related. In the minibus, in
the conference report, there is a number of
additional requirements for PTO to comply with.
Among that were to look at issues that the
chairman of our subcommittee has had an enduring
interest in and has raised with us a number of
times. We've been trying to be helpful
facilitating a discussion over both national
security issues. And he's raised the issue of
economic security, should there be some type of
filter to recognize economic security.

I think you'll see us coming forward at
some point soon potentially seeking public comment
even on these questions to try to further the
dialogue. The national security issues, I think
what we've committed to doing is working with our
colleagues throughout the government to look at
whether the standards are appropriate that the
defense agencies give us to determine whether things should not be published, should be placed under secrecy order. So that was specific and made me curious to some members of the committee part of our committee report, among others. So we'll be, along with all of the reports required under the AIA, in parallel, we'll be looking at the reports required by our appropriations committee and moving forward with those throughout this year, and you'll hear reports from me on progress there.

So I wanted to highlight a few pieces of active legislation unrelated to patent reform, but certainly things that we're keeping an eye on and will impact the IP system. The first of which I'll highlight is the so-called SOPA Act, the Stop Online Piracy. This bill is, on some provisions, parallel to legislation we've seen in the Senate addressing online piracy and essentially trying to provide additional tools to combat online piracy.

The Senate bill, the Protect IP Act, which I actually think is on the next page, was
introduced earlier this year, actually
reintroduced after a few Congresses and refined. That addressed just the online piracy issue. The
House took a different approach. They wanted to
take a more comprehensive bill. So in addition to
those issues that they address in a slightly
different way, they also try to introduce
provisions to improve our current IP attaché
program. We think the IP attaché program as it
currently exists at the PTO that we administer is
fairly robust. We've had a significant effect in
working with companies attempting to market their
products overseas, particularly the China market,
but throughout the world.

This bill tries to increase that

program. We're still looking at that language and
somewhat concerned with ensuring that this program
can continue to grow, receive direction from the
Patent and Trademark Office, and actually serve
two different functions, one being the development
of reasonable and reliable IP infrastructure in
those countries, the statutory structure, and we
are playing a role in supporting many other overseas assets of the U.S. Government addressing IP violations. And we're one player among a number on those issues, so we're still looking at that.

In addition, the House bill incorporates a number of changes that the intellectual property enforcement coordinator sent up to the Hill earlier this year, particularly on an issue of drug counterfeiting, increasing penalties in areas of streaming, and sentencing in other areas, so really trying to put more meat on the current statutory structure for addressing online piracy. That's one that my staff is spending quite a bit of time on and our External Affairs team here at PTO. Other bills, just for interest, the Sunshine Litigation Act, that's been a bill that's been around for a few years here and reintroduced. And some of our stakeholders have expressed concern about the impact of that bill on protective orders, and frankly, providing -- allowing too much intellectual property and certainly trade
secret information into the discovery process. So I know that's one that we're also watching. And then there's a series of bills continuing to look at the ability of generics to come to market to provide competitive pricing for popular drugs.

The last bill I'll highlight here, I think I've actually hit now all of them, the American Innovation Act was one that was interesting to us that I just included there, combating military counterfeits. That actually was also an issue incorporated into the House counterfeiting bill, so again, another bill that we're watching.

You know, I mentioned our funding situation at a high level at the beginning of my remarks. I wanted to summarize it here. Again, I think, arguably, we really have the best outlook here for PTO since 1991, and a good outlook both for this year and the next year.

What the higher level of appropriations, the 2.7, way above our fee collections means for PTO is that we won't use the provision in the AIA
that accounted for any excess fees above our appropriation, we won't collect fees above that amount. But certainly in our appropriations language included the ability for us to access that in those years that it occurs. We expect that language to be carried forward. So the agreement that the House leadership, the Judiciary Committee and the appropriators came out to in addressing our funding, it seems they've come through with that agreement, they've included all that language. We'll test our that mechanism surely in coming years, but certainly not in FY '12, maybe in FY '13, most likely in FY '14. I think that's all I'll say on that.

The last is an update on legislation that passed now more -- just over a year ago to increase our flexibility on telework. Our team here worked very hard to develop both a program, to develop cost benefits, so that we're actually incorporating our telework flexibility into our business plan.

We sent that over to GSA. We're
awaiting their approval of that program. Once they indicate to Congress that we've developed a solid program, which we know they will, 30 days after that we can implement. So we're in a holding pattern right now waiting on GSA. We expect them to act somewhat quickly.

And with that, I'll end. And I'm happy to take any other questions.

MR. MATTEO: Questions from the members?

Well, thank you very much, Dana, I appreciate it.

Okay. Next up we have a patent operations update from Bruce Kisliuk, assistant deputy commissioner for patents. Bruce, please.

MR. KISLIUK: Thank you, Damon. Good morning, everyone. Okay. I'm going to go ahead and do the patent operations update this morning. I'm going to cover some data from Fiscal Year '11, kind of an update of where we were, give a quality update, some of our new measures, talk through those, and then touch on a few of the initiatives. Peggy had mentioned the COPA one, I'll show you some more numbers on that.
You already heard some numbers on Track 1.

Some of our Patent Examiner Training Program, which has been very effective, First Action Interview Pilot Program, our Green Tech Program, and the E-Petitions Program.

So this is kind of a summary of the highlights of '11 in terms of some of the filing numbers. So we finished with about 507,000 filings in '11. That was roughly a 5.3 percent increase over the prior year.

We did, like Peggy mentioned, our backlog was reduced significantly and I'll show you some more slides. It's a little bit more dramatic if you see it visually. Total applications in process, that number in the 1.2 million includes those applications that are still pending, that haven't been disposed, not just those newly unexamined, as well. Our patent production rate remains high, that's good news. Again, the slides will be a little more descriptive visually of the pendency, but our first action pendency is at 28 months, total pendency is at 33.7. Our
allowance rate, again, I have a slide on that, continues to increase, it's up to 48 percent. And our electronic filing rate continues to grow, it's up to 93.1 percent. So those are all relatively good news slides.

This is our filing slide. This shows filings from Fiscal Year 2011. The last bar on the far right is actually a projection, that's not an actual data bar, that's for FY '12, our projections.

The top half of each of the bars shows our regular filings. The blue section underneath there are RCEs. So I think if there's any takeaway as one, if you do see in the column for 2009 a little bit of a filing blip, that was, you know, kind of the impact of the economy, we talked about that for the last couple of years.

Since then, it seems that we're back on a relatively consistent growth pattern in the 4 to 5 percent range. And in other -- what I believe is a good news story is, if you look at both FY 2010 column and FY 2011, if you focus on the RCEs, although the bar doesn't show it very well, we, in
fact, dropped in absolute RCE filings and RCEs as a percent of our total filings. So we believe that's a result of a number of initiatives, and I know that we -- that Andy Faile has been working with a number of the members of PPAC on some additional initiatives to try to reduce the need for RCE's when applicants aren't interested and we'll continue to pursue those.

This is a slide that shows our regular application filings that are awaiting action. We often call this the backlog. I'd like to just clarify, we use the term "backlog" and I just wanted to make sure people understand that the total number, while it's a backlog, there still needs to be a working inventory.

So we think that when we get to a steady state, when we get to our ten month pendency, we think our working inventory is going to be in like the 300,000 to 400,000 range based on the volume of examiners that we all have. So while the number in the backlog still is relatively large, in the 600,000 range, not all of that is something that
necessarily will be worked off even when we get to ten month pendency.

So this shows -- goes back for three fiscal years. And there's slight -- you'll see on the bottom scale, there's some hash marks just to denote where the fiscal years are. So you can see there's a pretty repeatable pattern, it's a seasonal pattern over a fiscal year. And we have been consistently coming down and the low points have been at the end of the fiscal year. This year, to the far right, not only did the pattern repeat, but it came down slightly quicker at a little bit faster rate, and even the first data point of the next fiscal year, as you can see the farthest data point, did not go up as quickly or as steeply as some of the other prior years. So we think that's just a continuing trend on all the initiatives we have to reduce the backlog, including the COPA effort, and I'll talk about that a little bit more, as well.

MR. MATTEO: Excuse me, Bruce.

MR. KISLIUK: Yes.
MR. MATTEO: Maybe that month is missing from this. I can't read it. How do you reconcile that with, for example, Tony's notion that there was a large uptick in applications received, which I assume would be counted here?

MR. KISLIUK: Right. Tony's mention of the bubble was a fee bubble, that was mostly directed to maintenance fees, not to application filings.

MR. MATTEO: Okay.

MR. KISLIUK: And consistent with the prior slide, which was our regular cases awaiting first action, this is our RCE backlog, and this is also -- these numbers are also shown on our dashboard, our public dashboard, as well. So this number, again, continues to grow a little bit. It also seems to have a seasonal effect at the end of the fiscal years. There's, again, hash marks on the bottom, you can see that. It does seem to come down a little bit, but seems to still show a pattern of continuing decline, so again, we're working with other PPAC members looking at ways to
reduce the RCE need. This is our pendency slide.

This shows two sets of information. The top part is our total pendency. Again, this is showing the past three fiscal years worth of data. The top is our total pendency, and the bottom one is our first action pendency.

There are some dotted lines that show relative targets for fiscal year '12, where we expect to be in '12. I will note a couple of things that you may be questioning. One is, if you look at our first action pendency, which are the green triangles to the right, you'll see that increasing.

It increased this fiscal year as a direct result of our COPA effort. So as we work on the older cases, those cases have older pendency. So that number went up. And what we do expect also in the next 8 to 10 months, to see a commensurate increase in our total pendency, because when those cases become disposed, then we'll go into our total pendency number.

So we see it as a necessary path to go
through before we can get to our 10-month
pendency. So it's going to go up as you clear out
the older, and then we should see it start coming
down.

Now, this is a look at our quality
metrics. We have our new quality composite index
and it's made up of seven measures. So this is
kind of a walk through of what those measures are.
The first two of the seven are what we call our
existing measures. One is our final disposition
compliance rate and we finished at 95.4 percent.
The other one is our in-process compliance rate
and we finished at 95.2. The other five measures
are relatively new measures. And they go through
various aspects, one is the first action on the
merits review, the complete first action on the
merits review, and these are another look at our
actions, our first actions, how well we're doing
up-front.

These are more of a -- kind of a grade,
it's like an A, B, C, D, how good the first action is, relative
to our existing measures which are more like a pass or
fail. So if you have an error, it's a fail; if
you don't have an error, it's a pass. The other
new measures are more on a scale of is it good,
how good is it. It gives us a little more rich
data on how we're doing.

We also have amongst these seven
composites an actual composite of composites. So
the QIR Index Report is actually a statistical
representation of a number of other measures
within it. Yes, Esther.

MS. KEPPLINGER: I have one question
about the statistics. I think when you do these
quality numbers, you're only looking at the cases
that you've reviewed in a certain program. But
you have all the data from the pre-appeal brief
conference, which are at least, from what I've
seen of the statistics, at odds with 95 percent.
Would it be appropriate to add that in somehow?
Because I think there are a significant number of
those which would be whether or not the final was
correct, and a lot of those are reopened or
something else happens, they don't continue on, so
that has to say that the final rejection was not appropriate.

MR. KISLIUK: I'll make a note of that.

So as I said before, these seven measures all go into our new composite index. And before I show you the full composite index, that index also has a score, and so I want to put that score in context before I show you the full sheet.

So this is the way it has been designed.

The way the index is measured is it's kind of gauging our achievement of what our targets are on our strategic plan, which go out to FY '15. So if we were 100 percent successful, we would achieve that 100 percent out in '15. Since we are in the first of four years of that metric, then -- this year we would expect to be in the 35 to 43 range as we move up, so it's a progression towards on an annual basis.

This year's result was 30.7. And again, the rest of the text just describes what goes into that measure. And this is -- the next slide is kind of a pulling those first two slides together,
and I know it's slightly eligible, but it shows the seven metrics. It kind of shows the quarterly number, so you can see a trend of those, and then you can see also all the way to the far right is this composite score. And then, like I said, I know that it is relatively eligible, but there are definitions underneath that describe both what these measures represent and how they work together in the scheme.

MR. MATTEO: So, Bruce, if I may --
MR. KISLIUK: Yeah.
MR. MATTEO: -- this is all laudable work, but are you also going to touch upon the feedback mechanisms and how this is cycled back into the system for constant improvement, as well?
MR. KISLIUK: Well, I can say it is. We look at all of our data and we look at it on more than an annual basis. Some of these measures, for example, are taken at relatively long periods of time. For example, the external surveys and the internal surveys are a much wider period of time. So every time we do those surveys, we look at what
were the results, how did they compare to previous
numbers, and what does it mean for our operations.

Most of the other numbers we look at
actually -- at a much closer window of time. For
example, our QIR data, which is a much more
refined look at data, we look at that almost on a
daily basis depending upon the issues, the
technology center, so it's data that we can drill
down all the way to an examiner level. So it is
data we use routinely daily to look at
improvements in both the systems and our
employees. So I think the safe thing to say is
there's two things that this type of composite
helps us do. One is it rolls up a number of items
from different perspectives to give us an overall
quality trend, are we trending in the right
direction from a lot of perspectives. And each
one of them, I would say particularly our
historical final disposition and in process are
ones that we look at very closely on a regular
basis at the TC level all the way down to the
Art Unit level and the QIR data, as well. So we
are using them on a routine daily basis to make improvements in the technology center.

MR. MATTEO: So I think it would be useful and informative at perhaps the next meeting or in the interim you were able to respond more fully to the question about the feedback loops and how that works, please.

And we have another question, Wayne.

MR. SOBON: Yeah, Bruce, in particular, it's kind of market the -- well, how it was two years ago, the external quality survey was in the ones and now it's in the threes. I wondered if there was any key outcomes from that or key drivers that you could glean from why the external user community has seen? It's not perfect by any means in your scale, but a significant improvement, what were the key drivers of that?

MR. KISLIUK: Yeah, I think there's a number of things. I think it's kind of the -- if you look at all of the initiatives we've done that have centered around compact prosecution, I think if you look at the trends of the survey, it goes
to a reduced number of actions per disposal, more outreach in interview practice, all of the initiatives that we've done to focus on compact prosecution, reaching out to applicants early.

The survey seems to hit on the things that we've done and the trends we see in our numerical statistics have been reflected in the external survey, as well. What's interesting to see is when will we might plateau in terms of this increase? And you're right, the scale has gone up pretty dramatically. So that's what -- kind of the answers to the questions seem to show us.

MR. MATTEO: So is there some sort of normalization that needs to be done, i.e., for example, was the basis of all of the questions and the metrics the same, as well, so are we comparing apples to apples?

MR. KISLIUK: Yes.

MR. MATTEO: Okay.

MR. KISLIUK: Yes, for this measure, it was.

MR. MATTEO: So that makes it even more
telling.

MR. KISLIUK: Uh-huh.

MR. BORSON: Bruce, I had a question relating to the differences between the external quality of surveys and the internals. Why do you think there is a higher index for the internal quality?

MR. KISLIUK: I couldn't tell you, Ben. I don't -- I haven't looked at these in detail that much, so I can't answer that. But we will look at it and I'll try to get back to you if there is anything to glean from that.

MR. BORSON: Well, just as a thought, it may go to the inherent, you know, predisposition of the people that are being asked these questions are given the surveys.

MR. KISLIUK: Which is why we try to do it from multiple angles.

MR. BORSON: Right.

MR. KISLIUK: This is an overview of some of the initiatives. Peggy had mentioned COPA, and she had mentioned it was extremely
successful. So at least last year we completed almost 260,000 first actions in this, which was 20,000 over our goal. I have a slide that I'll show you a little bit more.

I think Janet already touched a little bit on track one. The numbers you see on this slide are already outdated. That 1,286 number is already up to about 1,500. And I just got an e-mail this morning that we have allowed nine applications under Track 1, but I don't think of the nine in that program have granted a patent.

Our patent examiner technical training program is one which we've updated our website and our outreach, where we have technical experts volunteer to come to the PTO. And while we had done that relatively informally over the years, this program, the way we develop the outreach and website, have been very successful. And we've got a lot of good training programs, at least 30 have participated so far, over 14,000 hours of technical training. It's a very robust system and working very well.
MR. BORSON: Bruce, I had a question about that. Is that 14 hours of examiner hour -- 14,000 examiner hours or --

MR. KISLIUK: Yes. Yeah, those are -- that's equivalent to examiners, not doing production, they're in those training sessions.

MR. BORSON: I see, okay. Thank you.

MR. KISLIUK: And our first action interview program, this is a program, we ran a pilot for a number of years at a relatively low scale. We had just a few either art units or work groups identified in each TC. And in April of this year, we expanded that program to all applications in all TCs at least for one more year, so it's still a pilot. I think it runs through May of next year, so it has been growing.

Looking at the activity in that program, I think the agency -- we could probably do a little better job advertising. We'll be looking for ways to get the word out. I think that's a program that, when people started using it, because it was so limited, it wasn't available in many areas.
And I think that we could make it more known. And I think it has been very good results, and we worked well with the union to get that expanded, so we're looking forward to expanding that even further.

Our interviews, I'll show you some statistics from the interviews. Those hours continue to show good growth. Our Green Tech program, which as of the last notice, would be ending in December of this year. It was 3,000 applications or December 31st. We will be extending that until March 31st of next year and adding another 500, so the cap will be 3,500. But we do not intend after that point to further extend that program.

In our E-Petition Program, and there's eight new web-based E-Petitions, we launched this in March, and I'll show you a little bit more of that, as well.

MR. BORSON: Excuse me, Bruce, there's one thing here that I'd like to follow up on from a prior meeting. Peggy mentioned at a prior
meeting this year about management training for SPEs, and I just wanted to ask what the status is of that program?

MS. FOCARINO: I think we chatted yesterday a little bit about this, Ben, but basically, in addition to our new SPE development program, we have now an Experienced Patent Manager's Program. So we have a series of classroom modules on topics ranging everywhere from coaching and mentoring for SPEs to search strategy, leading a high-performing team, and also employee relations, labor relations, that type of thing. So while we've always had a new supervisor or a pretty robust training program, now we've got an experienced training program and we continue to evaluate it and ask more experienced SPEs what it is that you would like to have refresh your training on, what can we offer you? So it's been really successful and we hope to continue to refine it.

MR. BORSON: Well, it seems that there might be a metric that might shed some light on
that at some point, and that is the degree to
which applicants seem to be able to break through
some of the barriers between a primary and a SPE,
you know, as we may have experienced in individual
cases. Once an examiner takes a hard and fast
position with an application, the SPE tends to
follow along, and so the question is whether or
not there is a way to track or provide a metric
for the evaluation of this management training
effort that you're undertaking.

MS. FOCARINO: I'm sure we can, you
know, we can look at different things. I think
some that Bruce mentioned, our quality index,
we've got some data points in there that also can
focus us in on some of the behaviors and the
change and we can recognize that, but that's a
good point. I think we'll look a little closer at
doing that.

MS. LEE: Bruce, just following up on
Ben's point on the Patent Examiner Technical
Training Program, I'm sure you've got a lot of
programs going on training your examiners. I
think, perhaps for me anyway, the more useful statistics is not how many examination hours were spent, which is depending upon the number of attendees, the number of sort of teaching hour programs, I think that would be an interesting statistic, and I'm sure you have it. Is that correct?

MR. KISLIUK: I will check, I'm sure we do.

MS. LEE: Okay, right. That would be helpful. Thank you.

MS. KEPLINGER: One of the things, following up on Ben's comment, and that is, with respect to improving the quality and reducing the need for RCEs, I think one of the biggest things is ensuring that the examiners, as they're coming up, get adequate feedback. I think that's one of the things that is maybe missing, that a lot of examiners don't get any feedback from their supervisor about whether they're doing things right or wrong.

And I can tell you that just
anecdotally, a number of junior examiners have mentioned to me just in passing that they don't have anybody to ask questions of, that a lot of the senior people are gone, working, you know, they're hoteling, and that they don't get enough input from various people. So if you can provide some additional training to the managers about how to -- that it is really is part of their job to give this feedback so that they're learning how to do it the right way and don't have to be corrected later in their career.

MR. KISLIUK: Okay. Moving on to the COPA slide, I think you've seen this one before. This is kind of a visual of how we finished the COPA program for FY '11. And I know it's kind of a busy slide, but I think the takeaway is, if you look at the bars, those are -- the total top of the bar, yellow, was the total volume of cases and the age, so the scale on the bottom is the months, how old they were, and the scale on the left side were the number of applications. And the markings in red are what was completed.
So based on the total volume of this older work, we did a great effort, in fact, in a lot of ways a surprising effort even to ourselves to beat what our target was. And we are still in the process of analyzing, you know, what went so well and why and putting our plans together for '12. Peggy said we have a target of another 260,000 of the older cases for FY' 12. So we're kind of moving step by step, the oldest every year, take the next oldest, and as we hopefully get to the point where the cliff falls off in that ten month first action range.

We probably don't need to go through this much again. This is the Track 1, you've seen the numbers already, but again, it seems to be working well. I think the cap is still set at 10,000 per year. Our intent is to just monitor that closely. If we, you know, I think if we get close to that cap, there will be considerations of further revisiting that, but right now I don't think we're close, so it's an open program, plenty of slots, and looking for
people to take advantage of that.

This is a visual of our interview time.

It shows four lines, they get kind of
crammed up at the top, but it's basically the
increasing number of examining, I'm sorry,
interview hours through the year. So this is in
October, the scale on the bottom is October
through September, those are our fiscal years.

And the bottom line is '08, so it's '08/'09 and it
kind of moves up.

And we kind of -- it seems that we've
sort of plateaued a little bit from -- in '10 and
'11. So we will continue to look at ways to
courage our examiners to reach out. And this
number includes both applicant initiated and
examiner initiated interviews.

MR. BORSON: Bruce, I have a question
about clarification of this.

MR. KISLIUK: Yes, uh-huh.

MR. BORSON: This looks like total
number of examiner hours. How does this track to
the hours per examiner?
MR. KISLIUK: These are -- I don't think I can answer that question. I don't think it does track. These are total -- these are hours examiners -- these are basically number of interviews.

MR. BORSON: I appreciate that. And it clearly shows that there is a trend increasing. But it would be interesting to know whether or not examiners are providing more interviews on an individual basis, that is, if the number of examiners have stayed constant throughout these periods, then these numbers --

MR. KISLIUK: Oh, so you're looking --

interviews like -- almost on an examiner -- interview per examiner?

MR. BORSON: Well, yeah, I mean, if instead of plotting the total number of interviews, you would divide that number by the number of examiners that were doing the interviews, then that would result in a number that is the number of interviews that an average examiner is giving. And that would be useful,
that would be helpful to us to see whether or not
examiners like the idea of giving interviews and
whether they're receptive to it.

In contrast, it may be that as the
examining corps changes, maybe the numbers of
examiners are increasing, and that accounts for
the number of increases in interviews given.

MR. KISLIUK: Good comment, thank you.

MR. MILLER: I'd add to that, have you
looked at the number and the time to grant in the
cases that have these interviews, especially the
first interviews?

MR. KISLIUK: Yeah, the answer is yes.

In fact, one of the reasons that we put such a
strong effort in the last couple of years is that
we found statistically that when there is an
interview, it not only gets -- the percentage of
allowances are extremely higher, I think almost
double, actions for disposal are cut in half. So
we know that when there are interviews, that's why
we started the initiatives to --

MR. MILLER: Can you publish those
results? Because I think that would be helpful to
get not only examiners, but practitioners
interested in working within the program.

MR. KISLIUK: Yeah, thank you. Good
comment.

MS. FOCARINO: And just to follow up on
Ben's suggestion, we are -- I've got some people
looking more granularly at this interview data by
art unit and area and that kind of thing, and
we've held some focus sessions with some SPEs in
areas that seem to have high usage versus those
that aren't so high to determine why they're
either encouraging or not encouraging use of
interview time.

And we hope to, in the very near future,
as Bruce said, this represents hours, total number
of interview hours, but we would like to track the
number of interviews and normalize that against
the number of examiners. But there are definite
trends in certain areas, and, you know, it differs
by technology. Also you'll see some difference
in, you know, interview time, which doesn't
necessarily mean there's a problem, but we're
definitely looking at some more granular data that
I think will help us focus in on areas that we can
really, with a little bit of effort, see a lot of
improvement.

MR. MATTEO: If I may, just a
generalized comment. So that speaks to some of
the things I was talking about in terms of how the
metrics are used and fed back into the system. I
think it might be useful for PPAC and perhaps the
public at large, maybe at our next meeting or at a
different session, if we could take maybe two of
these pilot programs, one fairly mature and one in
the early stages.

So in the early stages, for example, we
could look at process program design, give you
some guidance and feedback on that. And then with
the more mature program, you could sort of give us
a history of how it unfolded, some learning, et
cetera, that you could share with the public and
with PPAC, and we could perhaps help you
facilitate some of that feedback mechanism to
basically feed the constant process improvement
and efficacy that I think we're all looking for.
So why don’t we table that for our next meeting?
We'll have one of each. Wayne.

MR. SOBON: Yeah, one thing that strikes
me, and a question just in terms of training, what
training do you do or have you thought about
training for examiners about how to get better
results in interviews? It's the sort of thing
that, you know, akin to negotiation training, but
training around how to listen, how to engage, how
to -- and something also that could be actually
used for the user community, as well, to
understand what is most effective to actually get
to better results in those interactions.

MR. KISLIUK: I think the answer is yes.
We actually went through training, I want to say
it was almost two years ago, we started our first
module, and I believe we actually worked with one
of the bar groups and posted that on our website,
as well.

MS. FOCARINO: We have a joint paper
with AIPLA on effective interview practices, but we also have our own training that we've given examiners, it started about two years ago. As Bruce said, I think you can find that material on our website.

We also have a new very more in-depth package on negotiation training and how to get the most out of an interview that we've had a couple of group directors work on, and it's geared towards -- everyone will get it, but it's particularly geared right now to the examiners as they approach the grade level where they're granted negotiation authority. So it really emphasizes what the responsibility of the examiner is with that authority in an interview. So I think we're really looking for some good results from that.

MS. KEPPLINGER: One of the things -- SPECO had a session where some of -- I and some other people came in to talk to the managers about interview practice, and they were -- the SPEs were quite surprised at the amount of time, at the
cost, the preparation that goes into interviews, the amount of time and money that gets spent. And something like that, getting some of that across to the examiners might be something that's useful, too, because I don't think, in general, the office appreciates how important it is to the applicants and how costly it is for them to do these kinds of things.

MS. FOCARINO: That's a great point. I know that was a very successful session, and perhaps we could work in some of that data and information into the training to people -- it's a lot of preparation on both sides to be really successful -- that's what you need to do.

MR. MATTEO: So, Bruce, we're actually running a little bit behind. If you could move through the balance of the slides a little more quickly, I'd appreciate it. Thank you.

MR. KISLIUK: Okay. The next slide I don't have to touch more on. This is the Green Tech pilot. The only thing worth noting, like I said before, is we will be extending it until
March of next year at another 500. And the last slide is just another bullet point on the eight new web-based E-Petitions, and that's it.

MR. MATTEO: Great. Thank you very much. Any further questions from the members? Perfect. Thank you very much, Bruce, I appreciate it, and we'll be following up about several of those action items.

Okay. We're scheduled for a quick break. Why don't we take something on the order of a five-minute break and reconvene at 10:30 here?

(RECESS)

MR. MATTEO: Okay, everybody, can I ask you to return to the table and we'll resume? Okay. I appreciate everybody's patience. What we'd like to do now is begin the report from the OCIO, and leading that will be John Owens, OCIO. Thank you very much, John.

MR. OWENS: Thank you, Damon. Good morning, everybody. So it's nice to brief you all yet again. So let's start with our universal
laptop program. This has been one of the
successes of last year. We had a stretch goal to
deliver by the end of the fiscal year 4,500 units,
which is approximately half of our core set of
employees. We exceeded that. By the end of
October, we delivered 6,180, and by this morning,
it was over 7,000 units.

Unfortunately, we hit the end of the
year quiet time for patents. It's suspended
starting today and will resume in January, because
we don't want to disrupt any of the production at
the end of the year. But we're doing 260 a week,
and don't forget, that's actually customized per
each individual. We go to their desk, we guide
them through it, we move all their files, et
cetera. We have completed a good portion of the
organization. The only lagging organization right
now due to a complication with some of their
software is trademarks. But particularly for
patents, we've cleared many TC's and will finish
up the rest early next year. So this is going
along splendidly.
The only current risk to this is a little bit of flooding in Thailand, which has caused some delays in hard drive manufacturing around the globe, because we don't buy commercial machines, which kind of get spun up at the end of the year for Christmas and the holidays, we buy business class machines. They generally decrease in production rate.

We have had some near shortages because we're ordering them just in time. I don't want them sitting around and losing their warranty. So luckily the suspension also helps us out with that. So as long as we have no other inclement weather or natural disasters that cause production delays, we're good to go, we're still on track for being ahead of schedule, which is always a nice thing for me to be able to say.

MR. MATTEO: Excuse me, John.

MR. OWENS: Yes.

MR. MATTEO: A question from --

MR. SOBON: Yeah, John, one question I have is, are there measures of satisfaction by the
examiner corps on the new platform and how are
those showing? Obviously, there's initial ramp-up
issues and things that will happen, but is there
any measures you're taking in terms of
satisfaction with the new platform?

MR. OWENS: We do have -- we haven't --
we do a survey, and the survey comes at the very
beginning when you get the unit. It also comes a
little bit later as you use it. We do see, and we
discussed this last time, I spike in calls.

People are like, oh, I'm not familiar with our new
environment, we've changed Windows to Window 7, we
have the new, latest Microsoft. So some folks,
more than others, are a little disoriented, but
they quickly acclimatize.

The environment, I have been told, both
anecdotally and by the e-mails that I receive --
because I'm a pretty open CIO, I get e-mails from
the corps all the time -- that they are extremely
satisfied, if nothing else because the core
software packages, the OAKS and the EDAN and the
other products that we built, fundamentally did
not change as much, other than becoming compatible with Windows 7. They haven't seen huge improvements, but compared to the processor speed and the memory that was on the later box, they certainly run better, and we know that they do, so it's a much more stable environment.

When one application crashes just because of the advent of Windows 7, not everything else does, and that does save some time and alleviates some frustration. So generally, and I'm happy to provide the information separately, because we work very closely with OPIM and the former SIRA and patents to conduct those surveys, I'm more than happy to share that information, but I would say that it's overall extremely positive.

Certainly we could ask the union what they've heard, but I believe that all the data I've received, it's been very welcome as one of the biggest changes they've seen in quite some time, along with the new telephone.

MR. SOBON: A follow-up to that is, I remember one of the things that David Kappos was
touting a year or two ago about the new platform also was integrated video and the ability to, you know, implement and enable, especially for teleworking and other venues, interactive videoconferencing, especially with the user communities for more impromptu, you know, examiner interviews. How is that progressing or what are the plans? That may bleed over into process of reengineering, but I'd be very curious about that.

MR. OWENS: So there is a new package on the laptop based on the Cisco products, and that's the WebEx Communications Suite, which has instant messaging. It integrates with the Microsoft products like Outlook for scheduling. It has videoconferencing. In fact, today this telecast is being done via WebEx and not our old Adobe system. In fact, it's been that way for quite some time, and it has been incredibly stable. This combined with the brand new network we have, which alleviated all of the network constraints that we were experiencing some years ago, allows an examiner to use those tools to collaborate at
will. There is no constraint at this time. So that is deployed.

Is it integrated like we'd like to see it with the patent's end-to-end product? No, because the patent's end-to-end product is not done. But we do see that integration eventually happening. And you all have talked to or heard from Marty Hurst in the past, who is helping us lead that process of reengineering of the visual interaction effort, and we will integrate those tools.

But the Cisco suite of collaboration tools brought a new evolution to what was available here, which was pretty much the first generation, from the phone, to the instant messaging, to the collaboration suite, the video teleconferencing, being able to have multiple participants and use it from home, that's all capable of being done today for those folks with the laptop.

For the folks without the laptop, however, they have to wait a little bit until we
get them one. Their current desktops are not as compatible. They could watch today's telecast, but they are not going to be able to participate in some of those things that require more heavy processing power, like multiple video teleconferences or what we call the Hollywood Squares effect, where'd you have pictures of nine people and you're the tenth participant or the like.

MR. SOBON: So if I have an examiner on a case, and like, for instance, I'm enabled on WebEx internally for my company, if I set up a WebEx meeting and invited them, is that possible for us to have an impromptu WebEx session created like that?

MR. OWENS: For those examiners with the universal laptop, I would ask that you follow the process in patents to set up the appointment, and that the examiner actually host it on our system due to security concerns. Not every teleconferencing system is supported here at the USPTO. We make special exceptions. When, for
example, Peggy needs to give or Bob needs to give
a presentation using someone else's, we will
temporarily make a security exception, put them in
a room with a special laptop that has special
protections.

But if the conversation is scheduled
with our equipment, then we are assured that it
meets our security requirement. Not all products
meet that requirement. Some of them actually are
quite dangerous to allow into your environment
because it would allow individuals to, in the
background, take every item off your desktop or
off your computer and copy it, which is something
we'd like to avoid given the confidential nature
of the work we do. So I would ask to follow the
normal procedures that patent sets up and have the
examiner themselves schedule the meeting on our
WebEx, and we are happy to host it for you.

Examiner count update, you know, this
was one of the largest changes to examination
since IFW. It affected what's known as the Palm
system. Now, last year we had a bunch of things
going on in our environment which created actually quite a contention for resources, and I think I'd take a moment to talk about them.

Palm in itself is the hub, it sits at the center of all patent processing. It not only tracks what an examiner does, it tells them, you know, what they have earned as far as their counts and so on.

At the same time this was happening over the last few years, we have built an increasing number of employees, as you all know. And if you remember the road map, and if anyone here is too new to have a copy of the road map which was developed at the end of 2008 and started implementation in 2009, my office warned, I, myself, warned against the increasing usage and increased hiring because of the load on systems.

And I was very worried that that load would overtake our ability to replace some of these systems which involve rewriting millions of lines of code on legacy platforms that no longer exist, such as the one Palm runs on, and moving
them to a more standard platform running LINE-X in a much more generic environment. So we had a rise in employees, and, of course, the older the employee gets here at the USPTO, the better they are at doing their job and the more output they have, which is good, we want that.

At the same time we were changing the examiner count system significantly. In fact, the count system today takes six times more processing power to accomplish than the one a year ago, because so many more computations are done online and auto count takes a lot of processing.

So though it was a big benefit, the rise in production, which we were happy to see with the reduction of the backlog and so on, the increasing capabilities of the examiner and the increased load based on changing this production system for a short period -- I wouldn't say short; for six months out of the middle of the year, on occasion -- overtook our ability to finish the projects of rewriting quick enough to overcome that load.

So what we had wasn't crashes, they were
-- in fact, the system never crashed, it just slowed down so much it was unusable, which is different, because back in the 2008/2009 timeframe, it did crash, I mean hard crash, and it took a long time to recover. Neither one is a good position, however. I am happy to report now that we have replaced all but one server in that environment for Palm, and we are actively working to replace that server. Along the way, we have rewritten a significant amount of this product and are prepared to migrate it into patents and over the coming year, which I don't know if Mr. Landrith is going to talk about, but that's a great piece of news for us.

But the better news is that it really changed the way examiners dealt with their counts and basically eliminates the need for 650 SPEs to manually review all examiner work every pay period, which was a huge load and created quite a bottleneck with the auto count system.

There are some criticisms, however, and we're going to talk a little bit about those. The
database communication and now reporting server

downs and crashes, which I previously discussed.
The new system is very complex, which is making it
difficult for many of the people to understand it.
The automatic counting -- automatic computations
sometimes seem confusing to folks even though the
mathematics hasn't significantly changed over what
it was manually. In fact, it hasn't really
changed at all other than it's now being done
automatically.

The high volume of data corrections, if
someone has an issue, something wasn't counted
appropriately, does create a volume of data we
have to deal with and the product actually is --
it's involved quite a bit of debate on whether or
not that mathematics we have been using, which we
have been using for years, is actually the right
set of math to actually implement. I can tell you
that the office, my office did implement it
exactly as designed and the mathematics is correct
based on that design. I think overall, the
question is, is that the right set of mathematics?
And this is what we've heard from examiner feedback.

We are working very hard, by the way, to listen to the examiner in all aspects of what we do, just like with patents, and to fold that back into whatever process or engineering effort we have going forward. And, of course, the key point to that conversation is OPIM under Fred Schmidt in patents, being the representative to patents on that type of feedback. Anyone have any question about Palm workflow? Okay.

Let's talk a little bit about PATI. This was a fantastic success at the end of the year. This was the product that we produced based on some legacy applications that we had where we integrated text that we OCR'ed ourselves into the examination environment, because we really didn't know how people were going to react to text. They have never had the text before, they had pictures and only pictures.

So we took a couple of products, we made them compliant. We gave it to 300 examiners in TC
2440 and TC 2460, and we provided them with 60,000
in-house OCR'ed -- Optical Character Recognition
-- taking the picture, turning it at the text
applications. Eighty percent reported they are
having text of claims, spec and abstract in their
examination. They intuitively liked how we
engineered the system to use text. Seventy-two
percent, which overall isn't bad, saying they
directly took text, copied it into their office
action instead of having to retype it, which was
always a problem. Seventy-eight percent said that
the OCR level that we had, which wasn't anywhere
near where we want it to be, but it was good
enough to use, which was quite an accomplishment.
Today we pay quite a bit of money to have it
OCR'ed outside the agency via contract.

Eighty-eight percent said that they had
everything that they needed and would give it to
every other examiner. And, of course, the
searching the applications and the documents for
specific language was useful.

Now, we are delving into -- one would
always say, if you're a half cup full or half cup empty type, a person would say what about the other 20 percent? We are delving into why it's only 80 percent, 76 percent, and so on and so forth. But these numbers are highly encouraging considering this is the first time an examiner has ever had these tools modified nor text to use ever.

Obviously, many people do resist change, but for those that were willing to use it, this was much higher and much better feedback than we could have expected in the past, so I consider that a win. Any questions on PATI? So there is a little bit of a reengineering effort going with the USPTO home page. Obviously, the home page today was relatively new, but it really didn't have a good pop, splash, good feel to it. It didn't look very modern, though it was reorganized. And this change is a result of the previous change.

The goal is to increase graphically to make it more appealing, reduce the number of links
that a user has to choose from and organize the
front page a little better. It will only affect
the home page, it will not affect the subsequent
pages. And the new home page and the old home
to get used to it.

This effort is being designed and led by
Peter Pappas' organization and the communications
group using our new web publishing system that we
instituted a few years ago. But you'll be seeing
this improvement coming along here shortly.
Any questions? Well, if there -- I'll
take questions from myself before I hand it over
to David Landrith, the patent end-to-end portfolio
manager.

MR. MATTEO: We actually did have one
question.

MR. OWENS: Yes.

MS. KEPPLINGER: John, I know you said
here that you got input from internal and
external, and I think I was in at least one of
those focus sessions. But the last iteration of
the home page, when it was modified, was very
difficult to use. So have you done any beta
testing or anything, you know, giving some people
sort of access to it to figure out whether this is
going in the right direction?

MR. OWENS: Actually I'm not the right
person to ask that question anymore, which is
probably a good thing. I don't like to admit it,
but my office had a lot to do with the last home
page redesign, and I learned something from that.
We're engineers, we're not visual application
people. So the responsibility was split.

I maintain the hardware, the hosting,
the back end, the templates, the design, you know,
the design CSS style sheets and all of that, but I
no longer handle the design, the communication or
the feedback. That's all handled out of our
communications group, formerly under Mr. Pappas,
who is now part of the -- directly under the under
secretary's office and is being controlled under
Mr. Kappos.

So I don't design it anymore. I don't
communicate it. I just implement it, which, trust me, given the last one, it's probably a good thing for you all, because I don't do publication, I'm getting out of that business. You should never have the CIO do your publication, it's a bad idea. I'll ask Peter to get back to you.

MS. KEPPLINGER: It wasn't necessarily the look, it was the ability to get to various places, you know, places you could go in one click, you had to go through. It was hard to find things and you had to -- those were the criticisms.

MR. OWENS: Yeah. Today the process has changed so much that that organization does -- they tell me what they want implemented and we just implement and that's it. But I'm sure I'll get back to Peter and answer that question for you. Mr. Landrith.

MR. MATTEO: David, if you would, just in the interest of time, can you keep your presentation to about 10 minutes?

MR. LANDRITH: Yes.
MR. MATTEO: Great, thank you.

MR. LANDRITH: I'm going to start out by going over the Fiscal Year '11 successes. We set new standards for user involvement, the quality of our development approach, the quality of the technology, and the key value that we provided the examiners in Fiscal Year '11 is text-centric functionality. I'm going to be diving into each one of these deeper.

With user involvement, we've utilized an unprecedented level of examiner and executive involvement which has given us a vastly superior ability to gather requirements and a broad buy-in from executive management. We started with the user interface prototypes that received input from more than 2,000 examiners. That defined the high priority functionality. In fact, PPAC has seen parts of those prototypes on multiple occasions because we used screenshots from those to define the initial functionality. We also had back-end prototypes. Those drove the technology selection and they informed how we went about creating and
implementing the high priority items.

As we go forward with the applicant tools projects, you'll see the same commitment level of involvement of the applicant community.

With our development approach, we have substantially improved development methodologies. One of these is agile development. That represents a sea change in the way the federal government and this agency develops software applications. It's a mature industry-proven process that has been urged by the federal CIO and is part of the 25 point plan for reforming the IT that was put forth by the administration. In fact, Patents End-to-End is one of the six flagship projects mentioned in that plan.

We've been criticized for our lack of top down planning on some fronts. It's a common view of Agile for people coming to Agile from an outside environment or from an older, less effective methodology. But the thing with Agile is defining the right planning at the right time. With older methodologies, you'll frequently define
features years in advance and scope years in
advance. By their very nature, such plans are
speculative. The ultimate success criteria
becomes whether you completed your plan and is not
-- frequently not related to the quality. It
would be like baking something in the kitchen and
the success of that product would be whether you
followed the recipe, not whether people liked it.

So the Agile approach allows you to
define an overarching vision, core needs, and then
small pieces of functionality that can be
developed to validate the plans and get feedback
to feed future plans. We also have been utilizing
user-centric design and will be going into the
user involvement further.

We've introduced and deployed
industry-leading technologies. This is important
because we don't want to be backed in a corner
once we've released this in terms of vendor
support. We also need to be capable of meeting
the growing needs of a geographically dispersed
workforce and the expansion that we see on the
John touched on this a little bit with the text-centric functionality in PATI. We developed two user environments: The Patents End-to-End uses a complete XML version of case data that's being released to the central reexamination unit, then we have the XML application data and the legacy interface to the core. Both systems assist examiners in doing their jobs. As you've seen from the survey on PATI, it's been found to be highly effective, with more than 60,000 applications and text and more than 200 examiners using it. So the deployment status for Patents End-to-End 1.0 is we deploy the application into production servers in Fiscal Year '11, introduced it to the CRU shortly thereafter. We had some outstanding complexities to resolve in the full case conversion, XML, we resolved those in late November. The application optimization continued while that was in process, so we didn't lose any time improving our work there.

We plan the rollout to individuals with
individual training scheduled in December, there's unintentional ambiguity there. What I mean to say is, we hope to, in December, work with examiners to put training on their calendars, that calendar date may end up being in January because of the holidays and the quiet time.

So we completed this on time and under budget. Not everything went perfectly smooth and we overcame many significant obstacles completing this. We had a very short development timeframe, and historic budgetary constraints. We had a lot of challenges fitting Agile methodologies into the oversight and budgeting process. We had some obstacles posed by procurement protests, and we were standing up an entire software platform and infrastructure set.

The user involvement strategy that we adhered to in Fiscal Year '11 and will be using going forward is to adhere to best processes of user center design, conducting weekly focus groups with the audience to
review incremental improvements. We complete
design sprints, for instance, every two or three weeks.
So "Sprint" is a software development term for iteration or
effort. What this means is that we're releasing
new front-end designs every few weeks and running
them by users. And we have a major holistic design
for user evaluation every six weeks where we go
over the accumulated changes.

We have regular updates to the Usability Council. We keep POPA and PPAC fully informed,
and we address critical feedback and ongoing
Sprints.

So these are the major development
projects for Fiscal Year '11. The first two are
the prototype phases; the second two are the
patents projects. We'll release PE2E to the
central reexamination unit and the last is the
PATI release to two art groups -- two tech centers.

Now, Fiscal Year '12 plans. We plan to
vastly increase the scale of development, with quarterly
releases of new functionality to maintain the
rigor of our agile processes, prepare for a
gradual rollout to the examiner corps in Fiscal Year '13, and prepare a rollout for text-based application tools or applicant tools in Fiscal Year '13.

I apologize that this is a little small. I'm working on breaking it up but wasn't able to get that done in time for this presentation. The four most important projects here are the E-Grant, which will allow for the USPTO to grant patents electronically in advance of their being printed and mailed; the applicant to office interface, the office action interface, and PATI 1.1, which will expand the availability of text within the legacy systems.

Our Fiscal Year '13 road map, we have architecture and infrastructure there, which is continuing to work on examiner tools. The conversion of legacy data involves improving the capture and conversion of text.

The Agile activities for high-value targets includes the business process reengineering changes and also the additional work
on applicant tools. They also have Agile
activities for high-value targets for search, to
continue our work on search, and building a cloud
environment.

And sometimes when people use the word
"cloud," they think of online storage. But what
we're talking about in a cloud framework is
deploying hardware in a way where it can be
reallocated as needed to more efficiently utilize
the infrastructure here at the USPTO.

The current risks and issues that we
have are the availability of USPTO human
resources, making sure that we can staff all of
the projects that we have slated. We have an
ambitious scope of features, and if we've bitten
off more than we can chew, the biggest risk isn't
that we will have the extra projects fail, but
that everything will fail, and so we don't want to
spread ourselves too thin. Scaling and improving
the image text and all transformation process,
funding constraints due to continuing resolutions,
and contractor support for software development.
MR. BORSON: David, I just have a question about the OCR project. You're outsourcing all of that at this point? And, you know, John, feel free to comment. Is there a thought to bring that internally?

MR. LANDRITH: Yeah, we are outsourcing that. There are multiple phases involved in the conversion process. One is the actual OCR, the conversion of the image to raw text, and then a second is the logical structuring of it. So the conversion of an image to text is actually a commodity product that is available quite cheaply in the marketplace. We're outsourcing that right now for patents end-to-end, and for PATI, we have been doing that internally. But as we expand the scope, we're looking for vendor-based solutions to drive that commodity aspect.

The tagging is more complicated. PATI uses an automatic tagging algorithm and that occurs internally. Patents End-to-End uses a human-reviewed patent tagging set that we rely on a vendor for. So does that answer your question?
MR. BORSON: Yes, it does. Thank you.

MR. LANDRITH: Thank you, Ben.

MR. MATTEO: We had one more question.

Wayne.

MR. OWENS: I think the important thing to note is we're using the appropriate mix for the appropriate part, but this is the first time you've seen the CIO shop at the USPTO actively go out and attempt to do something on their own without just running to a contractor to get it done. If we can get it done internally cheaper and better, we will use our internal resources for that part. But human intervention for complex XML tagging is highly likely given the nature of the tagging we want to do to meet the XML for IP or SD 96 standard, and we will likely use a vendor for that part.

MR. MATTEO: Wayne, one more question.

MR. SOBON: Sure. Yeah, but you note funding constraints as a risk, but we heard earlier about the minibus and the favorable conditions for next year's budget. Can you
comment perhaps on how things look now in terms of
risk for at least the next year for funding and
for implementation of the E-to-E and CIO's
projects?

MR. OWENS: Sure. I'm going to handle
this one, Dave. I believe you already heard from
Tony. Certainly we've had a lot of successes, but
last year at the very end of the year, with the
passage of AIA, we had a little bit of a bubble
where a lot of folks ran in before the surcharge
and tried to pay us. That ended up diverting a
number, I don't know what Tony shared, but a
significant amount of money that we expected to
collect this year. Because many of the projects
in OCIO have been pushed off year to year to year
to year, things have been building up. So I had
fully allocated to spend my budget. But because
that money did not get collected this year, and,
therefore, we cannot spend it, even though there
is an omnibus, we are looking to reduce again this
year to make up for that lost revenue. Does that
make sense to you?
MR. SOBON: Sort of. But we actually got a guy -- maybe we should have a clarification of this, that actually -- that you will now be allowed to spend not only that money that was, you know, put into the reserve fund, but also the expected collections up to the $2.7 billion new appropriated amount. So I guess I'd be confused about what -- where the gap would be then if that's true.

MR. OWENS: We are allowed to spend it if we collect it. We now believe we are not going to collect it because people prepaid at the end of last year, and that money they prepaid is not part of our internal revenue stream. So internally we are looking at reductions in programs to make up that funding. I don't want to speak on behalf of the CFO, but that is what is happening, and I don't believe it conflicts with what he said earlier.

MR. SOBON: Okay.

MR. OWENS: So there are limited places in the budget to get that amount of money from,
because the bulk of our budget pays for staff, and
I am one of those places. And I have, for years,
been building up a backlog of products. I know
Peggy has wanted to get done, I have wanted to get
done, that some of those will now have to be
defunded and moved until next year.

Because Patents End-to-End is such a
large project and such a large amount of money has
been set aside for it, I do expect to have impacts
to this program. Will they be catastrophic? I do
not know at this time, but I would not expect them
to be because this program is so important for the
agency. So as I determine what the recommendation
will be and Mr. Kappos makes the final decision, I
am more than happy to tell you, I just don't have
clarity at this point in time.

MR. SOBON: They're probably really
timely then at our next scheduled hearing to come
back and you can talk about any of the actual
impacts that you now thought, you know, worked
through.

MR. OWENS: I'll be more than happy to
share at that time what has been put off.

   MR. SOBON: That would be useful, yeah, great.

   MR. MATTEO: Yeah, actually in the spirit of that, though, what I would prefer, and I think this is what Wayne was suggesting is, you know, in the past for their annual reports, what I've been asking for is funding impact, project impact and then material impact, you know, what kind of functionality, what kind of service, et cetera, have we foregone. It's interesting to hear that project A and B were stalled, but it's even more so important to understand the material impact to the examination corps and the applicant community. So we'd be very interested in hearing all three layers of that.

   MR. OWENS: I will work to make that much clearer than in the past. Thank you.

   MR. MATTEO: Okay. So thank you very much, gentlemen, I appreciate your feedback.

   MR. OWENS: Thank you.

   MR. MATTEO: And our final presenter for
the afternoon will be James Smith, chief judge of
the Board of Patent Appeals and Interferences.
And he's -- oh, he's moved, there we go. Thank
you, James.

MR. SMITH: Thank you for allowing me to
give you an update on the board and for your
interest in it. Let me just mention briefly the
areas that I'd like to cover in the short time we
have: Hiring, how we're approaching it and what
our success seems to be so far; the extent and
growth of the backlog of cases at the board; our
considerations about having per curiam decisions
included in the manner of rendering decisions from
the board; some considerations with regard to
additional incentives to judges for higher levels
of output; collaboration we have ongoing or are
considering with the Patent Examining Corps, also
for purposes of helping us reduce the case
backlog; and we'd like to touch briefly on the
work of the Rules Committee of the board with
regard to the new AIA proceedings that will be
coming to the board in September of 2012.
Let me start with the hiring. As you may know, the board is authorized to hire before the end of 2012, the fiscal year, and certainly not later than early in Fiscal Year 2013 an additional 100 judges beyond the number currently at the board. I think our current number as of today is 98.

And when I say "hire judges," that's not an entirely correct term, or at least it's not robust enough to describe what happens, because, of course, the appointments to the board are made by the secretary of commerce, so our vetting process includes first deciding candidates we put before the undersecretary for his approval. Actually it requires the approval of the undersecretary, the deputy undersecretary, the general counsel, a number of people first have to approve each of the selections we make before those nominees are then put to the secretary of commerce for final approval.

Final itself is a -- I use guardedly because after the nominations are accepted by the
secretary, they come back to us for the normal hiring process where we extend offers to the judge candidates. But we have in an entirely unique way in the 150-year history of the board the opportunity to double the size of it to a historic level of about 200 judges by the end of the next fiscal year. So the question naturally arises, how are we doing against that very lofty target? We are achieving some success. Just last week the secretary approved the first four names that we have put forward for selection to the board, and we are absolutely elated as to the quality of those four new judges. Two of them may start as early as next Monday if we can clear all the hurdles, and we hope to have all four of them in place and working by the end of December. Unfortunately, I cannot yet tell you their names and a little more about their backgrounds, but we have no doubt that when you hear of their accomplishments and their decision to join us at the board, you will be as happy as we are about that.
We have another three candidates who have made it most of the way through the process, have not yet gotten the nod from Secretary Bryson, but we hope that will happen within the course of the next week or two and that we will be able to have them fully through the process and all but started, if not already started, by the end of December, as well. Certainly by the middle of January we hope to have those three with us, also. We've also, in an effort to increase the size of the board and certainly to address the need for increased output by the board, reached to former judges, and we have three of them who we believe will be able to rejoin the board on a part-time basis also before the end of December and in any event no later than January.

We're particularly happy about their participation with the board, because, of course, their ramp-up time to get into the job will be substantially less than anyone else we can find anywhere because they will already have been -- become in their lengthy careers very familiar with
how the board operates.

Altogether, looking at those three
groups, we have candidates, and, in fact, near
selections who we believe will be with us soon and
will help us substantially get into our mission.

With regard to the 90 more we have to
find, we have, in fact, had tremendous response to
the requests for applications, hundreds of
applications. Last week -- Well, I'm not sure we
had any interviews last week; it was Thanksgiving.
This week we're seeing some 20 candidates. By the
end of the first week in January, that number will
be at about 40.

And we are very pleased with those
people who we have -- with the records of those
people we've asked to come to see us for the
interviews. If they are as good in the flesh as
they are on paper, we will be able to make
substantial progress towards the hiring even as
eyear as January or February of next year.

To the subject of the backlog to which
the hiring is largely directed, the backlog
continues to grow. And let me say that I view as
one of our major missions at the board, and I know
it is certainly the view of the director and the
deputy director, as well, that one of our major
missions and first missions even before that of
reducing the backlog - is to reach a point where
the backlog no longer is growing. That's entirely
logical. Before you can reduce it in size, you
have to at least prevent it from growing in size.

This is not a small mission. And to
give you some concrete numbers to demonstrate just
how challenging that mission is, what we started
doing in recent times is looking every 7 days or
so at a 30-day window, the most recent 30 days
with regard to how many new cases are coming into
the board and how many are being decided. Again,
that's not rocket science to figure out that one
would want to look at those numbers.

The change, however, in how we're
looking at it is that we're just taking it at a
much more granular and real-time level so that we
can explore, even on a day-to-day basis
practically, how the problem is manifesting itself
and how we might address it.

Of course, traditionally we've always
looked at yearly numbers and calendar month
numbers as to how many cases are coming in and how
many are being decided. In a period ending a week
and a half ago, and looking back 30 days, the
board had 1,480 new cases brought to it. Now, if
you do the math, that equates to somewhere
between, and I'll give these in broad numbers
because at a point, one doesn't need to be too
specific about the numbers, somewhere between
16,000 and 18,000 new cases in a year.

MR. MATTEO: Excuse me, Jim, if I may
just use that as a jumping-off place. So there
are a number of approaches to reducing the
backlog, to oversimplify the whole supply and
demand notion. If you increase the number of
judges, clearly that will help address the
backlog. I think what I'd also like to hear is
how you plan to address the demand on a couple of
levels.
So, for example, I don't want to let you escape. I mean everybody who's been talking, I've always asked about, you know, what are the feedback mechanisms constant process improvement. So rather than -- it's not the same situation as a new applicant, a backlog for your board. I mean it's core, it's a necessary and valuable process, so it is at its core corrective or oversight process. So I think even more so that makes it a more keen interest on trying to feed back the things that your group has been learning back to the community to help reduce the backlog from a demand perspective in addition to a supply perspective. Is that something you can speak to, please?

MR. SMITH: Sure, let me speak to that. Let me just finish up in the briefest way a portion of the numbers. That 1,480 cases I mentioned coming in newly to the board was parallel to an outgoing number of under 700 cases, so the backlog grew in that 30-day period by another 800 cases. So you can just extrapolate
out, if we have an 800 per month increase in the backlog, how long it takes before the backlog is even more substantial than it is now.

And clearly the solution is not merely how do we deal with the cases coming in, but how we look at -- whether all the cases that we have before us should be before us and whether the service that the board provides is being utilized correctly or whether it is, in fact, being over utilized.

And this actually gets to the heart of the other main thing I wanted to address, which is efforts with the patent corps, Patent Examining Corps, to look at whether cases really are -- have properly matured for consideration by the board.

One of the things we have been discussing with soon-to-be Commissioner Focarino is -- and others of the leadership in the Patent Examining Corps -- today is December 1. Are you -- no, okay. January? Okay. I just wanted to get that right. Is how we might look, for example, at the number of instances in which there
have not been interviews with the examiners in cases, either early stage or late stage interviews, and how conducting those might well reduce the instances in which an appeal is necessary or desirable. Of course, if the interview results in the issuing of an application, and you heard earlier from the deputy commissioner that the number of issuances following interviews is substantially higher, of course, there's no right to appeal if you have an issuance, it's only in the face of a rejection. So that could potentially substantially impact the number of cases which are mature for consideration or even eligible for consideration by the board. And, of course, where the interview does not result in an issuance, that may well put the case in a different light anyway. It may provide more motivation for the applicant to seek a continuing examination or may result in abandonment or it may just change the claims which come to be issued and the ones which receive a rejection after an interview. The applicant may
not choose to appeal. We're not sure exactly what impact it
would have or exactly how we would structure
taking cases which are already part of the
inventory at the board, what route we would
construct to allow applicants an interview
opportunity, we are working on that. We do know,
looking at the cases before the board now, that 75
percent of the pending cases at the board have not
previously been the subject of an interview. So
there is certainly an opportunity, a nontrivial
opportunity to consider how we might take
advantage of that to reduce both the inflow of
cases and even the inventory at the board as it
currently exists. Another thing sort of in the
same vein that we have been giving attention to is
the number of cases in which there are amendments
not entered, amendments after final, which might
impact how the case would come to be considered
and might result in the need for no appeal.

It is often the case in the appeal
briefs that the parties make reference to what
they think could happen in the case if the
amendment made after final were to be considered.
Of course, at the appeal stage, there's not much
we can do with that because we are fundamentally a
tribunal of error looking at a record that is
extern as of the time of the filing. So we can't
look at an amendment; after-final that was not
entered and was not the subject of prosecution.
Due process rights are necessarily impacted by the
failure for -- by the absence of there having yet
been a consideration of the case with that
amendment.

But the thought would be that of looking
at the amendment-after-final and seeing whether
there's some way to prompt the discussion or
further prosecution between the examining corps
and the applicant in a way that would obviate the
need for the appeal. So those are some of the
things we're looking at that would reduce the
number of cases both coming in and reduce the
inventory quite apart from how do we deal with the
backlog as it exists, i.e., the reduced demand.
MR. MATTEO: Michelle.

MS. LEE: Yeah, James, thank you very much, that was helpful. You had mentioned an interesting statistic which is that 75 percent of the cases before the board were not interviewed. What do you know, or maybe other folks around this table know, what is the percentage of cases at the PTO that is interviewed? Do you know? Is it --

MR. SMITH: I don't know the answer to that.

MS. LEE: I think that would be an interesting comparison given the board's statistic.

MR. SMITH: One thing we do know, and I'm not sure we have concrete numbers on this, is that -- I heard this from the deputy commissioner earlier today -- the number of interviews is increasing. And we certainly have -- our assumption, looking at our numbers, is that the number of cases -- the number of appeals where there has not been an interview is higher for older cases and that, therefore, if we approach
that area, we have more to gain looking at the
older cases than we do the newer cases, which is
fine because, in fact, in a COPA like way, the
cases we'd want to address first are the ones
where the parties have -- the applicants have been
waiting the longest for a resolution.

MR. MATTEO: And actually, James, I'm
sorry, in the interest of time, since we
do actually have to leave the room, if you could just
provide some summary comments.

MR. SMITH: Certainly. One summary
comment, and again, it goes to backlog and board
operation overall, we are interested to know the
public reaction to a greater attempt on the part
of the board to make its decisions even more
concise, utilizing from time to time per curiam
decisions where in the record, either by way of
the examiner's comments or the applicant's brief,
the correct resolution of the case seems to be
already presented in writing to the board.

Lastly, I would touch on another thing
which, in fact, also impacts backlog and is
related to our hiring effort. While we're very pleased that we will soon have 10 new judges, this will allow us essentially merely to hold our ground, because, in fact, the great work put to us by the AIA, including participation in the drafting of rules, means that we have about that number of judges who are diverted from their normal work merely to help with the vetting of public comments on what the rules should be and drafting rules for consideration by the director and other parts of the agency.

But the folks we have working on the rules we think are giving themselves fully to it, trying to be as attuned as they possibly can be to the comments coming in through the micro site, and trying as best as possible to balance the various interests that play out with whatever those rules are going to be.

MR. MATTEO: So I can promise you we have a great measure of empathy for you with respect to new duties layered upon you by the America Invents Act. We're struggling with some
of the same issues ourselves. But I do want to
thank you very much. Do we have any quick
questions from the membership?

MR. MEYERS: James, I know that you had
a large number of patent attorneys I think that
were hired on as judges, selected as judges. Is
there any plan to backfill some of those positions
to also help with the backlog?

MR. SMITH: We might at some point
develop such a plan or certainly some plan that
involves support of the judges in whatever way we
can support them. Currently, however, we are not
prioritizing that effort largely because the
mission of finding 90 more judges is fairly
consuming.

MR. MATTEO: Okay. Well, thank you very
much.

MS. FAINT: I just have one question. I
was wondering also what the attrition rate is for
judges. Is it in line with the core overall or is
it higher or lower?

MR. SMITH: I don't know the numbers
comparatively. I would say this, though, that our attrition rate is very, very low. The judges like their jobs and we -- I should say we like our jobs, and we -- just yesterday we had an award ceremony for the board with judges and support staff, and the number of people to whom commendations were given for 10, 20 and even 30 years of service is just astounding to me; low attrition.

MR. MATTEO: Great. And with that, we'll wrap up. James, if I may make a suggestion for our next meeting, we'd like to have you speak again, several things. If you could provide your comments via slides, as well, that would be very helpful, not just to facilitate understanding here at the table, but for the public, as well. These are all made available on the website and by webcast, so I think that would be very helpful.

And in addition, if you would spend some time returning to that whole supply-demand side and the learnings and the feedback mechanisms, if you could spend a bit of time on that, I'll be
happy to work with you in the background to try
and develop more fully what we would like to see.
And I think that would be very helpful for the
membership here, as well as the public. Thank you
very much. Okay.

So just a few housekeeping issues to
wrap up, unless we had any additional comments
from the membership. Okay. So I did want to make
everybody aware that the PPAC has just recently
completed its annual report which is distributed
to the President and to key members of Congress.
That report is available for everybody to download
on the PPAC section of the PTO website in PDF
form. We have also made available all of the
presentation materials from today. Those will
also be up on the PTO website for those of you who
are interested.

And just to circle back on the questions
from the public, there were none, so we won't be
addressing those. However, having said that, if
and to the extent anyone has questions, don't feel
this is a speak now or forever hold your peace
moment. You can send them to that e-mail address. They will come to me and we'll find a way to get your answers out to you.

Okay. And with that, I'd like to thank all of the members of the PTO for their great presentations and all of the incredible work that is behind them. And thank you also to the PPAC membership for your thoughtful questions and participation. And with that, I will formally adjourn the public session of the Patent Public Advisory Committee. Thank you.

(Whereupon, at 11:35 a.m., the PROCEEDINGS were adjourned.)

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

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