

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Tuesday, February 14, 2012

1 PARTICIPANTS:
2 PPAC Members:
3 DAMON C. MATTEO, Chair
4 D. BENJAMIN BORSON
5 LOUIS J. FOREMAN
6 ESTHER KEPPLINGER
7 MICHELLE LEE
8 WAYNE SOBON
9 STEVEN MILLER
10 VALERIE L. McDEVITT
11 CLINTON H. HALLMAN JR.
12 Union Members:
13 ROBERT D. BUDENS
14 CATHERINE FAINT
15 Also Present:
16 DAVID J. KAPPOS
16 Under Secretary and Director of USPTO
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17 AZAM KHAN
18 Deputy Chief of Staff
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19 ANTHONY SCARDINO
19 Chief Financial Officer
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1 PROCEEDINGS

2 (9:33 a.m.)

3 MR. MATTEO: Okay. Before we formally
4 convene, just a logistical note. I've been told
5 that you need to lean in very deeply to the
6 microphones in order to be heard. So if we could
7 all remember to do that, please. And the
8 gentlemen in the back, if you could wave to me if
9 you're having issues hearing people. I'll throw
10 something at them so we can -- very good. Okay.

11 So then, I'd like to formally convene
12 the public meeting for the USPTO, Patent Public
13 Advisory Committee. And as we always do in the
14 beginning, I'd like to start with the roll call.
15 Myself, Damon Matteo, chair, and to my left.

16 MR. FAILE: Hi, Andy Faile, Patents,
17 USPTO.

18 MR. SOBON: Wayne Sobon, PPAC.

19 MS. KEPPLINGER: Esther Kepplinger,
20 PPAC.

21 MR. HALLMAN: Clinton Hallman, PPAC.

22 MR. FOREMAN: Louis Foreman, PPAC.

1 MR. BUDENS: Robert Budens, PPAC.
2 MS. FAINT: Catherine Faint, PPAC.
3 MR. HIRSHFELD: Drew Hirshfeld, PTO.
4 MR. MILLER: Steve Miller, PPAC.
5 MS. McDEVITT: Valerie McDevitt, PPAC.
6 MS. LEE: Michelle Lee, PPAC.
7 MR. BORSON: Ben Borson, PPAC.
8 MS. FOCARINO: Peggy Focarino, USPTO.
9 MR. MATTEO: Thank you very much,
10 everybody. And as also our custom, I'll begin the
11 meeting with the reminder to all of us, unneeded
12 but always spoken, to leave our hats at the door.
13 We speak not with our private affiliations in
14 mind, but with the best interest of the USPTO and
15 the innovation community at heart.
16 A few other logistical comments. The
17 agenda and meeting materials can be found at the
18 PTO website at the PPAC section. Members should
19 have handy copies as well.
20 It's not possible to take real time
21 questions orally from the audience and from the
22 public, but what I'd like to do is invite those

1 people interested in submitting comments or
2 questions during the meeting to send an e-mail to
3 our e-mail address ppac@uspto.gov, and during the
4 break someone at the PTO will get them to me and
5 we'll answer as many of those questions as
6 possible. Again, apologies, they won't be able to
7 be answered real time but we'll get to them as
8 soon as we can.

9 Let's see here. And just a housekeeping
10 issue; we do have an agenda. We'll need to stay
11 on time. I'll be forgiving but I will try and
12 keep us on the agenda. And I'm very pleased and
13 honored to welcome two new members of PPAC,
14 Clinton Hallman from Kraft and Valerie McDevitt.
15 And as our first order of business, we'll be doing
16 a swearing in for the two of them and if you could
17 both, and Peggy from the PTO join me up at the
18 front, we'll begin the swearing in.

19 If you would, please repeat after me.
20 I, state your name, do solemnly swear.

21 MS. McDEVITT: I, Valerie McDevitt, do
22 solemnly swear.

1 MR. MATTEO: That I will support and
2 defend the Constitution of the United States.

3 MS. McDEVITT: That I will support and
4 defend the Constitution of the United States.

5 MR. MATTEO: Against all enemies,
6 foreign and domestic.

7 MS. McDEVITT: Against all enemies,
8 foreign and domestic.

9 MR. MATTEO: That I will bear true faith
10 and allegiance to the same.

11 MS. McDEVITT: That I will bear true
12 faith and allegiance to the same.

13 MR. MATTEO: That I take this obligation
14 freely.

15 MS. McDEVITT: That I take this
16 obligation freely.

17 MR. MATTEO: Without any mental
18 reservation.

19 MS. McDEVITT: Without any mental
20 reservation.

21 MR. MATTEO: For purpose of division.

22 MS. McDEVITT: For purpose of division.

1 MR. MATTEO: And that I will well and
2 faithfully discharge.

3 MS. McDEVITT: And that I will well and
4 faithfully discharge.

5 MR. MATTEO: The duties of the office.

6 MS. McDEVITT: The duties of the office.

7 MR. MATTEO: On which I'm about to
8 enter.

9 MS. McDEVITT: On which I'm about to
10 enter.

11 MR. MATTEO: So help me God.

12 MS. McDEVITT: So help me God.

13 MR. MATTEO: Congratulations and welcome
14 aboard. I, Clinton Hallman, do solemnly swear.

15 MR. HALLMAN: I, Clinton Hallman, do
16 solemnly swear.

17 MR. MATTEO: That I will support and
18 defend the Constitution of the United States.

19 MR. HALLMAN: That I will support and
20 defend the Constitution of the United States.

21 MR. MATTEO: Against all enemies,
22 foreign and domestic.

1 MR. HALLMAN: Against all enemies,
2 foreign and domestic.

3 MR. MATTEO: That I will bear truth,
4 faith, and allegiance to the same.

5 MR. HALLMAN: That I will bear truth,
6 faith, and allegiance to the same.

7 MR. MATTEO: That I take this obligation
8 freely.

9 MR. HALLMAN: That I take this
10 obligation freely.

11 MR. MATTEO: Without any mental
12 reservation or purpose of evasion.

13 MR. HALLMAN: Without any mental
14 reservation or purpose of evasion.

15 MR. MATTEO: And that I will well and
16 faithfully discharge.

17 MR. HALLMAN: And that I will well and
18 faithfully discharge.

19 MR. MATTEO: The duties of the office in
20 which I am about to enter.

21 MR. HALLMAN: The duties of the office
22 in which I am about to enter.

1 MR. MATTEO: So help me God.

2 MR. HALLMAN: So help me God.

3 MR. MATTEO: Okay, welcome aboard.

4 Congratulations.

5 MR. HALLMAN: Thank you.

6 MR. MATTEO: Thank you very much,
7 everybody. (Applause) Thank you, everybody. If I
8 may be permitted a personal observation, one of
9 the great joys and pleasures, and frankly honors,
10 of working with PPAC is the company assembled at
11 this table. First-class people in every sense of
12 the word, so Clinton, Valerie, welcome aboard.

13 MR. HALLMAN: Thank you.

14 MR. MATTEO: So without further ado,
15 what I'd like to do is turn the microphone over to
16 Peggy Focarino, who will be making the opening
17 remarks for the United States Patent and Trademark
18 Office. Peggy.

19 MS. FOCARINO: Thank you, Damon, and
20 good morning everyone and thank you all for
21 joining us. I, too, want to welcome Valerie
22 McDevitt and Clinton Hallman, and congratulate

1 them on their appointment to PPAC. We appreciate
2 your service to the USPTO.

3 The PPAC's insights and wealth of
4 knowledge were a key part of our success last year
5 and I know that your involvement and advice will
6 help us build on those successes this year,
7 particularly with the opportunities in the Leahy
8 Smith American Invents Act.

9 So before I say a few words about our
10 recent progress, I'd like to introduce to you Andy
11 Faile, who is serving as acting deputy
12 commissioner for Patents and many of you already
13 know Andy.

14 The Patents organization has done
15 tremendous work this fiscal year. Our progress on
16 backlog reduction has had a significant impact
17 through the use of the COPA Initiative, or
18 clearing out the oldest patent applications, and
19 the first ever team awards associated with it. We
20 were able to drive down the backlog to 655,582
21 applications as of yesterday. And we did this in
22 the face of a 5.3 percent increase in filings in

1 Fiscal Year '11. We also hired and trained 836
2 new examiners last year, in spite of our recent
3 budget constraints, which was quite an achievement
4 for us.

5 We continued to focus on improving the
6 quality of our work and, in fact, as you already
7 know, together with the help of PPAC, we
8 introduced five new quality metrics in FY11, which
9 we will use in FY12 to help us identify areas
10 needing improvement. We also began implementing
11 key IT enhancements and we will continue to do so
12 throughout this fiscal year.

13 So in short, this is a team that's
14 committed to getting things done and we have
15 demonstrated that in FY11. I just want to touch
16 briefly on what we plan for the remainder of this
17 fiscal year.

18 As I said, our biggest news for all of
19 us here in recent times was the enactment of the

20 AIA on September 16th of 2011. So we'll be
21 working hard in implementing the Patent's
22 provisions of the AIA in 2012 and beyond.

1 We've already begun this with respect to
2 prioritized examination, otherwise known as Track
3 1, and I have great confidence that we will be up
4 to the task of implementing further provisions of
5 the law this year. So as we work to put the AIA
6 into effect, we're also working to implement CPC,
7 or the Cooperative Patent Classification system,
8 which is an effort with EPO.

9 We'll move even closer to our 2015 goal
10 of 10 month first action pendency and 2016 goal of
11 20 month total pendency by building on last year's
12 success in a number of ways.

13 First, we'll continue the extremely
14 effective team initiative that I had mentioned of
15 clearing out the oldest patent applications, which
16 contributed so much to backlog reduction in FY11.
17 So we'll have a new version, 2.0 version, in 2012,
18 and you'll be hearing more about this and other
19 operational priorities later this morning.

20 Second, we plan to add an additional
21 1,500 new patent examiners, which will allow us to
22 further reduce our backlog. Third, we'll continue

1 to upgrade our IT infrastructure, via completing
2 the rollout of our universal laptops to all of our
3 examiners and continue to work on our Patents
4 End-to-End program.

5 Regarding these upgrades, today you'll
6 see a demonstration of PATI, P-A-T-I, which is the
7 Patent Application Text Initiative, and that's a
8 key element of the technological improvements that
9 will make the USPTO truly a 21st century patent
10 office. Just in as a side, I wanted them to name
11 this initiative Peggy, but nothing fit the acronym
12 so we'll stick with PATI for now. But it's a
13 really great system.

14 In addition to taking these steps to
15 further improve our performance, we'll begin to
16 work on a new and significant initiatives that
17 really change the paradigm of how we view
18 ourselves as an agency and these include opening
19 the much anticipated satellite office in Detroit,
20 at the end of July of 2012, which will be the
21 first step in creating a nationwide workforce.

22 And the start of our TEAPP program,

1 which is the Telework Enhancement Act Pilot
2 Program, and that will allow us to change the duty
3 station of examiners to a location other than
4 headquarters here in Alexandria, Virginia.

5 So let me conclude by saying that like
6 FY11, fiscal year '12 promises to be challenging,
7 opportunity filled, and exciting for everyone here
8 today. So with your continued support and
9 guidance, I fully expect us to meet this year's

10 goals as we continue to reach out to stakeholders,
11 share information, and refine and improve our
12 processes and procedures. Thank you.

13 MR. MATTEO: Thank you very much, Peggy.
14 We're scheduled for a short break. If we could
15 reconvene at 10:00, please, I'd very much
16 appreciate it. Thank you.

17 (Recess)

18 MR. MATTEO: Welcome back everyone.
19 We'll be starting this part of the session with
20 Dana Colarulli, who has just joined us, who will
21 give us an update on legislative affairs. Dana,
22 if you would please.

1 MR. COLARULLI: Thank you, Damon. Good
2 morning, everyone. So your regular update on
3 legislative affairs, somewhat brief today but
4 happy to have further discussion with folks who
5 would like to have it.

6 So I'll start with some general IP
7 legislation highlights, things that my team is
8 monitoring as we're moving forward. Certainly you
9 see in that last AIA technical corrections and I
10 can talk a little bit more about that in the
11 discussion that we're seeing in the wake of the
12 AIA.

13 But other high level issues that we're
14 seeing in legislation. Certainly there was over
15 the last few months considerable discussion over
16 the SOPA, of the Stop Online Piracy and the
17 Protect IP Act addressing online counterfeiting,
18 and the discussion there was enhancing the tools
19 to allow rights holders to enforce their rights,
20 what the right balance is there.

21 This was a discussion, at least
22 legislatively, that evolved over the last few

1 Congresses and the solution that started to get
2 traction from members, this Congress, clearly had
3 -- there was a lot of public protest on the
4 particular solution they decided to go forward
5 with. So consideration of that legislation, both
6 in the House and the Senate, has been postponed
7 until some compromise to at least address the
8 concerns from the public have been addressed.

9 There was at least one substantive
10 hearing on the House side on this issue earlier
11 this year. I expect they'll be continuing
12 discussion about whether there is something here
13 that can be addressed, whether there are
14 additional tools that can be placed into the
15 statute to aid rights owners to protect their
16 rights online.

17 The second bill I highlighted here was
18 recent introduction within the last few weeks.
19 This is a bill that we've seen, and again, in
20 previous Congresses, Representative Issa from
21 California and Representative Lofgren, also from
22 California, introduced this bill Promoting

1 Automotive Repair, Trade, and Sales Act, or the
2 PARTS act.

3 This goes towards allowing, for the
4 purposes of repairing an automotive to its
5 original manufacturer, essentially eliminates the
6 ability to enforce your rights for those
7 particular technologies. The PTO in the past -- a
8 past director held a few town halls directing this
9 issue, a particular interest to the auto insurance
10 industry, certainly, but also of interest to a
11 number of rights holders. Question: Where do you
12 draw the line if this part is used simply to
13 return it to its original manufacturer or
14 something else?

15 It really is a question of eliminating
16 enforceability in at least one area and those
17 supporters say a very narrow area, but it's again,
18 a piece of legislation that we'll be watching that
19 I think has significant IP policy impacts.

20 The third on there is AIA technical
21 corrections. There is, I think, a very good
22 discussion. In the wake of a major legislation

1 there's always a discussion about are there things
2 that we missed. Are there purely technical issues
3 to address?

4 There certainly are a few in the AIA,
5 some that the team here had identified fairly
6 early on, and on those I'll mention effective
7 dates. There's a number of provisions in the bill
8 that do not have explicit clauses for when they
9 become effective, therefore, they fall to the
10 umbrella effective date, which is one year. It's
11 clear that that was not the intent of legislation.

12 So we've seen draft language from the
13 staff, they've added with us that they'd like to
14 at least correct that. There's also a provision
15 that was intended to coordinate the new
16 proceedings at the agency, post grant and inner
17 parties, by preventing you from filing a post
18 grant opposition -- or preventing you from filing
19 an inner parties review during the period of a
20 post grant opposition.

21 That certainly makes sense for post AIA
22 patents, but there are some cases where a patent

1 is filed free AIA, issued post AIA, where you're
2 still subject to that same restriction, you can't
3 file an inner parties reexamination, but a post
4 grant opposition is also not available to you.
5 That certainly wasn't the intent of the
6 legislation. So there's a good narrow fix that
7 could be addressed there.

8 The Senate staff is also looking at
9 other technical amendments and they've asked us to
10 take a look at them and decide whether there is
11 something that could move forward. I think a
12 bigger challenge right now for both the Senate and
13 the House staff trying to address these, again,
14 purely technical issues, is what vehicle. We are
15 in a -- certainly, we're in a political year so
16 moving forward -- of legislation. It's going to
17 be very difficult.

18 A technical amendment bill like this
19 tends not to move along by itself, introduced as a
20 separate bill, passed as -- voted on as a separate
21 bill, passed as a separate bill, but tends to be
22 attached to some other moving vehicle. So I think

1 there's a question of what vehicle might be
2 available right now for a technical amendments
3 bill, but the Senate staff is keeping an eye open.

4 There's also been some discussion of,
5 what I would say, some slightly less technical and
6 the House Judiciary Committee held a hearing
7 recently on one of the first of the two reports
8 that the PTO issued as required by the AIA. This
9 is on the prior user defense and the Congress
10 asked us to do a comparison of what's now under
11 U.S. law as a result of the AIA, and what exists
12 in the regimes of other countries.

13 We did that. The discussion moved in
14 the hearing towards are there amendments that
15 should be address, that could be made, as well, to
16 this provision. So there's a discussion there. I
17 tend to think that that may be less likely at this
18 point but there may be some purely technical
19 amendments that are in there somewhere.

20 Again, we're actively in those
21 discussions. The question is what's the window
22 for addressing these issues? Again, from a purely

1 legislative perspective, the more purely technical
2 issues I think are most likely to move forward.

3 The fourth issue I listed here was our
4 appropriations. The President delivered his
5 budget to the Hill this week. So our pending
6 legislative language is in there. More
7 importantly, for me right now, is actually
8 following up on last year's appropriations
9 ensuring that we're responding to all of the
10 congressionally required reports. There were
11 quite a few required of the PTO. So we're
12 following up on those right now, both on the
13 appropriations side and on the AIA side.

14 I mentioned the two reports we just
15 issued at the four month mark. That's the Prior
16 User Rights and the International Small Business
17 Patenting. We're right now working on the genetic
18 testing study. There will be a hearing later this
19 week and Janet may be reporting more on all of the
20 activities under the AIA. Let's move on from that
21 slide.

22 Hearings, mentioned the prior user

1 defense hearing. Upcoming hearings: The director
2 is scheduled to testify on our FY13 budget
3 proposal on March 1st. So we're well on the
4 process of drafting testimony for that. Both the
5 House and the Senate also have reached out to us
6 and said we'd like to get an update on your
7 implementation status of the AIA.

8 We'd like to move on to looking at other
9 issues so we're looking at the schedules to call
10 you up for a hearing, an oversight hearing,
11 potentially on an update on the status of AIA,
12 potentially on the impact of the AIA on the
13 international protection of patent rights. So
14 both of those are opportunities yet to be
15 scheduled.

16 I thought it made sense to spend a few
17 seconds just on our outreach generally on issues
18 that are important to us. Certainly -- I
19 mentioned the genetic testing study, satellite
20 offices. I happen to be one of the more popular
21 people in Congress right now because I think every
22 congressman would like to have a satellite office

1 in their district.

2 We recently closed the comment period
3 for the public to suggest locations that the PTO
4 move to the -- our second and third office,
5 Detroit is on schedule, likely to open up in the
6 summer timeframe. We received over 550 individual
7 submissions for our satellite office comment
8 period. The team is going to need a few months to
9 probably go through that.

10 They're doing that now led by Osmocon in
11 the front office. And I think we're going through
12 this in a very transparent way. They've adopted a
13 very nice, modified six sigma process to address
14 all of the issues that the statute laid out for us
15 to address.

16 And frankly, some other issues that we
17 thought were important, namely cost, in opening
18 this office. The statute doesn't specifically
19 require us to look at that but we thought that was
20 a good thing. I thought Tony might think that's a
21 good idea as well. So the team is right now very
22 aggressively going through all of those

1 submissions and, hopefully, they make a
2 recommendation in the next few months.

3 Road shows on AIA and implementation;
4 you all heard a bit about that already and
5 hopefully we'll be able to participate in some way

6 in some of those. We're also doing our regular
7 outreach effort to congressional staff to educate
8 them, post AIA, of what's going on at the agency,
9 but all other issues we have one day in the life
10 for a congressional staff scheduled where we bring
11 folks out here, show them a day in the life of a
12 trademark examiner, a day in the life of a patent
13 examiner, and start to discuss some of the issues
14 that are important to us.

15 This becomes very important when staff
16 are faced with issues like to protect IP, like
17 online counterfeiting, or like any piece of
18 legislation that might affect our IP policy. They
19 have someone to call and they have a little more
20 context. So we're actively doing both meetings up
21 there on the Hill and trying to get folks out
22 here. And that goes along with both individual

1 meetings with staff and briefings. There's a
2 number of IP caucuses as well that are active on
3 the Hill.

4 We've been very, I'll say forceful, but
5 I'll say very open to coming up and briefing on
6 any number of issues or facilitating panels on
7 issues that are important to congressional staff.
8 So we're continuing to -- all of those things.

9 MR. MATTEO: Thank you, Dana.

10 MR. COLARULLI: Sure.

11 MR. MATTEO: Oh, I thought you were
12 moving to another slide.

13 MR. COLARULLI: No.

14 MR. MATTEO: With respect to the
15 satellite offices.

16 MR. COLARULLI: Sure.

17 MR. MATTEO: I'd be grossly understating
18 if I said more than a few people have asked me
19 about the process.

20 MR. COLARULLI: Mm-hmm.

21 MR. MATTEO: And I'll do a mea culpa in
22 the front end here. I have not visited the

1 website, but I suspect that the solicitations are
2 posted on the website. What other vehicles are
3 there for the public to gain visibility into the
4 process, the criteria, the status? Is that
5 something you could touch upon, please?

6 MR. COLARULLI: Sure. So in December we
7 went out with the Federal Register notice. It was
8 a 60-day process and as I said, we received over
9 550 comments; a lot of very, very good comments.
10 And I'll tell you, throughout that process and
11 even this week, I've met with local delegations,
12 congressional delegations with the team here to
13 talk about both what our methodology is going to
14 be in selecting them, but, frankly, during the
15 comment period, what we're looking for.

16 And I said more than one time, the
17 volume of letters saying that we have a great
18 place to live, you should really move here, that
19 wasn't really compelling to me and wouldn't be
20 compelling to the team that needed to make the
21 recommendations to the director and to the
22 Secretary of Commerce.

1 What would be helpful is helping us make
2 the business case for why opening up an office in
3 a particular local area would make sense for the
4 office, both for its recruiting goals; that's been
5 the primary driver behind these offices, but then
6 also for maintaining an office, for using that as
7 a launch point for outreach to communities that we
8 can't otherwise reach. And a particular element
9 that Congress asked us to look at, which was the
10 economic impact.

11 So we did a considerable number of
12 meetings during that process encouraging folks
13 that were submitting comments to include all of
14 those things, help us make the business case. The
15 results, I think, paid off.

16 We've seen a lot of very good
17 information and the team went through very
18 earlier, as I said, lined up the statute, along
19 with some additional things that we thought were
20 important, and now, looking at all of the
21 proposals that are coming in, and frankly,
22 identifying some additional criteria.

1 And so I think the public period for
2 submitting us comments, for giving us additional
3 information is now over. We've got a lot of good
4 information in front of us, I think benefited from
5 the fact that folks took our request seriously,
6 help us make the business case.

7 So we'll be looking at that now. I'm
8 continuing to, as I said, continuing to meet with
9 folks to talk about our process. We want to make
10 sure that folks understand that this is a very
11 transparent process. We're very excited to open
12 up an office someplace outside of D.C., beyond the
13 Detroit office.

14 Our task at hand is to look at the next
15 two places. If those are successful, we'll look
16 at places beyond that. So I think the official
17 period is now closed. We need to do our work and
18 make the business case for ourselves.

19 MR. MATTEO: Thank you, Dana. Actually,
20 that was the substance of my question. I
21 understand that public comment period is closed.

22 MR. COLARULLI: Mm-hmm.

1 MR. MATTEO: The question is, what
2 measure of visibility, if any, does the public get
3 into the process, its status, the criteria, et
4 cetera? And how would they do that? Is there a
5 vehicle, a website, a --

6 MR. COLARULLI: Yeah, I think certainly
7 the website is a great place to start. We've now
8 posted all of the comments that are in there.
9 Sorry, I didn't address that part of your
10 question. We've now posted all of the comments.
11 I think we'll, as I said, the team needs some time
12 to make the recommendations.

13 As we get closer to opening up the
14 Detroit office, we should be in a position where
15 we can make a recommendation. I don't know when
16 we're going to make that announcement, but that
17 would be the next time that we'll probably give a
18 very visible update.

19 MR. MATTEO: Okay, thank you. Any other
20 questions from the floor? Robert?

21 MR. BUDENS: Just a quick one. On the
22 SOPA bill and the PARTS bill, as the agency, and I

1 guess by extension the administration, have they
2 taken a position on these bills with the Hill?

3 MR. COLARULLI: On the PARTS bill, no,
4 it was introduced very recently. We don't have
5 the date up there but it's within the last few
6 weeks. But again, legislation had been addressed
7 in the past. We do not have an administration
8 position yet.

9 On the SOPA and the Protect IP, there
10 was an administration position that was announced
11 as the bills were still active on the Hill. It
12 was very supportive of ensuring that you can
13 enforce your rights online. Maybe there is some
14 things that could be done here in legislation. It
15 questioned whether the bills hit the right
16 balance. And I think that was the question that
17 was also raised in the public.

18 So I think that's as far as the
19 administration position has gone. I think we hold
20 out hope that there might be something that could
21 be done here to address some of the concerns at
22 least we're hearing from stakeholders in their

1 ability to protect their rights online, but it's
2 unclear how that may move forward at this point.
3 Other questions --

4 MR. MATTEO: Okay. Damon, thank you
5 very much.

6 MR. COLARULLI: Sure, happy to be here.

7 MR. MATTEO: Appreciate it. And with
8 that we'll move on to a finance update, led by
9 Tony Scardino, chief financial officer of the PTO,
10 and principle comments by Esther Keplinger, the
11 lead for our Finance Subcommittee. Please.

12 MR. SCARDINO: Good morning. Esther,
13 did you want me to go first? Always a pleasure to
14 follow Dana. One of these days I want to convince
15 him to do my briefing as well. I always walk away
16 very confident of our congressional and government
17 relations after I hear him speak.

18 We don't have much to formally present
19 today. We just have a couple of slides but I want
20 to give a little context to that. The last time
21 we met, I think it was late November, early
22 December, we had just had a bill enacted, an

1 appropriations bill for 2012, and it had full and
2 strong support from Congress.

3 They fully supported the President's
4 budget request at \$2.706 billion, but we also, I
5 think, explained that we had experienced a bubble,
6 what we're calling, in collections at the end of
7 2011, right after AIA was enacted.

8 So we continue to refine our estimates
9 in light of that. So rather than \$2.706 billion
10 that we're authorized to spend -- we're still
11 authorized to spend that amount -- we're only going
12 to collect closer to \$2.5 billion. And even that
13 has some track 1 monies in there that -- track 1
14 has been going a little slower than we had
15 anticipated. We're hoping that it's going to
16 catch on later in the year.

17 So this slide goes through our projected
18 collection -- like I said, it's a little more than
19 2.5 billion. And the breakout of Patents versus
20 Trademarks will result in a patent surplus, we
21 think, between \$88 million and could be as high as
22 \$100 million depending on some IT projects that

1 we'll be spending money on later this year. And
2 hiring, we are hoping to hire up to 1,500
3 examiners this year. It's an ambitious goal, but
4 we hope that we're going to meet it. So depending
5 on how all of that goes, will, of course, drive
6 how much money we spend this year.

7 Major activities, as I mentioned, was
8 the -- on top of the examiners, or also as Dana
9 mentioned, expanding our nationwide workforce.
10 Again, the two additional locations will not be
11 opened this year but we are making plans to
12 proceed at pace and Detroit will open, I guess,
13 hopefully middle of the summer, somewhere around
14 there.

15 Also, IT modernization is proceeding
16 full speed ahead, Patents End-to-End. Within the
17 funding that we have projected this year, we will
18 do everything that we wanted to do with Patents
19 End-to-End, while also starting to build what
20 we'll call the Patent operating reserve. By hiring
21 so many people this year, so many examiners, we're
22 going to need money in the first quarter of next

1 year to fully fund all of their salaries. So
2 we've built that into our budget plans.

3 Yesterday, the President released the
4 2013 budget and it was \$3.8 trillion overall.
5 Our budget was \$2.9 billion - \$2.953 billion -- of
6 which we'll spend a little more than \$2.8 billion.
7 So we'll continue to build the Patents operating
8 reserve, but it's a transition year for us.

9 This will have been -- 2013 will be the
10 first year that we have fee setting authority and
11 that we plan to utilize. As you'll -- obviously
12 tomorrow at the public hearing on fee setting
13 we'll discuss that in more details. But because
14 of that, when we built our budget for 2013 we had
15 to take into account our current fees for part of
16 the year and then we hope new fees will be
17 introduced and enacted in February of 2013. So
18 part of the year will reflect the new fee schedule
19 and part of the year will reflect the current.

20 So the budget also identifies, for the
21 first time publicly I guess, officially, that our
22 strategic goals are changing for patent pendency

1 and backlog. From 2014 and '15, we're shifting
2 that to 2015 and '16 due to the amount of spending authority
3 that we received in 2011.

4 But it continues to highlight, you know,
5 our budget priorities have remained the same.
6 We've got patent pendency and backlog reduction,
7 we've got our information technology and
8 modernization, we've got a sustainable funding
9 model, which includes fee setting, and then the
10 fourth goal that we added for 2013 was AIA
11 implementation. So I encourage the public and all
12 of you to review the budget that was released
13 yesterday. It's available on our website.

14 But I won't really go through any more
15 on '13 in terms of the new fees because as much as
16 they're tightly coupled, new fee setting
17 authority, as well with the 2013 budget,
18 tomorrow's hearing will go through that in much
19 more detail of course. But I'm available to
20 answer any questions you may have or respond to
21 Esther's comments if she has any.

22 MR. MATTEO: Questions from the floor?

1 Esther?

2 MS. KEPPLINGER: I have one question.
3 Thank you. So you're saying you're authorized
4 this year to spend 2.7, but you think you're only
5 going to bring in 2.5.

6 MR. SCARDINO: Correct.

7 MS. KEPPLINGER: But you'll have an end
8 to year surplus of 88 million, which you're going
9 to put into the reserve to fund the beginning of
10 next fiscal year --

11 MR. SCARDINO: Correct.

12 MS. KEPPLINGER: -- the examiners that
13 you would have.

14 MR. SCARDINO: Well, yes, to the extent
15 that that reserve is necessary.

16 MS. KEPPLINGER: Mm-hmm.

17 MR. SCARDINO: It's part of our goals,
18 as you'll see at tomorrow's hearing, to build an
19 operating reserve that is manageable so that
20 sustainable funding model where we can kind of
21 ride through any either increases in workload on
22 the front end with applications, or on the backend

1 with economy fluctuations if maintenance fees go
2 down.

3 MS. KEPPLINGER: Right. And one other
4 question for 2013 with the President's Budget.
5 You've indicated that you would collect -- or that
6 you were authorized to spend 2.953 billion --

7 MR. SCARDINO: Well, that's the request.

8 MS. KEPPLINGER: Right. And that --
9 okay. And that you would envision spending 2.8
10 something?

11 MR. SCARDINO: Correct.

12 MS. KEPPLINGER: So again, are these
13 numbers based on the proposed fee increases or --

14 MR. SCARDINO: Yes, they are,
15 absolutely. Completely coupled with fee
16 authority, fee setting authority, being enacted in
17 February of 2013.

18 MS. KEPPLINGER: Okay.

19 MR. SCARDINO: Just about a year from
20 now.

21 MS. KEPPLINGER: Okay, thank you.

22 MR. MATTEO: You said something that

1 sparked my interest in terms of the operating
2 reserve as necessary. So does this not operate
3 like a traditional operating reserve? Is it --
4 there's some sort of articulated antecedent to
5 reserving the money? We anticipate we'll have
6 expenses A, B, and C, and those will amount to \$80
7 million, ergo we can set aside \$80 million for our
8 operating reserve?

9 MR. SCARDINO: Not exactly. In other
10 words, our goal over a series of years is to
11 develop a three month operating reserve. So this
12 is like the first stage towards that. But the
13 whole concept of an operating reserve, of course,
14 is it to be available for unanticipated needs or
15 fluctuations in workload, or maintenance fees
16 being lower than we thought they were going to be?
17 So the operating reserve would be just that. And
18 if we need in the first quarter, let's say we live
19 under a continuing resolution for example, it's
20 happened a time or two, it could happen again in
21 October, so the operating reserve would help us
22 get through that.

1 MR. MATTEO: Okay, that's exactly the
2 reason I asked the question. It sounded like
3 there needed to be some articulated reason to
4 reserve X dollars. That's not the case?

5 MR. SCARDINO: No.

6 MR. MATTEO: I just wanted to confirm
7 that.

8 MR. SCARDINO: Right, yes, you're
9 correct.

10 MR. MATTEO: Okay, so it'll operate more
11 like a traditional operating reserve?

12 MR. SCARDINO: Yes.

13 MR. MATTEO: Okay, thank you. I
14 believe, Ben, you had a question?

15 MR. SCARDINO: Sorry if I wasn't clear.

16 MR. BOLSON: Yeah, thank you. I had a
17 question. Given the fact that certainly for '12,
18 Congress has authorized a greater budget than you
19 anticipate collecting, what do you expect the
20 repercussions might be from the Hill?

21 MR. SCARDINO: Oh, none at all. In fact
22 we identified this bubble, as you may say, as we

1 like to call it, to the House and Senate
2 appropriators and they were fully aware of it. In
3 fact, the Senate wrote it into the reports that we
4 know your estimates or your projections are lower
5 than what we're going to appropriate for you, but
6 we want to give you full support; so fully support
7 the President's budget request. If something
8 happens and, you know, money falls out of the sky
9 and you actually do collect \$2.7 billion you can
10 spend it.

11 MR. BOLSON: Yeah, thank you. That's
12 very encouraging.

13 MR. COLARULLI: Can I add one other
14 thing, which is I mentioned in my presentation
15 that the conference report last year included an
16 incredible number of reports for the agency to
17 complete.

18 One was on our fee projections and that
19 continues a discussion that we've been having with
20 the Hill to try to address some of the concern
21 that in past years our projections at the end of
22 the year have not matched our actual filings. We

1 have a dynamic process here so that -- it's no
2 wonder that that's the case. But one of the
3 required reports under our conference report is
4 for us to go in even more depth with Congress on
5 what our methodology is.

6 MR. SCARDINO: Amending it.

7 MR. COLARULLI: Tony's team has
8 documented that, shared that with the Hill, shared
9 that with other congressional offices as well, the
10 Congressional Budget Office in particular.

11 MR. SCARDINO: We're planning on sharing it this
12 week actually.

13 MR. COLARULLI: So they actually
14 provided us an opportunity to continue the
15 discussion. We think it's going in a good
16 direction and we're going to continue to try to
17 educate, make sure our methodology is transparent
18 on how we actually put a target on this dynamic
19 process of collecting fees, particularly in a time
20 where we're resetting the fees for the first time
21 in the history of this agency.

22 MR. MATTEO: Steven.

1 MR. MILLER: Thanks. Tony, in February
2 you said that you based this with the fee
3 increases coming your budget and your spending,
4 but my sense is there's probably going to be
5 another bubble in February because of increases --

6 MR. SCARDINO: Very possible, yes.

7 MR. MILLER: -- in the fees, that most
8 people will prepay a lot of those fees to beat the
9 increases. Is that accounted for in these
10 numbers?

11 MR. SCARDINO: Yes, we've tried to take
12 that into account. I'm, you know, each time we do
13 project our fees, we learn from experience of
14 course and we look backwards and forwards, and
15 we've experienced a bubble or two now recently and
16 we do anticipate it happening again; probably next
17 January or somewhere around there.

18 MR. MATTEO: Any other questions from
19 the floor? If not, Tony, Esther, thank you very
20 much.

21 MR. SCARDINO: Thank you.

22 MR. MATTEO: And with that we'll move

1 onto Andy Faile to whom I'll pass mic, who will
2 give us a Patent Operations update.

3 MR. FAILE: Thank you, Damon. Good
4 morning. So there's a good bit of material to get
5 through, to the extent we can hold questions to
6 the end, I think that would be very helpful.

7 One of the things I kind of want to open
8 up a little bit at the end to talk about is RCEs.
9 So we'll get to that issue; try to get through the
10 material first and get to that at the end.

11 Okay, first slide here is our backlog
12 slide. Currently the backlog, is at the bottom of
13 your slide on the right there, 659,000 and some.
14 This shows the general trend from sometime in
15 October '08 as it kind of does a general downward
16 slope to the current level.

17 On this slide, which we'll loop back to
18 at the very end is the backlog of RCEs, which is,
19 as you can see, the trend is the opposite to kind
20 of slightly going up. The current backlog of RCEs
21 as of the 8th of February is 81,255. On looking
22 at this backlog of RCEs, there's a couple of

1 different things that we're looking at office
2 wide.

3 We're trying to look at different
4 situations where we may be able to do things a
5 little bit different from a procedural point of
6 view to obviate the need for an applicant to go to
7 the RCE route. The first bullet there talks about
8 IDS's, particularly those after allowance of both
9 before and after payment of the issue fee. We've
10 heard from applicants, a lot of concern about
11 trying to get an IDS considered at this stage of
12 prosecution without having to go the RCE routes.
13 We're working on a couple of different scenarios
14 to address that issue.

15 The second bullet there speaks to after
16 final practice. That's another area where we feel
17 that for applications where we're pretty close to
18 allowance, if we could actually spend a little
19 more time after final than we normally would, try
20 to get the case into the allowance stream and
21 obviate the need for a RCE, that would be a good
22 bonus there as well.

1 So at least two different areas where we
2 see a couple of pressure points where we may be
3 able to do things a little differently and reduce
4 the need for RCEs in those two specific instances.

5 Okay. This graph shows our UPR and RCE
6 filings, the serialized filings there in the kind
7 of purple and the RCE filings in the blue there.
8 As you can kind of see, it's an interesting trend
9 starting somewhere around 2010 through 2012. You
10 see a bit of a leveling off of RCE filings,

11 relatively flat, but you can see that the
12 serialized filings, obviously, still on the
13 increase. We have a 5.2 percent projected growth
14 over last year's filings. That will put us in the
15 neighborhood of 533,000 for this particular fiscal
16 year.

17 First action pendency and total
18 pendency; as you can see kind of in the green
19 triangles, it's kind of a track all of the way
20 from September of '08 to present on first action
21 pendency, riding just below the line there of our
22 22.5 month target. The top part, the actual blue

1 bars, track our total pendency again to the
2 current of staying just below our goal there of
3 34.7 months.

4 Interview time. One of the more popular
5 outreach initiatives that has helped both I
6 believe applicants and examiners move a case
7 quicker towards a final conclusion is expanded use
8 of interviews. As you can see on the graph here,
9 the interviews have been trending upward. We're
10 on that same course this year as well. This
11 really just tracks the interview time itself.

12 It kind of gives us a general
13 indication, coupled with a lot of remarks we get
14 from the outside, the interviews have been on the
15 rise, examiners have been accessible,
16 practitioners have been able to get with examiners
17 and move cases along in general. So we think
18 that's a good trend there as well.

19 Okay, Peggy mentioned out COPA
20 initiative, clearing the oldest patent
21 applications. I'll spend a little time on this
22 slide. There's a lot of information there. We're

1 in version 2.0. We're obviously naming this after
2 some type of software convention starting at 1.0
3 last year and we're at 2.0 this year.

4 What you see here on the bar graphs is
5 kind of the distribution of the 304,000 cases
6 filed on or before September 1, 2010. The blue
7 bar shows kind of the inventory number per age of
8 the cases, age on the bottom in months. And then
9 the purple bar in there is the amount of cases
10 worked in that particular inventory bar.

11 The pie chart shows kind of a breakdown
12 of our goal. Again, our goal this year for the
13 COPA cases is to work 260,000 of these cases. So
14 far we have worked 96,794, the kind of maroon
15 color at the bottom. That leaves us with 163,000
16 cases or so to go for our 260 goal and that will
17 leave us with a projected about 44,000 cases or so
18 left over at the end.

19 If you see there kind of the red bar in
20 the middle there, everything to the right of the
21 red bar is the tail left over from the COPA 2.1
22 initiative. And another one of our sub

1 initiatives in COPA this year is to work off 90
2 percent of that particular tail.

3 This graph shows the 12-month rolling
4 average of allowance for a bi week. Up to the
5 current, just a touch over 49 percent, 49.1
6 percent, as of the end of January; generally an
7 upward trend from about October of '09 to present.

8 Here we see the examiner attrition rate.
9 If you look at the bottom scale, just a quick
10 note, it goes in years all of the way into the
11 circled area, which we're breaking down in months
12 to kind of give a blowup view of that. So the
13 scale is not completely consistent on the bottom.

14 You can see kind of a bit of a downward
15 trend starting somewhere in the '08 area until our
16 current levels broken out there in the last three
17 or four months show us at about 3.28 percent
18 attrition rate, which is very good. Obviously
19 retaining examiners, keeping them working on the
20 backlog is a very important ingredient in addition
21 to hiring the number of examiners we need to get
22 the resources to work that backlog down to our 10

1 and 20 goal. A pretty healthy look there.

2 Shifting over to quality. We used to at
3 the office, we used to have a couple of quality
4 measures. We looked at the allowance rate and
5 what we called the in process review, and that
6 would be a look at cases in prosecution before
7 they reach the allowance marker and assess quality
8 or a compliance rate on the review of those cases.

9 In working with the PPAC, in working
10 with you guys, we've actually constructed a more
11 robust quality measure that relies on a composite.
12 So we're looking at seven different things now,
13 two of which were our traditional measures, we've
14 added five new measures per a lot of the input
15 from PPAC.

16 This slide kind of shows what I call our
17 march to our ultimate goal. Our ultimate goal is
18 at the end of '15, our strategic plan gives us a
19 number of in targets for those seven different
20 measures, which we'll go over in a minute. And
21 this is kind of our goal, our march up to 100
22 percent. So the numbers you see there are

1 actually percentages.

2 And the way we're doing this is each
3 year you'll see a percentage range in the red
4 there: 48 to 56, 65 to 73. That indicates 48
5 through 56 percent of our ultimate 100 percent
6 goal. So it kind of shows the march from '12,
7 '13, '14, all of the way to hitting 100 percent of
8 our goal in '15. And we have different ranges
9 that we want our composite to be in as we move up
10 towards that 100 percent mark.

11 Currently, in the blue bar in FY12 you
12 see we're at 43.9 percent of that eventual 100
13 percent and that's slightly below the range we
14 want to be at at the end of this fiscal year,
15 which is in the 48 to 56 percent range. So we're
16 moving towards that but we're still a little low
17 on that.

18 The quality composite, spend just a
19 minute on this slide. This is the breakdown of
20 the seven different measures. I'm starting kind
21 of at the bottom left, the in process compliance
22 rate, and then going to the right, final

1 disposition compliance rate, are our two
2 traditional ones. Continuing kind of
3 counterclockwise, we have both an internal and an
4 external quality survey, which I'll get to in a
5 minute, which is part of the composite. We have a
6 QIR, quality index reporting, which is basically a
7 rich set of data looking at all kinds of different
8 prosecution points and trying to quantify those
9 particular points.

10 We have a complete FAOM review; a little
11 bit different than the in process review in that
12 the in process review gives us kind a digital
13 answer, action good or action no good, the
14 complete FAOM, FAOM being first action on the
15 merits review, goes into a lot of different issues
16 in the case and quantifies them more specifically.

17 And then we have an FAOM search review,
18 looking at totally just the search. So we believe
19 this kind of composite here gives us a little bit
20 more of a 360-degree look at quality versus just
21 our previous two compliance measures of allowance
22 rate and in process compliance.

1 On this very busy slide, it might be
2 difficult to see, kind of gives you the weighting
3 of each of the components and the cranking through
4 the numbers to get to the ultimate compliance
5 measure, again, currently at 43.9 percent of our
6 eventual 100 percent of our goal.

7 You can see in the column to the left is
8 the actual metrics. The components themselves I
9 just discussed in the previous slide. There's a
10 definition for each one. There's a weighting for
11 each one of these that eventually turns into the
12 -- cranks out the ultimate number. There's a base
13 year, which is basically our FY11 for many of
14 these and some of these came on a little bit later
15 so we have a different base year.

16 Our stretch goal and then our current
17 level, our current progress, you do the weighted
18 summation of each one of these, sum it up, and
19 that's where we get our 43.9. Again, this gives
20 us kind of an indication. Instead of just looking
21 at our two previous measures, this gives us a
22 little bit more of a robust look at the quality.

1 Taking another look at this slide, it
2 kind of goes into a little bit of detail of a
3 couple of those, the final disposition, in
4 process, and QIR 12-month rolling average. On the
5 top bar there, the kind of the pink boxes show our
6 in process compliance rate while the green dots
7 show the final disposition compliance rate. The
8 bottom, kind of the blue triangles, show our
9 quality index reporting within the particular
10 ranges described at the bottom of the slide; kind
11 of an in-depth look at those three.

12 As I spoke about before, we have a
13 couple quality surveys. The first one is an
14 external quality survey we've been doing for some
15 time now and basically the numbers there, what we
16 are looking at, is ratio of good or excellent
17 responses to poor or very poor responses. So
18 obviously the higher that number the better ratio
19 we have and we have targets for the end of '15
20 shown on the previous slide of where we want to be
21 in our overall ratios of good to poor responses.
22 And this shows you a graph of where we are now.

1 Oh, thank you, Damon; sorry. That's the external
2 quality survey.

3 Internal quality survey is a bit of a
4 newer measure, the same logic. We're surveying
5 internally examiners asking such things as the
6 quality of the cases that they're working on from
7 the practitioners from the applicants, the quality
8 of our training internally here, the quality of
9 our tools to do the job, et cetera, and we're also
10 looking at a ratio there of excellent, good
11 responses, to poor or very poor, to crank out that
12 particular part of the quality composite.

13 This last slide shows kind of our track
14 1 statistics Tony and Dana had mentioned briefly.
15 Looking at track 1, our total petitions under
16 track 1, the accelerated examination, prioritized
17 examination initiative, we're at about 2,205
18 petitions received in both adding both '11 and '12
19 together. There's a 10,000 cap limit per fiscal
20 year so we had -- the initiative came online
21 sometime in September so we had a little bit of
22 filing last fiscal year, a reset in October to

1 another 10,000 number. The sum total of that,
2 we're at about 2,205. From small entities, it's a
3 little bit less than a third that we're getting
4 from small entities from track 1.

5 On the average days to a petition
6 decision from filing in the office until we make
7 the decision that we're moving forward with the
8 examination is about 44.6 days. An interesting
9 little note on this number, this includes any
10 rework if a petition is not ready and we send it
11 back and the applicant does rework, those days are
12 counted in here as well.

13 So one thing we'll do is split this up
14 and I kind of would like to see what the -- for
15 the petitions that come in that are fine the first
16 time around, what that average turned around time
17 is and we'll work on getting that number as well.

18 And so far pretty much all of the
19 petitions have been granted eventually; it might
20 be on the first or second loop at about 99
21 percent. Of those track 1s, a little bit over
22 1,000 of them have first actions completed and the

1 average days from petition grant to the first
2 office action are 36, which is a pretty good
3 number there. Very early in the program we've had
4 3 final, 71 allowances, and the average days from
5 petition grant to allowance at about 51 days.

6 MR. MATTEO: Questions from the floor?
7 Ben Borson.

8 MR. BORSON: Yes, thank you, Andy. It's
9 good to see you, you know --

10 MR. FAILE: Good to see you.

11 MR. BORSON: -- working on this matter
12 and good to see you as well. I have actually a
13 few questions but I don't want to, you know,
14 appropriate all of the time available for
15 comments. I had a couple of questions about these
16 targets. The simple questions are how do you
17 define the target, you have 100 percent of your
18 target number, what is the actual target number,
19 and how is that set? So that's sort of one
20 question.

21 And then the second set of questions
22 relate to how does these quality metrics drive

1 behavior by the office or feedback into the
2 examining core and to the applicants? And then
3 the third question is, regarding the surveys.
4 This may be simple.

5 I presume that these are all totally
6 anonymous so that nobody -- there's no applicant
7 that has to sign a name or there's no way of
8 tracking who the respondents are for the external
9 surveys and similarly for the internals. And I
10 apologize if I'm giving you all of these questions
11 at once but I think these are significant issues
12 and maybe you could have some comments and I could
13 repeat them if necessary.

14 MR. FAILE: Let me start with the last
15 one. I believe they are anonymous. David, do you
16 know from the external perspective?

17 SPEAKER: I'm just double-checking.

18 MR. FAILE: Okay. We'll get you that
19 answer, Ben. I believe they are.

20 MR. BORSON: That's fine.

21 MR. FAILE: If we can go back to a slide
22 for one of your other questions; hard to see here.

1 But the goals, the ultimate 100 percent of the
2 goals would be the column that says stretch goal.
3 For example, the final disposition compliance
4 rate, our stretch goal within '15 would be at 97
5 percent, 97 percent for our IPR rate, 97 percent
6 for first action search review, et cetera. Those
7 are the goals that we set for the end of the --
8 when we were doing the strategic plan process and
9 this is just a process to march us towards those
10 goals.

11 MR. BORSON: I understand. But when you
12 say that your stretch goal is 97 percent, that's
13 97 percent of your target or your target is 97
14 percent of high quality? Is that --

15 MR. FAILE: We want the final
16 disposition compliance rate to be at 97 percent or
17 higher.

18 MR. BORSON: Okay; thank you.

19 MR. FAILE: Yes. And the first one I
20 forgot already, Ben.

21 MR. BORSON: Well, just what are the
22 targets for quality? I mean I believe that you've

1 already answered that --

2 MR. FAILE: Correct.

3 MR. BORSON: -- which is that you've set
4 the targets and the stretch goals are for the
5 actual target value and as you approach 100
6 percent of the target value, if for example your
7 target was 30 percent, then you would be able to
8 say we have 100 percent, we've reached 100 percent
9 of our target goal, which was 30 percent
10 compliance.

11 MR. FAILE: That's correct.

12 MR. BORSON: But in fact you're saying
13 that these actual targets are much higher; they're
14 over 90 percent in each case.

15 MR. FAILE: Yeah, depending on the
16 different measure.

17 MR. BORSON: Okay. Then, maybe to the
18 more important question of this set is how does
19 this quality information feedback to drive
20 behavior in the core?

21 MR. FAILE: Okay, good question. As an
22 example from our internal qualities survey, we'll

1 pull off areas that we think we need, additional
2 training, there's comments on training, comments
3 on the IT tools, we'll feed that back. We've
4 started different academy classes directed at
5 things that we think examiners seem to indicate to
6 us that they need some extra work in or we didn't
7 score as well maybe on those areas.

8 So there's always a feedback loop for
9 many of these. Particularly, if you look at the
10 letter E, the QIR, there's a good bit of activity

11 in those particular measures. At the bottom of
12 the slide, you'll see the five QIR measures that
13 are actually tracked in the composite but there
14 are many, many more QIR measures that we track.
15 And what we'll do there is we'll look at those
16 measures, see where we're out of tolerance,
17 generally do reviews of those cases to try to
18 figure out more of a root cause analysis of why a
19 particular TC, or even a particular work group, is
20 low in a certain measure and then we'll approach
21 it with some version of training and feedback to
22 the examiners trying to improve that measure.

1 So the QIR really gives us a rich
2 dataset, very much pinpoints different prosecution
3 points. We go in there and look at that and it's
4 always we're trying to improve that through a
5 continuous feedback loop.

6 MR. BORSON: Thank you. I understand
7 that that applies to a sort of group behavior or
8 unit behavior, for example, but for applicants,
9 they are concerned about this particular examiner.

10 You know, here's a particular case that
11 is stalled, that is not moving, and I'd like to
12 just ask whether or not you envision the office
13 moving back towards a situation that used to exist
14 with the technology specialists who could actually
15 get in their review the work by and examiner, and
16 the examiner's supervisor, and provide some
17 genuine guidance, or suggestions, feedback, and so
18 on.

19 I know that that program was
20 discontinued some years ago and that as the
21 Ombudsman Program has come in, that it's taken
22 some of the place to provide applicants with

1 suggestions about procedural ways of moving things
2 along. But I'm still wondering about whether or
3 not there could be some substantive input, short
4 of filing an appeal, and of course, we all know
5 that the fees for filing an appeal and moving that
6 track are getting much more expensive.

7 And from an efficiency point of view, if
8 we could sort of have some of that feedback going
9 to the examining core and particular examiners
10 prior to the appeal, that would increase
11 sufficiency, reduce backlog, and certainly would
12 help the backlog in the appeals court.

13 MR. FAILE: Good observation, good
14 comment. For the QIR data we do, we use the
15 training quality assurance specialist. Do look at
16 those numbers and they do get with the examiners
17 that would be considered outliers and try to help
18 them through training, kind of get back into the
19 normal range. That's a process that goes on in
20 pretty much every TC's -- every -- each TC to the
21 extent that we have those outliers trying to pull
22 them back in range.

1 Also, you mentioned the ombudsman
2 program. Again, that's more of an external
3 mechanism for applicants to come in and say I've
4 got a case stuck in this particular situation and
5 then we'll assist them in trying to get that case
6 unstuck and back on --

7 MR. MATTEO: Andy, I actually have a
8 question that's related. So, for example, just to
9 pick an example, you had mentioned that the
10 interview time is ticking upward and I think my
11 question is really directed at from a process
12 optimization process understanding perspective.
13 What kind of feedback loops have you identified?
14 Where is this correlation leverage analysis of the
15 different processes?

16 So, for example, if interviewed time is
17 going up, does that correlate positively to
18 changes in time to final disposition or quality of
19 metrics? Have you been able to identify what is
20 the source of any particular change? Does it
21 correlate positively and how vis-à-vis leverage
22 examination to get more bang for the buck out of

1 it? So the sort of holistic process view of all
2 of this. Can you speak to that?

3 MR. FAILE: Sure, okay. Yeah, again, we
4 get more specific data and are able to pinpoint
5 more things in prosecution using the QIR dated in
6 the interview. The date of the interview day it
7 gives us an amount of time. It's generally a
8 macroscopic view and it kind of marries with the
9 comments we get generally from the outside, the
10 anecdotal comments. There's kind of an interview
11 time is increasing. We get anecdotal information
12 that interviews are helpful in moving cases along.

13 I don't know that we've quantified it
14 more specifically than that. We would use more of
15 the QIR data to kind of get those pinpoints on
16 different prosecution anomalies. I don't know
17 that we've taken interview time and actually
18 crunched that down and tried to fit that in into a
19 feedback loop of what that would do on a more
20 microscopic level. That's more of a macroscopic
21 view, that particular one.

22 MR. MATTEO: I meant that as a broad

1 example.

2 MR. FAILE: Mm-hmm.

3 MR. MATTEO: But anywhere you have an
4 initiative, so for example, on interviews or where
5 you have targeted targets -- targeted targets,
6 that's interesting, as opposed to non- targeted
7 targets -- there's an initiative attached to
8 something. It would be interesting to understand
9 what the impact was and how it correlates to
10 different things. So if that's an analysis that
11 you've done and can share it with us next time?

12 MR. FAILE: Sure.

13 MR. MATTEO: I would very much
14 appreciate it. And I believe we had another --

15 MR. FAILE: Somebody -- I'm sorry,
16 Damon. Some examples of that would be -- specific
17 examples would be helpful.

18 MR. MATTEO: Okay, we can take that
19 offline.

20 MR. FAILE: Sure.

21 MR. MATTEO: We're running a bit short
22 of time. I did want to have some other questions

1 from the floor. I believe Wayne had one?

2 MR. SOBON: Yeah, thanks, Andy. I think
3 it's no surprise that some significant concerns
4 continued to be raised and I think you're starting
5 to address and it's very salutary that you're
6 focusing on RCE issues because if you look at your
7 decrease in first action backlog, it almost neatly
8 correlates to an increase in RCE backlog. And so
9 there's always concerns that we haven't really
10 fully addressed the total pendency and the
11 concerns in the office.

12 I have a couple of requests maybe for
13 further data that would help us understand where
14 those levers are and what's happening. I like the
15 fact that you, on the dashboard, you post a kind
16 of new synthetic total pendency figure, which is
17 actually a -- and I'm reading your dashboard right
18 now, it's 40.6 months for classic pendency plus
19 the RCE backlog for what an actual applicant
20 really sees in the total average application filed
21 in the office.

22 And of course, that only happens -- that

1 only occurs after actions have been happening. So
2 we don't know where the trends are. It would be
3 useful if you can to, and recognizing that it's
4 going to be couched with lots of caveats, if you
5 can do some sort of estimation of the trajectory
6 of total pendency based on the backlog that hasn't
7 yet been, the RCE backlog, that hasn't yet been
8 finally addressed by the examination core.

9 And also to your chart you have on
10 pendency that you present here, it would be nice
11 to add to that line where the trend lines are for
12 this total pendency, too, so we could see how that
13 -- where that picture is going, and not just have
14 a data point, but a trend line. I think that
15 would be very, very useful.

16 MR. FAILE: Okay.

17 MS. KEPPLINGER: For example, along that
18 line, the RCEs are not in the backlog. They're
19 not in the COPA. Now, last year, I believe, when
20 we had asked this question of Bob Stoll, he
21 indicated that the age of the cases' RCEs was
22 junior to many of these COPA cases, but he

1 acknowledged that this fiscal year that would not
2 be the case.

3 So right now you don't have those in
4 there, but in fact, the age of those RCEs is
5 increasing and I think that dub tales with what
6 Wayne is saying because those RCEs that are
7 sitting on the shelf aren't being picked up.
8 There are no stated goals as to what you're trying
9 to do to achieve them and these are in the fee
10 numbers that we've seen.

11 There is nothing that says you're going
12 to do -- whether the RCEs fit into that backlog
13 that you've indicated for the fees that you're
14 going to charge, or what pendency we would expect
15 to see. And then just one other question or
16 comment and that is, with respect to the quality
17 aspects, the number that you have for the final
18 disposition, which includes finals and allowances,
19 how do you reconcile those numbers with the
20 numbers that come out from the pre-appeal brief
21 conferences or the appeal conferences where you
22 have significant disparity between this high

1 percentage that you're reporting and the much
2 lower percentage of those cases that go forward,
3 and in fact, many get, you know, 25 to 30 percent
4 get reopened or allowed at that point?

5 MR. FAILE: Okay, good question. There
6 are two different measures. We're looking at
7 different points in the prosecution. To the
8 extent that there's churning in the prosecution
9 prior to allowance, that would probably show up
10 better in the QIR stats than it would on the final
11 allowance measure. So the fact that we're looking

12 at two different things at two different points in
13 the prosecution, I can see how those numbers may
14 be different.

15 To the extent that there's some churning
16 in appeal brief conferences that it would show up
17 in one of the QIR measures, that would be
18 something to take a look at. It's a good point.

19 MS. KEPPLINGER: Well, I guess I don't
20 understand. If the final disposition is measuring
21 the propriety of a final, or the propriety of an
22 allowance, then the pre-appeal brief conference

1 and the appeal conference both are a measure of
2 the impropriety of a final, which seems to me to
3 be the same measure.

4 MR. FAILE: It would be the teasing out
5 of the finals from the allowance in that final
6 measure.

7 MR. BORSON: Yeah. Just as the final
8 point, if you look at the number of cases that are
9 reversed on appeal, that's a larger number than
10 the 2 percent, which is the difference between 100
11 percent of your target and, you know, the 97
12 percent that you were aiming for. So the, you
13 know -- and we had this conversation over the last
14 couple of years is that the number of cases that
15 are reversed on appeal is a very strong indicator
16 of quality, in our view anyway.

17 MR. FAILE: Ben, just to cycle back to
18 your question on the external review, just to
19 confirm, it is anonymous, external survey. Do I
20 have one more minute, Damon? Yeah, just a quick
21 -- a little bit of a discussion on RCEs, which I
22 think is a good thing to have, the couple of

1 initiatives that I spoke about on a previous slide
2 were looking at different ways we can reduce RCEs
3 now.

4 Also, in working with Wayne and Esther,
5 we've also kind of looked at more holistically the
6 actual prosecution in general. On some of the
7 comments have gone back to looking at the quality
8 of action all of the way back to the very
9 beginning of the prosecution, particularly in the
10 line of thought that RCEs are kind of making up
11 for a delta between an examiner and a practitioner
12 early in prosecution. If we can somehow go back
13 to the beginning of the prosecution and close that
14 delta, make that delta, that gap, a little bit
15 tighter, probably going to avoid the need for
16 RCEs, at least kind of in a holistic view on the
17 backend. So a couple of things that we've kicked
18 around are initiatives designed at the very
19 beginning of the process where we can kind of
20 bring the examiner and the applicant closer
21 together on the subject matter and on the
22 prosecution of the application. Maybe closing

1 that gap would reduce any rework on the backend,
2 whether it be RCEs or any other action we would
3 rework on the backend.

4 We've discussed such options as kind of
5 a pre-first action interview, kind of an
6 orientation to the case. In some areas that may
7 be helpful. In some areas that might not be
8 needed. But we're trying to look at different
9 ways at the very beginning of the prosecution that
10 we can bring that examiner and applicant closer
11 together and I think we could probably make some
12 good progress on there. So I'd welcome any
13 feedback from PPAC on that type of approach in
14 looking at this.

15 MS. KEPPLINGER: And just one final
16 quick -- and how about looking at the option of a
17 personal interview with like the pre-appeal brief
18 conference or the appeal conference? Because I
19 think that could help resolve it, reduce the need
20 for appeals and reduce the number of RCEs.

21 MR. MATTEO: Thank you very much, Andy,
22 and good questions from the floor. What we'll do

1 now is move to an update from the Board of Patent
2 Appeals and Interferences and leading that update
3 will be the chief judge, and James Smith will be
4 -- has already joined us. There he is.

5 MR. SMITH: Good morning. Thank you.
6 Two big things, big picture things, with respect
7 to the Board. If there were no America Invents
8 Act it would still be a very exciting time at the
9 Board because, of course, the challenge -- one of
10 the main challenges we have before us is the
11 reduction of the backlog.

12 So setting America Invents Act aside, we
13 have an exciting mission to get pendency time
14 before the Board from over three years to
15 hopefully under a year. So that creates a
16 backdrop of excitement anyway. And of course,
17 there is the America Invents Act, which creates
18 additional excitement.

19 The two major points of excitement are
20 of course related to each other. We need to
21 reduce the backlog of ex parte appeals in order to
22 be better situated to handle the AIA work. And in

1 addition, from -- to reducing the backlog, the AIA
2 work is itself a unique challenge.

3 That is, even if there were no backlog
4 of ex parte cases, we have the work of assisting
5 the agency with the development of the new rules,
6 the proposed rules which are now already out,
7 and just upgrading our capacity to handle that
8 work when it arrives. So it's a very exciting
9 time and the things we're going to discuss this
10 morning are all components of what we hope to do
11 with those two exciting sets of challenges before
12 us.

13 As you know, we are very interested in
14 increasing the size of the Board, the number of
15 judges on it and, ultimately, also the support
16 staff so that we can handle the substantial number
17 of cases that are now characteristic of what the
18 Board receives every year, and in addition, have
19 the staffing to handle the new cases that come
20 with the AIA.

21 Our goal is, in this fiscal year, to
22 bring on 100 new administrative patent judges to

1 the Board and we've been working very aggressively
2 at this since late last year. The numbers on this
3 slide are somewhat outdated already, even though
4 the slide was prepared last week.

5 We have now reviewed over 450 applicant
6 records. We've interviewed over 80 candidates and
7 we have another 10 scheduled for interviews
8 sometime in February and March. Already we have
9 put before the Under Secretary and the Secretary
10 35 judges for appointment and I think our actual
11 appointment number is at somewhere around 33 or 34
12 as of this morning.

13 Eight of these judges have started
14 already. We expect in the next week or two for
15 that number to double. We had an oath ceremony
16 for a number of the new judges two weeks ago at
17 which Chief Judge Randall Rader of the Federal
18 Circuit administered the oath. We will have
19 another such ceremony in another two weeks, at
20 which former Chief Judge Michell will administer
21 the oath to the new class of judges. At that
22 ceremony we will also hope to have in attendance

1 Deputy Secretary Rebecca Blank.

2 I think it is fair to say at the second
3 class of judges who will be administered the oath
4 in our next ceremony, they are every bit as high
5 caliber as the first class. Just to give a quick
6 sampling of one or two individuals who are in that
7 group, who are very reflective also of the first
8 group, we have the former managing partner of a
9 major U.S. law firm who has managed the IP section
10 for a couple of decades.

11 We also have a former U.S. attorney who
12 has conducted and first-chaired dozens, actually
13 scores, of jury and bench trials. And we have a
14 number of -- actually I can say a number because
15 it is -- two or three attorneys from the government
16 who have either worked at the International Trade
17 Commission representing the United States or the
18 Department of Justice in its Trial Section.

19 So we are elated at the caliber of folks
20 who have put themselves forward to serve on the
21 Board and we continue to be mystified that, at
22 least for the ones leaving private practice, that

1 they're willing to give up the compensation. But
2 there seems to be a substantial bump of interest
3 that has been motivated by, the motivation of
4 which stems from the America Invent Act itself,
5 not only interest in participating in those
6 proceedings, but just in doing something for a
7 patent system that has been reinvigorated by that
8 act.

9 We have a current vacancy notice which
10 ends at the end of May. So we have a substantial
11 amount of time to continue to gather applicants
12 and review records for consideration. Our hope is
13 to keep the caliber of appointments as high as it
14 has been so far.

15 In addition to the advertisement, which
16 is D.C.- focused and has Alexandria as the duty
17 station, late last week we also went live with a
18 vacancy notice for Detroit. And we have been
19 working for several months now with the Detroit
20 planning team to add to that office a component
21 that is specifically board focused.

22 Time doesn't allow this morning to

1 really go into details of how we think the Detroit
2 footprint uniquely comes together with what we are
3 attempting to do at the Board; just a short word
4 on that.

5 We think that the contraction, generally
6 in the auto industry and others in Detroit and
7 Southeastern Michigan, Northern Ohio, have created
8 a situation where there is a great talent pool of
9 patent attorneys in that area and that we will be
10 able to provide a particularly attractive
11 combination of work and reasonable compensation,
12 but together with the same AIA motivation I was
13 speaking to earlier, will allow us to receive a
14 great number of highly qualified candidates who
15 would be willing to be on the Board in Detroit and
16 we would like to take as much advantage of that as
17 we can.

18 Indeed, as we are speaking here, the vice
19 chief judge and another judge on the Board are in
20 Detroit. Only moments ago they sent me a
21 photograph on my phone of the work going on by the
22 office to equip the space at 300 River Place in

1 Detroit for the examining core and the Board.

2 In addition, the vice chief judge and
3 Judge Kaufman, who is with him, will be meeting
4 with members of the Michigan Intellectual Property
5 Law Association and the Intellectual Property Law
6 Section of the Michigan State Bar this afternoon
7 to discuss what's going on at the Board and our
8 hiring intentions in Detroit.

9 The next slide really just summarizes
10 some of what I've already told you. We have had
11 excellent candidates step forward, including a
12 number of outstanding candidates from within the
13 U.S. Patent and Trademark Office. I've mentioned
14 some of the others shown -- some of the other
15 areas from which we have gotten applicants, which
16 are shown on this slide.

17 We have been very pleased with the
18 caliber of candidates stepping forward from within
19 the office and one thing that has been clear in
20 interviewing these candidates is that the agency
21 itself provides a very wide and rich arena for
22 gathering experience of a kind that would be

1 useful at the Board.

2 It is no overstatement to say that the
3 kind of hiring effort we're engaged in now is
4 somewhat revolutionary. This slide captures
5 hiring over the last more than 100 years, 112
6 years. And one can see from the slide that
7 through the first almost 80 years of the Board's
8 existence in this century, the number of judges on
9 the Board has not even approached 50.

10 Late last year we reached -- or actually
11 in the summer of last year we reached the magic
12 100 number for the first time and now, by the end
13 of the year, we hope to have that number at 200.
14 And that's really the number we hope will be
15 sufficient before the AIA proceedings really come
16 in large numbers, because, of course, we will not
17 see any of those proceedings until September of
18 this year and really won't see any substantial
19 number of them until 2013 into late 2013, early
20 2014.

21 The number 200 will allow us, however,
22 not only to deal with the initial proceedings, the

1 first set of proceedings that come by way of AIA,
2 but also will allow us to reduce the very large
3 backlog and the pendency, but only that, which
4 means that after we finish the doubling of the
5 Board to 200 judges we still have work ahead of us
6 to continue to see the Board grow -- commensurate
7 to the amount of new business that comes by way of
8 the AIA proceedings after the initial set of those
9 proceedings hit us.

10 As you can imagine, the number of things
11 we are working on challenge even the capacity of
12 the -- challenge the Board's capacity even with
13 new judges coming in. We need, of course, to
14 train the new judges.

15 Although they are superior in their
16 talents as lawyers, there are a number of things
17 that are Board specific that we would not expect
18 them or no one would expect them to know until
19 they actually arrive at the Board, things
20 including our specific operating procedures, our
21 IT infrastructure, the operating rules, the
22 particular manner of writing our decisions, the

1 way our trial practices operate for the new
2 proceedings. That training requires the time of
3 judges who are already at the Board and it's also
4 training the new judges have to receive before
5 they become fully effective and fully able to help
6 us discharge the backlog. So that's a major
7 activity that needs to be ongoing, and will need
8 to be ongoing for a substantial period of time.

9 It is no small challenge to double the
10 size of the judges on a tribunal and we want to
11 make sure that even as we proceed with it very
12 aggressively, we also do it carefully and not take
13 for granted the amount of infrastructure attention
14 that's really vital to making sure we don't have a
15 less than effective growth in progress. Or put
16 more simply, there's so many ways for this to go
17 wrong if we don't do it very carefully. It's a
18 lot to undertake so we're trying to pay attention
19 to building it both quickly and well.

20 MR. MATTEO: Excuse me, Jim, if I could
21 just jump in here by virtue of a time check.

22 MR. SMITH: Please.

1 MR. MATTEO: We're allocated 20 minutes
2 for this conversation and we're about 15 minutes
3 into it. So if perhaps you might want to hit the
4 highlights and still reserve a bit of time for Q&A
5 at the end?

6 MR. SMITH: Sure.

7 MR. MATTEO: Please.

8 MR. SMITH: Sure. Let me skip ahead to
9 some specifics of the backlog and how we're hoping
10 to -- scoping to bring it in check. What we've
11 undertaken to do recently is to provide ourselves
12 a rolling 30-day assessment of the number of cases
13 coming in, compared with the number of cases being
14 decided by the Board. And the picture is
15 positive; it has become increasingly positive in
16 the last several weeks. For example, we were able
17 to decide nearly 800 cases in the last 30 days.
18 We actually have another week of rolling 30 day
19 data and we exceeded 800 cases in the last 30
20 days, ending last Wednesday, to nearly 850 cases.
21 The unfortunate thing, however, is that the red
22 bar seems to know we're in a race with it and

1 jumped from 953 received cases to about 1,100,
2 which means even though we made good progress, the
3 black bar showing how far behind we are grew as
4 well.

5 The combination of increased output by
6 the judges -- and this is really the bottom line
7 on what we're doing -- the increased output by the
8 current judges, taken together with the new output
9 that is being provided by the new judges, we hope
10 creates a situation where by late summer, early
11 fall, the green bar is consistently at or above
12 the red bar. Many things have to work for that
13 actually to happen and one big hope, of course, is
14 that we don't see a consistent increase of the red
15 bar, or number of incoming cases. As you will
16 recall from the last time we were together, I
17 reported that in one 30-day stretch we actually
18 received 1,300 cases. That was last fall.

19 If that happens consistently, we are
20 looking at a more difficult situation. But we
21 have been looking at the numbers carefully over
22 the last several years and think that on average

1 the number will not be higher than about 1,100
2 cases per 30 days.

3 Here's another look at the backlog and
4 its growth. Currently, it's in excess of 25,000
5 cases; hasn't quite reached 26,000 yet. Our first
6 goal, of course, is to just flatten that number so
7 that it's not growing and then work from there.
8 And commensurate with that, the pendency time,
9 which is shown here over the last nine quarters,
10 which also has been growing, would at least level
11 off and then at some point begin to decline.

12 One of the strategies we're using to
13 make sure the Board is operating efficiently is to
14 rely more on per curium decisions where there is
15 not a designated author and where in certain
16 instances panels will look, for example, for
17 really well-crafted examiners' answers and use
18 those as the basis of their decision, not only as
19 the basis, but in fact will adopt the language of
20 the answer as that of the Board for the decision.

21 Already this year we have, and this
22 number also is a little outdated given the number

1 of cases we move every week, the number is now
2 higher. In all Fiscal Year 2010, we had 21 per
3 curium decisions, only 6 in 2011. At the end of
4 the first month of this year, we're already at 16
5 and hope that number will go substantially higher.

6 We continue to do relatively well at the
7 Federal Circuit in terms of the review of our
8 decisions. Clearly, they are predominated by
9 affirmances and we're seeing a good number of rule
10 36 or per curium affirmances by the Federal
11 Circuit on a fairly regular basis.

12 We also have a number of initiatives
13 directed at stemming the inflow of cases to the
14 Board. This was something that came up also at our
15 last session. We are working with the examining
16 core on a regular basis and in a committed way to
17 look at a number of points of the pre appeal
18 activities that might work to avert certain cases
19 from actually ending up at the Board. We see that
20 as a very important component of the strategy of
21 reducing the backlog.

22 Just to tie it back to the earlier

1 numbers, this is an important part of making sure
2 the incoming cases on a 30 day basis are more on
3 the order of 1,100 cases or lower, rather than
4 1,300 cases, which on an annual basis is a two or
5 3,000 case difference in the number of appeals
6 that we would be facing.

7 MR. MATTEO: Thank you very much. If I
8 may just a follow up on a few questions that I had
9 asked last session. Forgive the gross over
10 simplification, but the -- large part an oversight
11 body. And one of the things I had asked about
12 last time is what sort of feedback mechanisms are
13 built into your processes that would better inform
14 the prosecution process?

15 So for example, you see a great number
16 of cases where X is an issue or there were Y
17 examiner issues, et cetera. What are the measures
18 that you have implemented or were contemplating
19 that would help feedback some of the learning that
20 you're doing on the oversight side in to the
21 generation or the creation side?

22 MR. SMITH: Well, in keeping with being

1 an oversight body, we view our main feedback to be
2 what we write in the decisions themselves, of
3 course. In addition, each of our lead judges of
4 each of the technical sections, chemical,
5 biotechnology, business methods, three electrical
6 sections, have a regular set of meeting with the
7 technology center directors.

8 They're not on a case specific basis, but
9 sort of in the aggregate and, at least quarterly,
10 we look at the trends in the cases and areas where
11 we think feedback about how the examiners might
12 approach the examination or approach the appeal
13 might be useful to those technology centers. And
14 in fact, it's really a two-way communication
15 because they also provide to us in those same
16 sessions guidance they think we should have with
17 respect to how we undertake the review of their
18 cases.

19 This has been ongoing now for at least
20 the better part of the last year and we actually
21 are working very hard to make it even more regular
22 and to involve more people from the technology

1 centers in the dialogue.

2 MR. MATTEO: Well that's great. Would
3 you be in a position next time we meet to share
4 with us the broader process that you have in place
5 and perhaps some of the generalized synthesis of
6 some of those meetings?

7 MR. SMITH: Sure. We can -- on a fairly
8 regular basis at our board leadership team
9 meetings, which include myself, the vice chief
10 judge, and the lead judges of the sections, the
11 lead judges of the sections provide updates on
12 these. We could aggregate their input from the
13 several technology centers and provide that in a
14 report to you.

15 MR. MATTEO: Fantastic. And I just have
16 one other thought and then we have other
17 questions. I'll get out of the way after this
18 one. The other is, again, a follow on from the
19 conversations we had at the last meeting. You
20 have a number of data points in here, a number of
21 judges, you know, time to final disposition, et
22 cetera.

1 Is it possible the next time we meet to
2 present them in more of sort of a management
3 function, how the number of judges correlates to,
4 for example, time to final disposition or the
5 backlog, things like that, that would better
6 enable us to more intuitively see -- given,
7 unfortunately, the limited amount of time we have
8 with you -- to be able to intuitively see progress
9 or the lack of progress, et cetera? Things like
10 that. And I'd be happy to chat with you offline
11 in terms of some of the things that might make
12 sense for that kind of presentation.

13 MR. SMITH: Sure. We can definitely
14 attempt to do that. There is a challenge in doing
15 it, however now, because we have not reached
16 steady state and we have a number of -- we would
17 have to ask to risk it in a number of ways,
18 including for example, even our judge output is
19 currently substantially reduced by the fact that
20 we have half a dozen judges who are working more
21 or less full time on AIA implementation.

22 MR. MATTEO: Mm-hmm.

1 MR. SMITH: And as I indicated in my
2 earlier remarks, even that first slide, which was
3 prepared last week, already is out of date. So
4 matching the data and then to the point where we
5 can confidently correlate action and outcome would
6 be challenging but we certainly can undertake to
7 at least provide some initial indication of those
8 sorts of things.

9 MR. MATTEO: So caveat is heard and
10 understood. Trust me that it wouldn't be the
11 first time in my role. I've seen in asterisks in
12 a presentation, so. Did we have other questions
13 from the floor? Michelle?

14 MS. LEE: Yeah, thanks, James. I
15 appreciate your comments and also appreciate the
16 challenges that you have ahead of you as you're
17 trying to build up this team. My question for you
18 is that as you try to bring on these, I guess 100+
19 or whatever the number is, administrative judges,
20 what steps are you taking to ensure that there's
21 uniformity or some degree of uniformity in their
22 rulings as all of these new judges come on?

1 I mean I think what you'll see is that
2 the stakeholders will be taking advantage of the
3 AIA provisions, they will be sending you more
4 cases to the PTAB, very important cases that have,
5 you know, pretty strong estoppel effects and so
6 getting it right will be tremendously important.
7 So if you could just speak a little bit as to
8 obviously this is training but that's a large body
9 of judges and I would hate to see differences in
10 outcome due to which particular panel you happen
11 to get.

12 MR. SMITH: Uniformity is certainly a
13 challenge. Last year we succeeded in putting out
14 somewhere between 7,500 and 8,000 decisions. We
15 view that as suboptimal, which is to say that we
16 hope this year to have in excess of 10,000
17 decisions. Personally, what I would like to do to
18 assist uniformity is to read them all, but you can
19 imagine that's not quite doable.

20 We certainly have been driving
21 consistency as an important message and we've been
22 identifying, for example, those legal issues which

1 seem most to challenge consistency. Just one
2 example, 101 issues when we reach them on eligible
3 subject matter. That's an area particularly
4 amenable to inconsistent decisions between panels.

5 One thing we have done is to have judge
6 webinars in coordination with the solicitors'
7 office to make sure we understand where the law is
8 or where we think it to be and also how we might
9 reach uniformity without at the same time
10 encroaching on the independence of individual
11 judges or panels. We hope to increase those
12 efforts and definitely feel the need to do so
13 given the state of the law, the number of areas
14 where there are opportunities for inconsistency,
15 and the huge number of cases we are targeting to
16 decide.

17 MR. MATTEO: Okay. Thank you very much.
18 I think we'll have to wrap it up here. We can
19 certainly circle back offline. And with that,
20 what I'd like to do is tee up the next subject
21 which will be an update from the OCIO. And with
22 us from the OCIO we will have John Owens, chief

1 information officer; and David Landrith, portfolio
2 manager; and principle comments from the PPAC by
3 Ben Borson, the lead of our subcommittee for the
4 OCIO. Welcome, John and David.

5 MR. OWENS: Good morning. How are you
6 all today?

7 MR. MATTEO: Very good. We stole five
8 of your minutes, but I'll tell you what, why don't
9 we go to 11:45 instead of the 11:40?

10 MR. OWENS: Well, very gracious of you.
11 Thank you very much. Actually, the bulk of today
12 will be the demo of what we've been talking about
13 for -- and under Mr. Landrith. So I'm going to
14 get out of that way.

15 I'm just going to give you a quick heads
16 up on our hardware replacement on our desktops.
17 So, as you know, this was a long time in coming
18 and we are going like gangbusters: 81.2 percent
19 complete. Most of the organizations outside of
20 Trademarks and Patents are done, but Patents has
21 gone leaps and bounds. We've already completed
22 most of the tech centers and other than 3,700,

1 which is scheduled, and we have no doubt that it
2 will be done on time. We are ahead of schedule
3 actually.

4 So you all saw the laptop demo before
5 and it will be the platform by which we deliver
6 the new sets of tools. So if you don't mind I'm
7 just going to hand it right over and then I'll
8 stay here and answer questions afterward if that's
9 okay.

10 So why don't we go to -- hello. Who's
11 got the computer operator over here? Can we move
12 to the other -- thank you. There you go.

13 MR. LANDRITH: So we're very excited to
14 be doing a demo today. Normally we're
15 presenting performance metrics and slides trying
16 to communicate what we're doing and so actually
17 being able to show a working application is
18 something we're very excited about.

19 Before we get into the demo I just want
20 to review some quick points about how we got here.
21 What you're going to see leverages Agile
22 development and User Center Design. It utilized

1 an unprecedented level of examiner and executive
2 involvement. It represents an entirely new
3 industry-leading application infrastructure.

4 And so this is a stable application and
5 is capable of non-disruptive upgrades and 24/7 up
6 time. It will scale to fit the expanding needs of
7 the USPTO, including the increased geographical
8 dispersion and the increased number of examiners
9 that are coming on board.

10 It is a web-based application that runs
11 through a web browser. It presents the entire
12 contents of the patent case in text. It
13 represents 16 weeks of core programming effort and
14 I want to emphasize that this is a production
15 application, rather than a prototype.

16 Front-end development, these are points
17 I think we've gone over in past meetings, but
18 front-end development began in May of last year.
19 Back-end development and design began in June of
20 last year.

21 We deployed this into production in late
22 September of last year. We've been working to

1 resolve data issues through last month and we
2 currently have CRU examiners that are being
3 trained and using this to examine cases.

4 Before we get into the demo I just want
5 to make two points. We are showing an application
6 that has features that examiners use to examine
7 applications and when you see this demo, keep in
8 mind that the actions that we will be taking have
9 no implication of a disposition or a commitment on
10 the part of an examiner or on the part of the
11 agency.

12 And then I also want to point out that
13 this has been designed to exploit the full
14 hardware available to the examiner, which is two
15 large screen monitors. And so today's demo,
16 because of the constraints of this environment,
17 will be on a single monitor that's more than a
18 third smaller than what an examiner sees. And
19 with that I'm going to pass this over -- the time
20 over to Arti Pandey, who is a primary examiner,
21 and Joe Wolf, who is the Patent's End-to-End
22 programming lead.

1 MS. PANDEY: Hello, I'm actually from
2 Esther -- Esther was my first director so it's
3 kind of good to see you back here. This is what
4 you're looking at here. We'll be replacing the
5 EDAN portion of the tools that we have. You are
6 also going to see a version of PATI that is -- we
7 are going to be working off of PATI once this
8 works, so this kind of gives you a little preview
9 of what we're looking at.

10 As an examiner the first thing I look at
11 is my docket. This is a view of the first action
12 cases and pending cases before us. Prior to, the
13 examiner just had one view or it was just a case
14 listing, which currently our tools show in EDAN.
15 This is a little advanced -- a little bit more
16 advanced as it shows the patent number, along with
17 the proceeding number or the control number of the
18 re-examine.

19 It gives the due date according the PAP,
20 which the system will create itself. It shows the
21 last action that was in PALM and it has the
22 ability for the examiner to notate on the docket

1 itself as to what action they're expecting to
2 take. There are other views the examiner could
3 use.

4 They could use a thumbnail version with
5 the listing or they could just use thumbnails.
6 The thumbnails are more convenient for mechanical
7 examiners or design examiners when we go to the
8 core. If you have the ability you can view your
9 entire docket as pictures because they speak 1,000
10 words. So the examiner will have the ability to
11 choose the format. If they want to see the first
12 page, the first patented figure, or whatever page
13 they select as everything is customizable here.

14 You can look at the radio buttons at the
15 top where it says All, Initial Requests, First
16 Action on the Merits. These are basically tabs
17 for what's due for the examiner. So right there,
18 Joe just clicked on the Ready for a Final. This
19 is the only case that's up on Carlos Lopez's
20 docket to act on for final.

21 The next thing the examiner does is they
22 open up a case. You have two ways. You can

1 either type in a serial number, and this is not
2 only specifically from your docket but from
3 anybody in the core. So we now have opened up a
4 case from somebody else in PTO.

5 Something I need to review, something I
6 need to look at could have overlapping subject
7 matter. Now, Joe's already looked at the case and
8 he's going to go back and pick a case to choose to
9 work on. What you're seeing here is opening up in
10 the second window. Currently, all examiners have
11 two monitors to work through so this is built to
12 -- if the examiner chooses to, they can use two
13 monitors.

14 The greatest thing about this tool that
15 I love as an examiner is I can still do my job
16 currently the way I am and if I choose not to, I
17 have all of these advancements to work with. So
18 the default that we've already set up, Joe's going
19 to choose his layout because every examiner works
20 differently, he's already created this layout
21 here, and now that he's got his layout ready he's
22 going to go to the case data tab.

1 This case data tab shows who the third
2 party is and a re-exam, who the original filer
3 was, who the original applicant was, who the
4 original inventors were, prosecution- wise what
5 filing dates are important to us, the effective
6 filing date, the filing date foreign priority if
7 it was claimed, foreign or domestic. It also
8 shows the original disclosure. This case doesn't
9 have any data that was foreign priority-wise; and
10 the classification where the patent grant was
11 issued.

12 Currently, that system right now, we
13 have to go to four or five different places to get
14 all of that information. We've created a one-stop
15 shop for the examiner, which shaves off a good
16 half-hour of looking for where this data is, who
17 actually filed, who needs to be notified, and what
18 was actually issued.

19 So now that Joe has all of that
20 information in his head, he's going to go to the
21 case contents. As you can see here, we never had
22 this before. When we were in the paper world, all

1 of these cases would be together. You'd have the
2 re-exam, you'd have the parent file and all of the
3 IDS's and evidence that was supported with the
4 case traveling with you. We have everything here
5 in one stop.

6 The parent application is the
7 application prosecution. That's the parent case
8 that was done by a different examiner in the core.
9 That right there is the actual patent grant, which
10 it matured into. And then above that is the
11 patent re-exam; it's what the question of
12 patentability is being raised on. So that is the
13 actual re-exam. It is an ex parte re-exam.

14 Now that Joe has gone through the
15 documents, he has the ability to sort the table of
16 contents. Currently, these are the only sort
17 features we have. In upcoming versions we'll be
18 able to sort by date and by dot code. The
19 examiner most of the time doesn't need to see all
20 of the administrative documents that are coming
21 and going. As an examiner I mostly rely on
22 incoming documents. So I'm going to look at the

1 incoming documents. It gives me everything
2 listed.

3 And of course, the most important thing
4 in a patent is the claims, so I'm going to sort by
5 claims. Those are all of the claims that have
6 been filed in the patent, the original parent
7 application and the re-exam. So, of course, I
8 read all of the documents. We looked at what
9 exactly they're questioning and now I'm looking at
10 the claims.

11 As you can see, Joe is resizing. Each
12 window can be resized, can be formatted.
13 Currently, we can only view the maximum of three
14 to four windows. The UI has a custom ability of
15 doing at least 10 to 12. They're still functional
16 and readable, even at this age. So as you're
17 looking here, these are the patented claims. Joe
18 has the ability to sort all active claims,
19 independent claims, or claims under re-exam. And
20 there's also a running tally at the top of the
21 header that shows how many claims were in the
22 actual total of the case, how many were

1 independent, how many are under re-exam, and how
2 many are not being considered under re-exam.

3 To the left of the header you see the
4 patented claims, the case number, which is the
5 control number of the re-exam, and the OCR level
6 of cleanup. Now, the examiner relies heavily on
7 the OCR level of the cleanup. If you don't, we
8 have the ability to look at the image. If you
9 don't trust it, there's an icon at the top that he
10 can click on and once he clicks on it it's opening
11 up in the second window. It's the actual image
12 that applicant filed.

13 Now Joe is going through the notes of
14 the claims and he wants to make a note and he
15 wants to search a term -- wait a minute. Yeah, as
16 you can see, there's 16 instances of the term
17 "monofilament" and it shows you both the plural
18 and the singular. As he scrolls through it'll go
19 to every instance in the claims.

20 This ability is also available
21 throughout the entire case history: The parent
22 application, the re-exam, and the patent grant.

1 So sometimes it's just a certain thing, the
2 conflict that they're going after. Future
3 enhancements of this will have the ability to
4 concept search and use the same operators that has
5 today and then some.

6 He has gone through the claims and now
7 he is going to make a note on the claims. As you
8 can see, as he's making a note it also hovers over
9 and tells you where that selection that you've
10 highlighted is present in the application. He
11 decides he's going to reject a 112 second over it;
12 it lacks basis. And he's also going to tell us --
13 it does have spell check also.

14 MR. WOLF: I'll just say lacks basis.

15 MS. PANDEY: Yes. That's okay, he can
16 figure it out. He's going to tell it that the --
17 claims inherit because we want to make sure that
18 each and every claim is addressed. He's going to
19 choose a color and he's going to add the note.
20 Future iterations of this will have the ability
21 for the examiner to right click and populate into
22 the office action writing tool. So again, we're

1 not taking notes, rewriting things, it's already
2 there. If the examiner would like to write the
3 rejection right there, they can write the
4 rejection right there and populate it into the
5 office action tool.

6 So as you can see here, the notes have
7 created on the right-hand side and actual note
8 history of when the note was created, what he was
9 trying to do with the timestamp. And if you look
10 to the left, you see the claims tree and it's
11 actually showing you claims of what you're going
12 to do in the rejection, only against the claims
13 that he has stated.

14 This claims tree is a great tool,
15 something we don't have that we manually do. It's
16 a great tool for teaching juniors, it's a tool for
17 at time of allowance to make sure that we have
18 addressed each and every claim. It cuts back on
19 printer rushes for the office, second action non
20 finals. And what else do you want to show?

21 We also want to show you the notes fewer
22 gadget. The gadgets at the top are all -- they're

1 grayed out but they're not supposed to be.
2 They're all little gadgets that we don't have but
3 as you can see here, he's making a layout and it
4 shows the notes that he already created. We
5 created one yesterday, so that's the note on the
6 patent itself and the one you see at the bottom is
7 the one he created today.

8 He has the ability to filter through
9 these notes. The notes feature is a great feature
10 because as examiners we write, we write on our
11 desks, we have Post-its all over our monitors.
12 This has the ability to actually keep us in an
13 electronic world and have all of the notes on the
14 case. If I go on vacation, another examiner can
15 work on it. If I retire, another examiner can
16 work on it. It has the ability for a junior in a
17 -- to communicate, a junior in a primary to
18 communicate, a conferee and a conferee to
19 communicate.

20 It allows the management to see how the
21 examiners are actually being trained, if it's
22 actually beneficial or not. Again, it'll be given

1 different permissions as you are at the office.
2 It gives you the ability here to filter, pick and
3 choose by date, by what kind of office action he
4 was doing.

5 This is a great feature when the
6 response comes back and you kind of know where the
7 attorney is going with his arguments. It's a lot
8 easier to review the case by looking at my notes
9 and having to go through the entire back file
10 again. Again, shaving off a lot of time for the
11 examiner.

12 The last feature we're going to show you
13 is the IDS tool. If you're unaware, IDS is any
14 incoming prior art submitted by applicant, whether
15 it was in the parent stage of the case or the
16 re-exam. So Joe has the ability to look at all of
17 the IDS's at once, where right now it's paper by
18 paper. You're looking at each date separately and
19 reviewing each date separately. He can expand all
20 of those and it'll show all of the U.S. patents
21 and NPLs that they've filed.

22 Now, Joe is interested in the last one

1 that says Ascher. He's going to right click on
2 it. This has the ability for him to consider it,
3 consider all of the abstract, if it was only in
4 English, all of the tools that we have to
5 hand-write and annotate on the current IDS right
6 now. Again, this is shaving off time because as
7 the examiner is going through and reviewing it,
8 it's automatically populating the forms, it's
9 initialing it, and it's telling you exactly what
10 the examiner did.

11 So he's going to think that this is a
12 little interesting so he's going to put a star on
13 it. This is now populated into what's called a
14 working reference. When we're examining we're
15 searching, we're using our search tools, we're
16 going through their IDS, we're looking at all back
17 data on 892, and we're basically throwing it into
18 a mixing bowl here.

19 So now he thinks this is interesting so
20 he's thrown it into his working references folder
21 and now he wants to go through all of the 892s
22 that were submitted. 892s are all outgoing IDS's:

1 References submitted by the examiner, whether it
2 was the core examiner or the re-exam examiner.

3 So he's going to open up a patent
4 application, the last one. The other one. Is
5 there an NPL? There's non- patent literature
6 here. He's going to open that up. And you can
7 see here, this is an NPL that has been OCR'ed.
8 Not only do you have the original document, but
9 NPLs are very hard to search for us right now. so
10 we have the ability to search the NPL within the
11 document, or actually populate it into the search
12 tools and search a concept through there and not
13 just a word. So it's really good here.

14 Now he thinks this is interesting; he
15 can make a combination rejection here of a 103 so
16 he's going to tag this, he's going to right click
17 on the actual NPL title, give it a rating. That's
18 fine. It's three stars. And with that he's going
19 to have the ability to create a 103 rejection of A
20 in view of B with the NPL and the 102 that he
21 selected.

22 And that's just the quick and dirty. Do

1 you guys have any questions?

2 MR. BORSON: Yeah, thank you. I'm very
3 impressed with the quality of this and the speed
4 with which this demo worked and I presume that the

5 new laptop is highly adapted to run this program.
6 But I did have a question relating to the use of
7 antecedent basis. As you know, the United States
8 still operates under a -- what the person of
9 ordinary skill would believe is the meaning of a
10 term, and you pointed to monofilament. If you had
11 something like "single line" as another term,
12 would this automatically exclude using synonyms or
13 analogous terms of art or would the examiner have
14 to go back to an appreciation for what the person
15 of ordinary skill would understand as meant by
16 "monofilament?" What I'm trying to get to is
17 hopefully to avoid the rather stringent rules of
18 antecedent basis provided by, for example, the
19 European Patent Office.

20 MS. LEE: Part of that is I just chose
21 that. It just happened to be a rejection that I
22 chose. But one skilled in the art in 442, a

1 monofilament has an exact definition. It's not as
2 arbitrary, as general 112 seconds are. So there
3 is a direct definition for that and, in that case,
4 applicant had to find. He was his own
5 lexicographer, so he did tell us exactly what it
6 meant. You can choose any rejection in there. I
7 was just giving you an example.

8 But we're hoping that future systems,
9 our search tools that are being developed, will
10 suggest to the examiner monofilament can also mean
11 this, this, and this. So the system will search
12 other terms, will give the examiner the option to
13 check those boxes and do you want to search this
14 along with it.

15 So before the rejection is made, it'll
16 almost be like a checks and balances. The search
17 will have picked up these other terms, so they may
18 make the note to make the 112 and when that search
19 is updated, the 112 shows that they are
20 equivalent, they'll remove the note.

21 MR. BORSON: Okay, thank you. And one
22 question for John. Given the fact that the 2012

1 budget has been passed with, you know, a
2 reasonable amount of money to move forward, do you
3 anticipate any hiccups in your timeline for moving
4 ahead?

5 MR. OWENS: On what specifically?
6 Patents End-to- End?

7 MR. BORSON: Yes, please.

8 MR. OWENS: Patents End-to-End, well,
9 let's see. Let's start at the beginning. AIA did
10 create a small bubble in our funds. I don't know
11 if Tony talked about that but that small bubble
12 had to be factored into our plans. Some of that
13 money was reduced; some reasonable amount of money
14 was reduced out of the CIO's budget. No one
15 should be shocked because the bulk of the rest of
16 our budget goes to pay people, which I'm sure
17 Robert would tell you is primary here at the
18 organization.

19 So there was some impact felt. Nothing
20 that couldn't be accounted for. What you saw was
21 16 weeks of effort, 16 weeks to get it done. The
22 first time we've done three quarters of the things

1 they showed you here, the first time they existed
2 for an examiner ever in the history of this
3 agency. There's a lot to be learned, there's a
4 lot more to do.

5 We have search in the works this year.
6 We have an office action tool in the works this
7 year. We do hope that at the beginning of --
8 we're sticking to our plan right now. We will
9 deliver this functionality at the beginning of '13
10 to all of the examiners, which that's Fiscal '13,
11 which means it's really this calendar year.

12 So Mr. Landrith and team is working
13 really, really hard to make sure all of those
14 things happen. We do shift; it's part of being
15 agile. So as budgetary requirements change on the
16 organization, and Mr. Kappos plays a personal hand
17 in helping make those decisions, given our input,
18 things may adjust and we'll keep you informed.

19 But I have to tell you -- and we're
20 learning a lot about the data and getting it in
21 text and what examiners are going to be doing with
22 it with PATI, but as far as Patents End-to-End

1 goes, 16 weeks brought us more work than we had
2 gotten done in any previous system to date and
3 advancing us. And it's been a fantastic effort
4 using a non government method of development but
5 certainly an industry standard of agile
6 development, specifically --

7 MR. BORSON: What would you estimate is
8 going to be your productivity gain by using this
9 new program?

10 MR. OWENS: I'm going to take that one.
11 The CIO does not estimate productivity gains. We
12 leave that into the hands of Patents.

13 MR. BORSON: That's why I asked the
14 examiner.

15 MR. OWENS: Yeah.

16 MS. PANDEY: Where's Peggy?

17 MR. OWENS: Yeah, I'm going to have to
18 defer. The reason is is we want to make the most
19 efficient system possible to increase the quality
20 of the actual product that is produced, aka, the
21 examination. We don't think in terms of time. We
22 do think in terms of efficiency, we do think in

1 terms of providing needed functionality to the
2 examiner, but I'd be more than happy to hand over
3 that question to Peggy Focarino, my esteemed
4 colleague, but I am not fit, nor my team, to
5 answer that question.

6 MR. MATTEO: We have someone who's
7 willing to answer that question.

8 MR. FAILLE: That would be me. Good
9 question. The long and short of it is don't know
10 quite yet. As John said, this is a first cut, 16
11 weeks' worth of development. We need to see the
12 full picture of what it is and then assess how
13 much productivity gain. I'm assuming you're
14 meaning in time saved by the examiner.

15 One of the things we would do is go to
16 examiners, Arti would be one, and try to get some
17 feedback. It sounds like it has a good potential
18 to save a lot of time. You don't see examiners
19 with sticky notes all over their monitors and
20 they're able to do everything electronically. But
21 it's really too soon to tell to actually come up
22 with a number of what it would save us, but it

1 certainly looks like it's going in the correct
2 direction.

3 MR. SOBON: It looks fantastic. And
4 also, I think just from our generation it looks
5 fun, to make work actually more like the rest of
6 your life. But I had two questions in terms of
7 looking forward that struck me. One was to the
8 extent -- how are you planning to -- to reduce all
9 of the OCR you're doing to have electronic filing
10 go directly into this as you go forward? That
11 would be one question.

12 And sort of similarly, all of the -- as
13 your OCR and all of this NPL literature being
14 brought in, is that being assembled and not just
15 -- for that particular case, but then being
16 brought as to a new collection of materials that
17 then could be cropped because that often will be
18 the most relevant cited materials for other cases
19 too? So those would be my two for looking-forward
20 questions.

21 MR. LANDRITH: Yes, so we have a project
22 underway this year that's been underway -- got

1 underway at the beginning of the fiscal year to
2 develop an applicant-office interface. So at this
3 point, we're exploring proof of concepts to make
4 sure that it is going to address the needs of the
5 applicants so that it does not end up being an
6 impediment to productivity. But one of the
7 end-to-end parts of Patents End-to-End is to begin
8 receiving the documents in text.

9 So right now, electronic filings are
10 frequently not text backed. They are just, you
11 know, scans of documents that are forwarded to us.
12 And so defining a standard that allows for the
13 applicants and the intellectual property community
14 to easily submit text is a high priority.

15 And then regarding the scanning, the
16 input that we are receiving is all in XML for IP,
17 which is the standard ST96. This then forms a
18 repository that Patents End-to-End uses and we're
19 developing a search functionality this year that
20 will allow for the search of that body of
21 information, as well as additional ones. But this
22 text data that we're entering into the system is

1 forming the core application dataset for Patents
2 End-to-End and will continue to expand. Does that
3 answer your question?

4 MR. SOBON: Yes.

5 MR. LANDRITH: Okay.

6 MR. MATTEO: Other questions from the
7 floor? Robert?

8 MR. BUDENS: Yeah, I've got first one
9 comment and that would be to commend John and
10 David. Just so you know, you're not the first
11 ones to see this demo. It's been demoed to a
12 number of examiners in this central re-exam unit
13 and stuff and the overwhelming response is, you
14 know, finally it looks like we're getting, you
15 know, getting to the functionality that we've been
16 needing for a long time. So good luck and we hope
17 you get it to it. We'll be looking forward to
18 seeing it later in the year.

19 That said, this question is probably a
20 loaded one for Andy too. I am a little concerned
21 because comments I've heard back from you just now
22 and other places suggesting that once again we're

1 cutting funding, you know, borrowing from Peter to
2 pay Paul and you're Peter.

3 One of the concerns I have, and this is
4 why it's loaded for Andy, is we're looking to
5 bring on 1,500 more examiners, you know, in this
6 year in a relatively short period of time while
7 we're taking money away from the systems that need
8 to be built up now in order to handle that kind of
9 influx of people. We're already now straining our
10 systems and examiners are coming in, you know,
11 never knowing from day one, you know, on account
12 (inaudible) going to be working today or is it
13 going to -- you know, what's it going to do or is
14 it going to take me two hours to get a case
15 counted instead of instantaneously stuff. Should
16 we maybe be rethinking the priorities a little bit
17 and making sure that we get all of the systems up
18 and running to the level we need before we --

19 while we continue to strain the system by bringing
20 on more examiners?

21 Maybe we ought to back off hiring a
22 little bit. You know, not completely because

1 we're working towards a goal, but maybe we should
2 be backing off a little bit and making sure that
3 we get enough money into the IT systems to get
4 them up and running so they can handle the 1,500
5 more examiners this year and potentially next
6 year. Anyhow, a thought.

7 MS. KEPPLINGER: If I could say
8 something. With respect to the question about
9 efficiency, I mean it's a good question and I hear
10 what Robert is saying, at least from the Patent
11 Office perspective when I was here, looking at the
12 increases, the kinds of technological improvements
13 that are made in the systems, actually give the
14 examiner in many instances more things to look at
15 rather than fewer.

16 And so the hope, at least one thing that
17 I would think that the office would be looking
18 for, is not only maybe to some extent an increase
19 in efficiency, but an increase in quality of the
20 work that's done.

21 MR. BUDENS: Just a quick follow-on to
22 Esther's comment. I appreciate what Esther just

1 said and I think if you look back historically you
2 will see that automation tools have not
3 necessarily ever done a whole lot for efficiency.
4 We just get more, you know, now we're bogged down
5 with e-mails, and now we're bogged, you know,
6 there's other things that come onto it.

7 And most of all, nothing ever allows me,
8 you know, no automation tool has ever gotten me to
9 read an application faster. So I think there is
10 an issue there and I think the real gains will
11 come in quality because we can then see, hopefully
12 we're getting all of the best information in front
13 of us when we're examining.

14 MR. FAILE: What was that, a loaded
15 question, Robert, you said?

16 MR. BUDENS: Yes, it was.

17 MR. FAILE: Okay, to the -- to Robert's
18 original point on competing priorities, sure. I
19 mean there are competing priorities. One of the
20 things we really need to do in the hiring mode, in
21 getting 1,500 hires in here, is we've got that
22 modeled out in order to get our backlog and

1 pendency to a certain number by a certain time.
2 Changing that plan would affect that, so you would
3 have that inevitable consequence.

4 It's my understanding, John, I don't
5 mean to put you on the spot, please correct me if
6 I'm wrong, that we have accounted for the hiring
7 as far as the IT support from the CIO. Is that an
8 accurate statement?

9 MR. OWENS: Somehow I think I got hit
10 with this.

11 MR. FAILE: Oh, sorry. Okay, I'll take
12 you down off of the hook. My main point is you
13 have to have IT support for 1,500 hires, you have
14 to have IT support for a portion of those hires
15 that are off campus that are not here. The
16 original idea in hiring the 15 is chasing after
17 the 10 and 20. So if we want to recompute and
18 relook at that, we're actually changing larger
19 priorities of things that we want to achieve.

20 I would say that we're probably going to
21 stay the course of hiring the 1,500 and chasing
22 after the 10 and 20, but obviously it's a good

1 point that we want to make sure that we have the
2 proper IT support for that level of examiners that
3 come in and for the level examiners that are here.
4 To the extent we can maintain that, obviously we
5 want to keep on course with our 1,500 hires, to
6 the extent that becomes some problem that we don't
7 know about now. We certainly want to look at that
8 as well.

9 MR. OWENS: All right. I am going to
10 say something, if I can, sir. So we do look very
11 closely. You know in the middle of last summer we
12 had a series of events, high spikes in usage of
13 the systems, particularly with PALM, toward the
14 end of bi-weeks and quarters that did negatively
15 impact. And within a few weeks we released major
16 updates to those systems.

17 Those major updates didn't start when
18 that event happened. They started six months
19 prior. And there is a forward looking issue. As
20 we move off of the platforms that we're on, we
21 have to significantly rewrite those systems. So
22 for a while, our hiring and load and all of that

1 did increase greater than our overall capacity.

2 If you go all of the way back to 2008,
3 when I presented this body with the IT Roadmap for
4 Modernization, I had mentioned that there was an
5 upper cap and we had already well exceeded it on
6 the original specifications for these systems.
7 These systems, PALM for example, was never built
8 to support more than 5,000 people; never. And
9 we've kept it going.

10 We are reaching the limits of those
11 systems, that is true. And you see it every day
12 so there's no way to hide it. But this agency has
13 never stopped for a moment, and Mr. Kappos has
14 never always provided the funding when necessary to help
15 us keep ahead of that curve. Now, last year we
16 did have a couple of hiccups where bilaterally,
17 weeks, a couple of weeks, we missed the spikes;
18 did not make a delivery or increase the, you know,
19 the load on those environments. We hope that
20 we're ahead of it now but we're only as strong as
21 our weakest link.

22 The savior here is not continued

1 reinvestment into legacy applications on hardware
2 platforms that quite honestly I have to buy off of
3 used parts facilities. That's not the plan. The
4 plan really rests with this man who works for
5 David and I, Mr. Landrith, in building a new
6 system that relies on modern hardware with modern
7 designs. Because at the end of the day, Robert,
8 though I understand where you're going, I can't
9 stretch that far with the current system.

10 But what's important is if you guys
11 don't make the numbers and we don't earn revenue,
12 that revenue cannot be diverted to -- so it is a
13 balance. And I work very closely with Patents on
14 that balance. Sometimes we teeter the line, but
15 we'll always be here to support you, we'll always
16 be planning as best we can and the best we know,
17 and sometimes we'll make a discovery. But the
18 fact of the matter is if the rate doesn't increase
19 and the fees don't bring in funding, I can't spend
20 it on improving IT. That's all I wanted to say.

21 MR. BUDENS: And there's no question
22 about that and there's no question you guys are --

1 we know you guys are trying very hard to do, you
2 know, to keep ahead of the curve and certainly
3 we're looking forward to Patents End-to-End. My
4 only question was knowing that a lot of our
5 systems are old and can't be replaced and that we
6 do need to make the investment in new software
7 that will run on current, you know, on updated
8 equipment, if we aren't borrowing from Peter to
9 pay Paul at the wrong time and shouldn't be
10 thinking maybe we need to be making sure we can
11 get Patents End-to-End up as running as fast as
12 possible and out to the examining core so that
13 when we bring on 1,500 people we don't strain the
14 system, you know, to a breaking point and find out
15 where those unexpected, you know, things are
16 hidden.

17 MR. MATTEO: Okay. So in recognition of
18 the problem and the manifest work, good work,
19 that's being done, and equal recognition that
20 we're not going to solve it today, I'm going to
21 bring this conversation to a close and direct us
22 to a lunch break. Now we're a little bit behind

1 schedule so we'll adjourn now and reconvene at
2 12:30. For committee members who have paid for
3 the lunch, it will be available down the hall and
4 we'll see everybody back here at 12:30. Thank
5 you.

6 (Whereupon, at 12:06, a luncheon
7 recess was taken.)

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1 thorough assessment of how the examiners liked
2 working with the PATI text.

3 Another feature of the PATI text was the
4 creation of a claim -- diagram that can be
5 configured by the examiners and an analytic report
6 that helps examiners with 112 first and second
7 paragraph analysis. What you're going to see,
8 demonstrated by Terrel Morris, who has led this
9 effort, is the actual PATI project that is up and
10 running, working on live cases right now.

11 This was actually a substantial data
12 conversion effort. We converted over 1.8 million
13 pages of text to, or of images, to tag text for
14 the PATI project. Because of the great reception
15 that we've received in work groups 2440 and 2460,
16 we are now moving forward to deploy PATI features
17 to the entire patent core later this fiscal year.

18 So without further ado, let me have
19 Terrel show you actually what it's like to work in
20 the PATI environment.

21 MR. MORRIS: Good afternoon. What
22 you're seeing on the screen at this moment is the

1 EDAN tool, it's Electronic Desktop Application
2 Navigator tool. This is what an examiner uses
3 everyday to view the contents of a patent
4 application. This is the tool that they live in
5 during the patent prosecution process.

6 What you see on the left-hand side of
7 the screen is the listing of the table of
8 contents. This is not sorted chronologically. I
9 have done it deliberately so it facilitates my
10 demo. On the right side you see the display of
11 the images and again, this is just a picture of
12 text and it can be zoomed in and zoomed out, just
13 like you would expect to be able to do.

14 And that's all part of what we normally
15 work with everyday. Now, as Fred was indicating,
16 we took the claims specification and abstracts
17 from all of these different applications. In
18 group art units 2440s and 2460s, about 250 people,
19 a total of about 33,000 patent applications were
20 impacted, 1.8 billion pages of text, as he
21 indicated, 160,000 different documents.

22 And we added those to this tool so that

1 the examiner would have access to them. Our
2 process included first running OCR against --
3 technical difficulties. Our process included
4 running OCR against all of those documents
5 initially, and then following up the OCR with a
6 conversion utility that we created in the House
7 that converted raw OCR into a custom XML format
8 that's approaching what we're calling XML for IP,
9 which is still an in process XML standard for
10 patents.

11 Once that was done, we were able then to
12 add that text to this tool in such a way that it's
13 intuitive for the examiners to get to. So this
14 icon indicates that text is available for this
15 document. A simple double click on it shows you
16 the abstract. And it is the same abstract as
17 shown in this image but because it's text, you can
18 do more things with it like increase its font
19 size, which is still legible and still on the
20 screen but a lot better than just looking at the
21 image.

22 In addition though, we wanted to be able

1 to do more than just that. I should explain some
2 things here. You'll notice some highlighting down

3 here at the bottom of this abstract. No OCR
4 engine is perfect at translating text, I'm sorry,
5 images into text; none are. Even our contract
6 provided text is not 100 percent accurate,
7 although they had the additional step of having
8 human review involvement in it.

9 What we elected to do is use a very
10 sophisticated OCR engine that identifies each
11 character by using six different engines and if
12 they disagree, then you can determine a confidence
13 value of how good the machine thinks it did. This
14 highlighting exposes to the examiner characters
15 that the machine was less than perfectly confident
16 on.

17 So a green highlight would indicate to
18 the examiner that they are at least, the machine
19 is at least 80 percent certain that it got it
20 right. If it is red, it's less than 80 percent
21 certain that it got it right. If it's clear, the
22 machine was confident that it got it right.

1 Doesn't mean that it is right; it means that the
2 machine is confident about it.

3 If the examiner ever has a question
4 about whether or not the text that they're looking
5 gat is accurate or not, we have this camera icon
6 on every single page, and you saw this same thing
7 done in Patents End-to-End when we have both
8 images and text available, you click this one
9 button and the image immediately pops up. And I
10 would do it here, except it's designed to open on
11 the examiner's second monitor so it doesn't cover
12 up the text that they're looking at. So I'm not
13 going to do it here, it'll get lost.

14 All right. So once we have that shown,
15 we can do a number of different things. One of
16 the things that we can do is open more than one
17 text document at a time. So I'm going to do
18 exactly that. I highlighted those three --
19 claims, spec, and abstract -- and I am opening all
20 three of these documents. And as you can see
21 here, they are all open.

22 This gives the examiner the ability to

1 do two types of searching. You can now do both
2 global, across all open documents, or you can do
3 local. So what I'm going to do is pick a word out
4 of this specification a random pretty much, and
5 highlight it and just by that, up here, in the
6 global search box, that word was added. It was
7 searched everywhere in the specification. You can
8 see it here and you can use these buttons to
9 navigate down through it and highlights it in
10 every place that it appears. But It also
11 highlighted it in the claims and the abstract,
12 although no matches were found in the abstract, I
13 have 4 in the claims and 83 in the specification.

14 Now over in the claims, if I wanted to
15 combine this with an additional term, I could do
16 that by typing it into this local search box. And
17 now, frame is searched in here, as well as server,
18 if we can find server because it wasn't as
19 popular. But both of them are now in here and it
20 uses a different highlight color if you notice
21 that as well. There we go; server is in yellow
22 and frame is in green. I don't know how well that

1 shows up for you folks at home.

2 So we have a local search in combination
3 with a global search. We can turn off the
4 highlightings and that sort of thing if we wish
5 to. I also have one other main feature of PATI
6 and instead of just providing text to the examiner
7 for use, and they can copy this material out of
8 this application and paste it into their office
9 action so that they maintain a verbatim inclusion
10 when they go to write their office actions.

11 We gave the examiners what we hope is
12 the first taste of leveraging the power of text

13 for their benefit. So I clicked the button to run
14 what we call an analytical report. And that's
15 what you see here. Now I am going to expand this
16 to take up the entire screen. These documents are
17 text and they are still open. They were just
18 resized but I am going to expand this document.
19 What you saw was on the fly.

20 This computer, or this application,

21 generated this claim tree. In a complex claim
22 environment, it can take examiners upwards of an

1 hour or more to generate one of these claim trees
2 accurately because you have to read through every
3 claim, find out how each one depends off of each
4 other. And we draw this one automatically.

5 But instead of just having one version,
6 we actually offer several different formats if an
7 examiner wishes or prefers a different format for
8 viewing these things. And depending on the art or
9 how you were trained, depends on which one of
10 these claim trees that the examiner actually finds
11 useful. So we provided that functionality to
12 them.

13 Now, like Patents End-to-End was shown
14 earlier, we have the ability to add a note to one
15 of our -- here, so I'm going to put in a piece of
16 text. And many times when I was examining, when
17 you had your claim tree, you are keeping this for
18 future records, you would indicated how you
19 treated each one of the claims. So I tend to do
20 that type of note when I do this. I'm going to
21 pretend that there was a 102 rejection on this and
22 I put it in here like that. And now my note is

1 associated with that particular claim and it will
2 remain there, even if I switched to a different
3 format; always associate it with that claim.

4 Additionally, examiners would use
5 different color highlight pens to do pretty much
6 the same thing as they were doing. So we can do
7 that as well. I can mark this claim as orange. I
8 can mark this one over here as blue.

9 And one of the great things about this
10 tool is I can close this application, this
11 particular document, open up this set of claims
12 six months from now after an attorney has had the
13 opportunity to respond to any office action, and
14 when I open this claim setup, these notes would
15 still be available to the examiner.

16 All right. After we have looked at the
17 claims tree, which there's several other features
18 we could -- but I won't get into them right now.
19 We have at the bottom an analytic report. This
20 takes a look at the claim -- not at the claim, but
21 the text material itself and tries to draw
22 information out of it that would be useful to the

1 examiner.

2 Some of these are more useful than
3 others, but we provided them all as part of our
4 analysis to see how effective the tools that we
5 were providing during this pilot was for our
6 examiners. So we looked at things like the
7 abstract and we count the number of words and the
8 number of paragraphs. And then if it exceeds the
9 maximum allotted as indicated in our rules, which
10 was 150 words, then we indicate that as well here.
11 So we're over by 11 in this particular case.

12 We then provide a claims summary so they
13 know that there are 69 claims, 5 of which are
14 independent, the number of dependent claims and
15 multiple dependent claims, all of which can be
16 mapped into the claim tree. There are no deleted,
17 cancelled, or withdrawing claims here because this
18 was an initial file to a set of claims.

19 And then we do another bit of analysis.
20 We then do a frequency listing of all of the terms
21 found in the claims. And so device was used 183
22 times and it was found in every one of these

1 claims. If you hover over any of those it shows
2 it in the pop up. If you click on one of these,
3 the claims box, which I have minimized right now,
4 it would automatically scroll your claims to that
5 particular claim. So it's a quick navigation tool
6 for the examiner. If they see something that is
7 of an issue, they click on the link and it
8 automatically scrolls to the place that they need
9 to be.

10 So we were hoping that this would enable
11 the examiners to just get a quick listing of all
12 of the useful terminology that was used in the
13 claims, or perhaps, facilitate construction of a
14 search for them.

15 In the next section that we have down
16 from the frequency list is the phrases. Now, this
17 was a brute force project. We didn't put a lot of
18 effort into dealing with the linguistic analysis
19 so the phraseology that we chose was pretty
20 simple. But we wanted to display that we had the
21 ability to use this type of information and to
22 find out if examiners would appreciate further

1 development in that area. So like the frequency
2 list for terms, this is a frequency list for
3 phrases.

4 The next section is the list of phrases
5 that were employed in the claims that were not
6 found in the specification. Now, this is one of
7 the sections that only occurs if you have claims
8 and specifications both open when you run this
9 report. If you only have the claims open when you
10 run the report, or only have the specification you
11 won't get this report because the machine won't
12 know which two documents that you want to compare.
13 But if they're both open and you run the report,
14 it automatically gives you this type of analysis.

15 So these phrases are not used in the
16 specification. Now that doesn't mean that there's
17 necessarily a problem, but it does indicate that
18 there might be an issue that the machine thinks
19 that the examiner should have their attention
20 drawn to. If you click on this it would
21 automatically search that phrase in the claims,
22 actually do a global search. And it will then

1 indicate that it certainly is not in the
2 specification. Again, it's verbatim, though, so a
3 different wording of the same information would be
4 overlooked by the machine.

5 The next section though, is the list of
6 terms that are used in the claims that are not
7 found in the specification. And this is probably
8 a little more useful to the examiner than the
9 phrases, and our research indicates that so would
10 the examiners. The feedback that we've gotten
11 from them indicate that they do appreciate this
12 feature.

13 Now, again, this does not mean that
14 there is an antecedent basis problem or any other
15 type of legal problem with the claims, it just
16 simply means that this term was not used verbatim
17 in the specification. The examiner can then go
18 look to the specification to ensure that proper
19 support is found. But it does draw the examiner's
20 attention to that type of thing.

21 Now, last but not least in our analytic
22 report is part numbers, and this is a poor case

1 for this example because it's electrical in nature
2 and not mechanical. But what we have done is we
3 have gone through the specification and looked for
4 all usage of part numbers, or reference numbers,
5 in the specification and then pulled those out and

6 corresponded them with the part that they
7 represent. And then we also looked for
8 inconsistency.

9 So 00 is used as port state, RSCN
10 format, ensuing port identifier, so forth and so
11 on, and then as we go down here we provide the
12 same list but backwards so you can find the part
13 and what number does it belong to. And then at
14 the end we have an inconsistency report. So 00 is
15 port state and these several different items
16 that's improper; it should be only one thing per
17 number and we have provided that. And then an
18 additional part of the part number list down here
19 too.

20 And part of it has to do with the
21 inability that we have with just no human
22 involvement whatsoever, being able to pick out the

1 appropriate terms to map back and forth. But as
2 time goes on, we're getting better and better at
3 it.

4 Now this is the PATI project and we are
5 looking to move forward with providing this to all
6 of the patent examiners in the core, hopefully, by
7 fourth quarter this year. It requires us to
8 convert almost 60 million pages of text.

9 That process has already started and
10 we're hoping that by the end of December that we
11 will have a continuous capture process in place so
12 that as soon as documents are filed with the
13 office they are automatically converted into text
14 and added to the system in exactly the same way
15 that you see here.

16 And again, the image associated with
17 this text will always be immediately available to
18 the examiner in the case of any type of concern
19 over the accuracy that they're seeing in the text.
20 Most instances, the accuracy is readily apparent
21 to one of -- that's looking at the documents.
22 There are certain areas where a single character

1 could be important and those examiners know that
2 they need to base their decisions more on the
3 image than they do the text, but still is a useful
4 tool based on the input that we received from our
5 examiners, which is the driving factor going
6 forward with this particular project. PATI is a
7 --

8 MR. MATTEO: Excuse me, gentlemen. In
9 the interest of time, if there were some
10 highlights you wanted to hit so we can wrap up,
11 please.

12 MR. MORRIS: I am pretty much finished
13 with PATI. If you would like to ask questions, I
14 would be even more than happy to take them.

15 MR. MATTEO: Okay. If we have a few
16 questions from the Committee, if not, we'll move
17 on to the next topic. Steve?

18 MR. MILLER: I'm going to ask my
19 question a little different. When you did this
20 with this two groups, did you see a decrease in
21 the number of pages being printed on printers or
22 hard copies of papers because now everything was

1 all electronic and -- so did the examiners tend to
2 do most of their work electronically in those two
3 units or did they revert back to paper?

4 MR. MORRIS: I would love to be able to
5 directly address that question. Unfortunately,
6 our project did not look into the use of the
7 printers at all. We were talking to our examiners
8 and we did ask them questions along the lines of
9 what is it that makes you want to print a document
10 and then we were looking for solutions to provide
11 to them in an electronic tool, that not to
12 discourage them, but to make printing irrelevant
13 to them. We have not done any type of study to
14 see how effective the intuitive nature of this
15 particular program was with that issue.

16 MR. MATTEO: Okay, thank you.

17 MR. MILLER: No problem.

18 MR. BORSON: Yeah, if I may just --

19 MR. MATTEO: One final question.

20 MR. BORSON: Yeah, I just wanted to make
21 a suggestion that you include that into your
22 analysis of the system because that would provide

1 us with some guidance as to, you know, what the
2 overall effectiveness is of the tool.

3 MR. MATTEO: And just a closing thought,
4 not a question or request, but it seems as though
5 -- and again this is not ready for primetime, I
6 understand that -- it seems as though there might
7 be some benefit to the applicant community having
8 access to this kind of a tool as an error check,
9 et cetera, before even submitting the application.

10 So that's something you might want to
11 consider as well. To what extent you've gotten
12 the applicant community involved in any of this,
13 but going forward, that would be a suggestion.

14 MR. SCHMIDT: You know, we're thinking
15 exactly along those lines. In fact, we're
16 contemplating having some sort of preliminary
17 automated office action go to applicants, not only
18 with this type of analysis of claim, dependency,
19 112 issues, but also including an automated prior
20 art search. So all of that is actually in the
21 works and our plans for part of PE2E, so we're
22 right in sync with that thought.

1 MR. MATTEO: Fantastic. So thank you
2 very much, gentlemen. Excellent work.

3 And what we'll do now is move to the
4 humanitarian pilot and our presenter will be
5 Edward Elliott, expert advisor, Office of Policy
6 and External Affairs. And Edward, just by virtue
7 of a time check, we have until about 10 after.

8 MR. ELLIOTT: Ten after? Okay, thank
9 you.

10 MR. MATTEO: Thank you.

11 MR. ELLIOTT: So thank you all for
12 coming here today. I'm here to tell you about the
13 office's Patents for Humanity Program, which you
14 may remember hearing about in an earlier version
15 of this.

16 So the idea is that we want to encourage
17 patent owners who do humanitarian things with
18 their technology, who use their technologies to
19 save lives, among impoverish people around the
20 world, and so we're launching a 12-month voluntary
21 pilot program that was announced last week at the
22 White House.

1 So the idea behind the program, it does
2 two things. It fits in with the White House by
3 advancing the President's global development
4 agenda. They had an event last Wednesday
5 celebrating the anniversary of that agenda, which

6 is the President's plan to build up countries
7 around the world and we think that our program
8 fits into that by encouraging patent owners to
9 address humanitarian needs. And we also think
10 that we can use this program to highlight
11 successful models of engaging in humanitarian
12 efforts and how that's compatible with strong
13 patent rights and business interests.

14 So there's a few principles that are
15 sort of guiding us as we structure this program.
16 One is that we want to respect the rights of all
17 patent holders, including the rights not to
18 contribute. So this is a completely voluntary
19 program. We wanted to structure it as positive
20 incentives for patent owners to do things. So
21 it's voluntary and if you do these good things you
22 can get a reward for it.

1 One of the outcomes that we hope to
2 achieve is highlighting the diversity of effective
3 models. There's a lot of different issues around
4 the world and there's many ways to address them.
5 And one of the issues that patent owners face is
6 they're just not sure if they want to contribute
7 to some of these issues. What's the best way for
8 me to do it? So to the extent that we can find
9 success stories and highlight them, I think will
10 help spread that information.

11 And, of course, we want to support
12 market-based approaches because a lot of the new
13 models that are coming out, they aren't just about
14 charity, they're self-sustaining models that
15 actually use the market to keep the system going.

16 So the way the program is structured,
17 it's run as an awards -- excuse me, I'm getting
18 over a little cold here. So the program is
19 structured as an awards competition. Participants
20 will submit applications telling us what they've
21 done with their patented technology that addresses
22 humanitarian needs, and then we have outside

1 experts who volunteer their time to help judge the
2 applications and select a set of winners. And in
3 the pilot year of the program we'll be having up
4 to 50 winners chosen depending on the quality of
5 applications received.

6 So this is meant to be a broad-based
7 program that applies to all sorts of different
8 types of technology. We've broken down the issues
9 into four different categories that people can
10 apply in. One is medical technology to address
11 health needs, and that includes not just medicines
12 and vaccines, but also diagnostic equipment,
13 assistive devices, things like that.

14 We have another category for food and
15 nutrition, which would address issues with food
16 supply. It could be more nutritious crops, it
17 could be drought-resistant or pest-resistant
18 crops, it could also be issues that deal with food
19 storage and preservations, so helping people keep
20 the food that they produce healthy and available.

21 Clean technology addresses energy
22 issues, so in a lot of developing places they

1 don't have clean sources of energy for light or
2 heat within their homes and this leads to health
3 issues. So this category is meant to address
4 that. And then the last category, information
5 technology, is geared towards educational devices
6 that help improve people's standards of living.

7 So this program is designed to be open
8 to all different types of participants. You know,
9 we wanted to highlight the ways that everyone can
10 contribute to these issues, so we imagine that,
11 you know, large businesses, small businesses,
12 universities, licenses, all sorts of different
13 patent owners and patent licenses would be able to
14 participate. And as I said earlier, we want to
15 recognize the diversity of different models for
16 engaging in these types of efforts.

17 As far as the way the judging will be
18 done, the judging for the program, the applicant
19 has their choice of two different sets of criteria
20 to be judged under. Their first set of criteria
21 were terming humanitarian use and that's about
22 showing us what you've actually done with your

1 technology to address humanitarian needs, so that
2 would be getting a vaccine or a water filter or
3 something into the hands of poor people around the
4 world who need it.

5 The second way to qualify is through
6 humanitarian research, which is where you're
7 taking your patented technology, which is a tool
8 for further research, and you're making it
9 available to others to further their research on
10 humanitarian issues.

11 The awards that we'll be giving out in
12 this program, we have a certificate for the
13 winners that will allow them to have expedited
14 processing of select matters before the office.
15 They can have their choice of either accelerating
16 an appeal to our Board of Patent Appeals and
17 Interferences. They can accelerate an ex parte
18 re-examination, including one appeal that arises
19 from that re-exam, or they can accelerate a patent
20 application, including one appeal to the Board.

21 So we think that this appeal to the
22 Board feature is very valuable in terms of

1 acceleration, giving them the Board's backlog, and
2 it's something that distinguishes this program
3 from other acceleration programs that PTO has run.
4 And, of course, we also want to bring recognition
5 to the winners so we'll have an award ceremony
6 here at PTO to recognize them for their efforts.

7 And then this is just a quick overview
8 of some of the organizations that have helped us
9 develop this program. We have talked to many
10 different groups in the pharmaceutical industry,
11 and in other industries. We've talked to
12 nonprofits, we've talked to universities, we've
13 talked to different industry trade groups and
14 really tried to structure the program so that it
15 addresses all of the concerns that they have and
16 is something that they can work with.

17 So in closing, I just have a short
18 little quote here about the President's
19 development agenda and we're hopeful that our
20 program can help advance this important mission.
21 Any questions?

22 MR. MATTEO: Thank you very much,

1 Edward. And I believe we do. Clinton?

2 MR. HALLMAN: It's more of a comment
3 than a question. I would recommend changing the
4 name of the clean technology category to clean
5 energy technology so that you don't get the idea,
6 initially at least, that it's about detergent.

7 MR. SCHMIDT: All right, thank you.

8 MR. MATTEO: Wayne?

9 MR. SOBON: I guess one question, sort
10 of a curiosity. But do the -- if someone gets a
11 certificate and gets expedited treatment, does the
12 particular internal organization or body know the
13 reason why they got that -- the accelerated or
14 expedited treatment? Just a matter of --

15 MR. SCHMIDT: You mean the recipient
16 that won the award?

17 MR. SOBON: Like the Board or the
18 examining core, whoever is taking up that matter,
19 do they know that they got the expedited treatment
20 because they won this particular award?

21 MR. SCHMIDT: Yeah, they'll know it's
22 accelerated because of the humanitarian program.

1 MR. SOBON: Okay.

2 MR. BORSON: Yes, I have a question. In
3 the previous iteration of the humanitarian program
4 there was an indication that the recipient could
5 then sell this certificate on the open market and
6 I wanted to ask whether that's part of this
7 program as well?

8 MR. SCHMIDT: No, that's not a feature
9 of this pilot. These certificates you can use on
10 any matter within your portfolio but it has to be
11 one of your own. You cannot transfer the
12 certificate to anyone else.

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

14 MR. SCHMIDT: Thank you.

15 MR. MATTEO: So on the agenda we're
16 scheduled for a 10-minute break. Why don't we
17 make that a 6-minute break and reconvene at 10
18 after just to keep it in round numbers?

19 (Recess)

20 MR. MATEO: So next on the agenda is the
21 Nationwide Workforce. And when he comes back,
22 Azam Khan will lead us through a conversation.

1 Azam is the deputy chief of staff. And, Azam, if
2 we could keep this to about 10 minutes, that would
3 be great.

4 MR. KHAN: I will do my best.

5 MR. MATEO: Thank you.

6 MR. KHAN: Well, thanks for having me.
7 Thanks for bearing with me while I grabbed water.
8 To the members of the Committee, thank you. I
9 think we'll all agree this is a very important
10 project that we're looking at for the future of
11 the agency.

12 In fact, I just came over right now from
13 the Knox Building where we have the team of
14 Nationwide Workforce Detroit Satellite Office
15 Leadership Meeting to go through a weekly
16 checklist of some 500 or so items that need to get
17 done between now and our July opening date.

18 So I think every business unit leader
19 that you're going to hear from today in their
20 various capacities has representation on that
21 team, and this is very much an agency-wide unit or
22 project. So I just want to kind of start off, and

1 we can click through the presentation here. Of
2 course, feel free to jump in with questions. I'm
3 going to try and present on two major topics
4 today. The first is preparation for the Detroit
5 office, again, scheduled for July of this year to
6 open. And the second topic will be our
7 methodology and selection timeframes for the
8 offices that have also been mandated by the
9 America Invents Act.

10 So jumping in, we have selected a site
11 in Detroit, in the city of Detroit. As you can
12 see, that's a picture of the actual building.
13 We're quite excited. As many of you will
14 remember, we were moving forward on this project a
15 couple of years ago. Due to funding cuts, we were
16 forced to put the project on hold. In fact, this
17 was the same building we had identified as our top
18 choice then. Our folks at GSA agreed with that
19 decision, and we were ultimately able to secure
20 space in the 300 River Place location.

21 Interestingly, the building is the
22 former home of Park Davis Labs, so there's a great

1 sort of innovation history there. It's also the
2 former headquarters of Stroh's Brewery. And
3 obviously it's a lovely space right there on the
4 water.

5 The plan for the first fiscal year of
6 operations with the first class of IP experienced
7 patent examiners, and stop me if folks in this
8 room don't know about that project, but we plan to
9 hire four classes in the first fiscal year of
10 operations, or the first actual total year of
11 operations of 25 each, to put us at 100 IP
12 experienced examiners within the first year. We
13 have a little flexibility built into that
14 timeline, and depending on the enthusiasm of the
15 response, we do have enough flexibility built in
16 to expand upon that slightly should we decide to
17 do that. We expect the vacancy announcements to
18 go live for IP experienced patent examiners in the
19 next couple of weeks. So I ask distinguished
20 members of the Committee, if you have folks in
21 mind for those positions, now is the time to start
22 thinking about that list. This is going to be a

1 full on recruitment blitz.

2 Next, a recent decision of the office on
3 leveraging sort of the same stuff that we hope to
4 on the examiner side in consultation with Chief
5 Judge Smith and other members of the Board, as
6 well as Under Secretary Kappos. We've decided to
7 post a vacancy announcement for board judges.

8 Right now we're thinking very
9 conservatively, in the single digits, for hiring
10 of board judges really as proof of concept, and
11 also to test the market in Detroit and see if
12 we're able to recruit the top level of talent that
13 we hope to recruit for board judges here.

14 I would sort of again ask for members of
15 the Committee that no folks in the Midwest and the
16 Detroit area who might be qualified board judges
17 to please consider recommending that. And that
18 vacancy announcement is live on USA Jobs right
19 now. Of course, this is the first of three
20 planned satellite offices, again, if funding is
21 available as Congress as mandated in the AIA.

22 So let's jump ahead, just a couple of

1 views of the building. As you can see, its first
2 class office space recently renovated. I
3 mentioned some of the history of the building.
4 It's right on the river walk, really a lovely
5 campus and I think a great place to recruit, but
6 really to retain top examiners.

7 Just a few key dates on the Detroit
8 timeline. So we have signed a lease that's in
9 place through our partners at GSA. That happened
10 in January. Right now we're in the process, we've
11 posted again the vacancies for judges. In the
12 coming weeks, we'll be posting IP experienced
13 vacancy announcements for patent examiners. The
14 first entry on duty date for class of examiners is
15 scheduled for the middle of July of this year.

16 This is a quick glimpse at the floor

17 plan. And because we have limited time, I'm not
18 going to belabor it. But you can see, if you look
19 from left to right, you'll see the first vertical
20 stack of offices on the far left side, those will
21 all be dual occupancy examiner offices, with the
22 corner office going to the regional manager.

1 Same with the top row of offices, up
2 until you hit that. And you'll bear with my color
3 blindness. The blue/purple color which currently
4 represents what we're holding for the Board.
5 Inside the space you can see some interior offices
6 there. We'll have two service stations, as well
7 as, of course, the training room that you see
8 there for our virtual training. I want to thank
9 at this point the POPA organization and Mr.
10 Budens, who have been really our partner in this
11 from beginning acquisition of the space on the
12 drawings. We've recently met with them and had a
13 really nice meeting about how we think the office
14 is going to look once we get it built out.

15 I'm also happy to report that ahead of
16 schedule, demolition is currently going on inside

17 the space. And also, one other thing we've
18 managed to pull off ahead of schedule, great work
19 by our procurement team here at the PTO, as well
20 as our CIO team. We actually did our first point
21 to point test on our fiber and did so
22 successfully. That's months ahead of schedule.

1 So a couple of nice things going on there. We
2 hope to take possession of the space in June,
3 again, with that July occupancy.

4 Now, I'll just pause a moment and see if
5 we have questions on Detroit.

6 MR. MATEO: No.

7 MR. KHAN: Great. Thank you. So moving
8 into future offices, this is the topic de jour
9 every day for me. And many of you will know, in
10 November we released a Federal Register Notice for
11 Comment to solicit public feedback on where we
12 ought to go to best serve the needs of the
13 applicant community, recruit and retain employees
14 and the other factors listed in the America
15 Invents Act.

16 That went out in November. It closed in
17 January, actually January 30th. As of that time,
18 we had received 550 plus unique comments
19 representing roughly 100 different cities and
20 regions. We're still working to index all of
21 that, and, of course, get it all read. In the
22 meantime, we continue to brief interested members

1 of the public, as well as folks on the Hill, that
2 are interested in the methodology for selection
3 that I'm about to discuss now.

4 So moving forward, the America Invents
5 Act, of course, listed -- actually, they listed
6 five important attributes to consider. The first
7 three you'll see in order: Applicant outreach,
8 recruitment, retention. The next two you will not
9 see. They were reduction of the backlog and
10 improvement of quality.

11 After quite a bit of deliberation by the
12 team, we decided that we couldn't have reduction
13 in the backlog up from this office and improvement
14 in quality that weren't a function of our
15 applicant outreach, recruitment and retention. In
16 other words, City A versus City B would be no
17 better at backlog reduction without factoring in
18 those other factors.

19 Below are specifically articulated and
20 enumerated things in the Act. In the language
21 below, you'll find that Congress has also asked us
22 to consider the economic impact on the community

1 that will be developing the new office, and
2 finally, to consider geographic diversity among
3 the offices. Of course, looking at the last
4 bullet, the USPTO team will consider operational
5 and start-up costs, as well as the cost of doing
6 business long term in that region, not
7 specifically articulated in the Act, but clearly
8 very important to our mission.

9 So let's see, we'll just jump ahead
10 really quickly. Well, you know what, let me spend
11 just a couple of minutes here on some other
12 criteria. So what we were able to do is pull
13 together a team of really top talent from around
14 the agency. So we took people from our Chief
15 Economist Office, from our CFO office, from the
16 Governmental Affairs team, from the Patents team,
17 and we got together and talked at length about
18 each one of these criteria.

19 We looked at the things that came in and
20 the comments. We're continuing to do that. We
21 brainstormed our own. And we listed criteria and
22 operational definitions for those criteria within

1 each one of what you'll see up there. Geographic
2 diversity is a little different by nature, and we
3 can talk about that for a moment.

4 We then took, thanks to the talent of
5 our Patents team that have experience in this
6 area, tools from Lean Six Sigma that are
7 prioritization matrices, where we're plugging in
8 the top level criteria, and then the criteria --
9 the sub criteria within each category, weighting
10 them against each other, and then running it out
11 in the middle, spit out the relative weight of
12 each of the criteria. We're also coming up with
13 operational definitions for all of those criteria
14 so that we make sure we're making apples to apples
15 comparisons. Toward that end, we're using what we
16 have from the comments in terms of data. And
17 we've actually -- we have a contract within the
18 agency, a contractor going through vetting, base
19 lining, and making sure all the data is even
20 across the board, as well as supplementing some
21 data in places where we've requested, all of that
22 to get to the most sort of objective decision that

1 we could possibly find.

2 This, again, is a private sector tool
3 that's used to make these kinds of prioritization
4 decisions, usually in terms of project priority.
5 We're applying that same tool to regional
6 priority.

7 So a quick look at the timeline. We
8 obviously have selected a methodology and we've
9 been working on that since September. The Federal
10 Register Notice stuff that I've covered went out.
11 The notice and comment period has now closed as of
12 January. Our contract is in place now to clean
13 and baseline the data. We're giving our
14 contractor a month, again, over 500 different
15 unique sets of comments. That's where we'll come
16 up with our list of cities.

17 In March, we'll begin the analysis of
18 actually plugging in the numbers, with a
19 recommendation going to the under secretary in
20 May, and then a decision will be made really at
21 the highest levels. In terms of public
22 announcement, that's something that, you know,

1 we're still debating, and certainly I think senior
2 communications folks, both in the agency and at
3 the department, will weigh in on. I'm happy to
4 discuss any of this in detail. I wanted to keep
5 the briefing short. I'll take questions.

6 MR. MATEO: Questions from the
7 Committee? Okay. So I'll ask you a question that
8 I asked earlier this morning in terms of
9 transparency, visibility. Can you help us
10 understand, on a going forward basis, where the
11 general public community can get more information
12 about the process, the criteria, the status, et
13 cetera?

14 MR. KHAN: Yeah, absolutely. So as I
15 mentioned, we have done a comment period. All the
16 comments that came in in a timely basis are now
17 published on the website, and you can find those
18 500+ comments on the AIA microsite. One way we're
19 doing that is by making the information public
20 right now. We'll continue to do that throughout
21 the process in sort of meetings and briefings with
22 the public.

1 What we're not doing is taking pitches
2 from individual communities. What we are happy to
3 do is do briefings individually with individual
4 communities, where the information is flowing from
5 the USPTO to the public. And certainly this
6 information will be made available, as well as the
7 criteria for our matrices, once all of that is
8 locked in. We don't want to get into a situation
9 right now where we're debating individual
10 criteria. But, of course, we will share all that
11 information publicly.

12 MR. MATEO: Very good. Thank you.

13 MR. KHAN: Thank you.

14 MR. MATEO: Okay. Next on our agenda is
15 the Telework Enhancement Act Pilot Program update,
16 and providing that will be Patricia Richter, chief
17 administrative officer, and Robert Oberleitner,
18 who is the assistant deputy commissioner for
19 Patents. And if we could keep this to 10 minutes,
20 that would be greatly appreciated.

21 MS. RICHTER: Good afternoon, and happy
22 Valentine's Day. Okay. I'm Pat Richter, and

1 along with Bob Oberleitner, I'm here to just give
2 you an update on the Telework Enhancement Act
3 Pilot Program, or what we affectionately call
4 TEAP. And participation in TEAP, you know, they
5 can change their duty station, they can -- to an
6 alternate work site in the city where they are
7 choosing to work.

8 Full-time teleworkers can live outside
9 of 50 miles, and they won't have to come back, you
10 know, to the campus the way they do now under OPM
11 rules. And participation is voluntary.

12 We have prerequisites for each of the
13 groups that our folks are covered by under POPA,
14 which covers the patent examiners, et cetera,
15 patent attorneys. The Patent Hoteling Program
16 employees are eligible, and there must be a
17 full-time teleworker living outside of the 50
18 miles. That's the way the criteria was set up for
19 POPA employees. For NTEU, they must be a member
20 of the Telework at Home Program for two
21 consecutive quarters, and they want them to
22 demonstrate that they have a proficiency working

1 in the electronic environment using the
2 collaborative tools, et cetera, and that's the 245
3 employees.

4 And then under 243 employees who are
5 kind of spread out throughout our business units,
6 they must be a full-time teleworker or have a
7 position that's approved for full-time telework.
8 Because the 243 employees hadn't gone as much into
9 full-time teleworking and we're migrating more of
10 those employees into full-time telework, that's
11 why it took a little bit of time.

12 I am happy to say that as part of the
13 Telework Enhancement Act, we had an obligation to
14 go -- bring our information to GSA. They had to
15 review our operating plan and our business case
16 analysis, et cetera. And we are the first agency
17 in the government to have our pilot program
18 approved. And now I'm going to turn it over to
19 Mr. Oberleitner.

20 MR. OBERLEITNER: With respect to the
21 travel requirements, the agency has a goal of a
22 four week notice before any required travel for

1 employees. But at the very least, we provide
2 three weeks' notice. This will enable the
3 employees to arrange schedules and try to get the
4 most cost effective travel means back to the
5 office. If we provide less than three weeks
6 notice, then the agency will pay for that
7 mandatory trip. Travel orders are to be issued
8 for all mandatory trips whether they are employee
9 paid or agency paid. And the employee's time for
10 those mandatory trips will be compensated as far
11 as comp travel time.

12 For Bargaining Unit employees, the
13 maximum number of -- well, for both sets of
14 employees, bargaining and non-bargaining, the
15 maximum number of trips back will be six. And the
16 way we split that out was, for Bargaining Unit, it
17 was up to four for business unit related
18 activities, one agency related activity, and then
19 ethics training if it's required for that
20 particular year.

21 And basically, going back to the comp
22 time and the travel time, basically we're going to

1 compensate them for the most efficiency travel.
2 And what I mean by that is, if they're coming from
3 New York and it's an eight-hour drive, but it's
4 only a one- hour flight, by the time you add in
5 the transfers with the airport and then the trip
6 here to the office, if it takes less time to
7 travel into the office via airline, then that's
8 the amount of time that we would compensate them.
9 If they choose to drive, that's fine, but we'd
10 only compensate them for the lower amount of time.

11 Regarding impacts of the TEAP, there's
12 pay benefits and relocation impacts. Regarding
13 the pay, the participation in the program may
14 impact the employee's pay. For the examiners,
15 it's a nationwide pay scale, so there would be no
16 impact for examiners. But employees in the 243
17 and 245 Bargaining Units, depending on what
18 geographic area they move to, their pay may be
19 impacted.

20 Regarding benefits, if employees move to
21 an area that their health coverage, for example,
22 doesn't service that area, they'll have up to 60

1 days from the time that they move to actually
2 switch their health care coverage. And, of
3 course, they may also need to fill out new state
4 tax forms. No relocation expenses will be paid
5 for employees who decide to voluntarily
6 participate in this program and change their duty
7 location.

8 For eligibility in the TEAP program,
9 employees must meet all of the criteria such as
10 being able to participate in a full- time telework
11 program. In other words, it's not for those
12 employees that may have the ability to only
13 telework one day a week, for example, or two days
14 bi-week.

15 Employees agree to voluntarily change
16 their official duty station outside of the 50-mile
17 radius, but within the 48 contiguous United
18 States. They agree to waive their right to travel
19 expenses being reimbursed on part of this pilot
20 program. And also they will only be eligible if
21 their normal duty requirements for their job does
22 not require them to come back to the office for

1 periods of time that would extend past 12 days or
2 more than 5 times a year. And they also have to
3 meet the permanent alternate work site
4 requirements of their individual programs, such as
5 the safety and security. They have to be
6 accessible and responsive to internal and external
7 inquiries, for example.

8 We're doing a phased approach to the
9 deployment. We're currently in the initial phase,
10 in the initial implementation. And basically all
11 the people that were already outside of the 50
12 miles, they were given the first opportunity to
13 sign up for the program. We're currently vetting
14 those applications now.

15 If there are any slots left for the
16 particular Bargaining Unit, then they will be
17 opened up after this period of time. If not, then
18 in the subsequent phases, what we were doing is
19 capping the program at 25 percent of the telework
20 eligible, not eligible, but the actual number of
21 people that are on full-time telework programs.
22 And so we are adding, for the examiners, for

1 example, new teleworks every couple of bi-weeks,
2 every quarter. So as that number of overall
3 hotelers increases, we will increase the number of
4 people that are eligible to participate in this
5 program. And that will go on throughout FY12.

6 In FY13, we'll basically take a break
7 and evaluate the program and determine whether we
8 should look at the -- we are looking at the
9 success factors and determine whether we should
10 expand the program at that point. GSA has
11 approved four years of the seven-year pilot
12 program that was set forth in the Telework
13 Enhancement Act. We will be in contact with GSA
14 throughout this first four years. Four years is
15 the standard time that they have been approving
16 different pilot programs, so this is standard for
17 what they have been approving. We anticipate,
18 along with GSA, that we will make any adjustments
19 as needed throughout the program and expect the
20 program to continue on at least through the seven
21 years, if not beyond that.

22 The evaluation will be based on both

1 internal and external results and measures such as
2 retention, presenting exam time, the productivity
3 of the participants, the employee satisfaction and
4 stakeholder satisfaction.

5 For the application process, we have an
6 online application. Applications may be submitted
7 any time. We are reviewing the applications on a
8 biweekly basis as they come in. And to sign up,
9 the employees must sign a waiver form, again,
10 waiving the particular entitlements to the travel
11 reimbursement, as I stated earlier. And then the
12 program is -- the participants are reviewed by the
13 agency, and then once the agency has approved
14 their participation, employees are notified and
15 they're able to participate at that point.

16 We have an internal site that -- it's a
17 busy slide, but that's basically through our
18 Internet. Employees can visit this slide as a
19 one-stop shop to learn more about the program,
20 find out the different requirements of the program
21 and actually sign up. And as they sign up through
22 this site, they will be able to see how many slots

1 are left and know when they sign up basically if
2 there are slots or if likely they'd go on a
3 waiting list.

4 And that's it for this presentation.
5 Any questions?

6 MR. MATEO: Questions from the
7 Committee?

8 MR. BORSON: Yes, I have a question.
9 How would you evaluate productivity? And would
10 there be any differences in the way that you
11 evaluate productivity for the teleworks versus the
12 on- site workers?

13 MR. OBERLEITNER: No difference in how
14 we evaluate the productivity. Basically what we
15 would do, we would -- we have people's names so we
16 can run reports basically. And just as we slice
17 and dice data basically, we would look at general
18 trends, our people basically, are they getting
19 similar productivity levels to those people that
20 are in the office, are they getting similar
21 productivity levels to those people that are
22 already teleworking, but not in this program.

1 MR. BORSON: And a related question is,
2 how do you monitor customer satisfaction?

3 MR. OBERLEITNER: We have a number of
4 vehicles right now as far as customer satisfaction
5 surveys, focus sessions, things of that sort. So
6 we would basically -- intending to look at many of
7 the features that we already have and many of the
8 vehicles we already have and kind of look for
9 trends.

10 MR. MATEO: Great. Thank you very much.
11 One procedural note, we're going to embrace the
12 agile development culture that's now spreading in
13 the PTO and shake things up a little bit. We're
14 going to flip-flop two of the topics on the
15 agenda. So in lieu of the presentation on process
16 reviews, we'll have David Kappos, under secretary
17 and director of the USPTO, speak first, and then
18 we'll go to the process review.

19 So, Dave, if you would, please. Thank
20 you for joining us.

21 MR. KAPPOS: Okay, sure. Thanks, Damon.
22 And let me start by just slightly disagreeing with

1 the use of the term "flip- flop." That's for
2 political candidates. Here at PTO, we're like
3 laser-focused in one direction, you know.

4 Good afternoon, great to be here. It's
5 always fun to spend time with our extended patent
6 family, the PPAC. And thanks -- let me start by
7 saying thanks to members of the PPAC for your
8 service to our country and to our agency. And
9 it's lovely to be able to spend time with you here
10 on Valentine's Day. I can't think of a better
11 testament to our collaboration than to share the
12 14th of February.

13 Seriously, though, the leadership that
14 you demonstrate and the teaming with our agency I
15 think has steadily improved and has enabled the
16 PPAC to emerge as a testament to the value that an
17 advisory group can bring to this agency, truly
18 providing us with the kinds of insight to help,
19 assistance, backstop, cross check, you know, pick
20 your appropriate term, that we so badly need
21 everywhere in the government, but particularly in
22 an agency like this one that's charged with such a

1 very, very specific and complex set of work
2 responsibilities, so thanks. I think while the
3 issues have never been as difficult as they are
4 now, and the volume has never been anywhere near
5 what it is now because of the AIA, the value, from
6 my perspective certainly, is really just
7 outstanding.

8 Before I go on, I'd also like to take a
9 minute and acknowledge a PTO executive sitting to
10 my right here who doesn't need any introduction,
11 that is Commissioner for Patents Peggy Focarino.
12 I know she's already talked to you today. But
13 since this is Peggy's first PPAC meeting as the
14 commissioner for Patents, I just wanted to thank
15 her for that job and make sure to acknowledge the
16 huge contributions that Peggy has already made
17 over many, many years at the PTO and the really
18 wonderful partnership that we have throughout the
19 Patents organization with many of her top team
20 here today, and thank Peggy for stepping into that
21 role.

22 Now, you know, it's been said many times

1 before, but I'll just repeat briefly that, you
2 know, our country is struggling in many ways,
3 making some -- to continue its recovery from our
4 recent recession, but also to figure out how to
5 live within its means over time. And that's
6 certainly something that we here at the USPTO have
7 to deal with also. And we've got to figure out a
8 way to get our work done and to do it within
9 reasonable budgetary limitations, and to do it in
10 a timely enough fashion that we don't leave for,
11 you know, if you will, our children or for those
12 who come after us, the overhang of having to fix
13 things that just -- we never get around to fixing.

14 And I believe that by collaborating
15 closely with the U.S. IP community, and with all
16 of our stakeholders right through to the best
17 interest of the public, but especially using the
18 PPAC as a major part of that collaboration, we
19 can, indeed, take advantage of the AIA in this --
20 truly to say once in a lifetime is really an
21 understatement, once in a couple of hundred year
22 kind of time, to build a better and a stronger and

1 a more robust patent infrastructure for our
2 country. And that's why we're all pressing
3 forward as we are so hard with all the rulemakings
4 and these fees that you're going to be talking
5 about a lot tomorrow on the back side of the AIA.

6 You know, for the first time in our
7 history, we've been given here at the PTO some new
8 powers. But, of course, with new powers come new
9 responsibilities and stewardship. And primary
10 among those powers is the opportunity to put the
11 agency on a path to financial stability, to being
12 able to think about the money that we bring in,
13 both in terms of how we can get our work done in a
14 very timely fashion, how we can get our work done
15 in the highest quality fashion possible, and how
16 we can get our work done in a way that ensures
17 that what's happening in the financial markets,
18 what's happening in the commercial markets does
19 not manifest itself immediately in, you know, in
20 very, very difficult circumstances, as we've seen
21 at some times in the past.

22 So, you know, we've come out with this

1 big set of rules -- over 3,000 pages of rules --
2 in an attempt to look at the procedural side of
3 running the agency to achieve both the due process
4 requirements that we need to achieve, but also to
5 achieve the procedural effectiveness and
6 efficiency that will enable us to do what we need
7 to do in a timely fashion, but still in a high-
8 quality and a fair fashion.

9 And we've also come out with, of course,
10 a proposed or first draft I'll call it fee
11 structure that reflects what it'll cost to run the
12 agency and get all that work done as the AIA asks
13 us to.

14 And one of the questions that I'm
15 getting already, and I think is a very fair one
16 is, well, you know, what about all the further
17 process improvements that can be made in order to
18 avoid having to raise the fees, but still get your
19 work done in a more timely fashion. And my
20 response to that is, we will continue to work on
21 process improvement. I think the data shows that
22 we've already made quite a few very -- process

1 improvements that have shown up, have manifested
2 themselves very clearly and improved efficiency
3 and effectiveness at the agency while also
4 managing to raise quality at the same time.
5 That's not to say that there isn't a lot more that
6 can be done.

7 I hope that the PPAC and the whole IP
8 community as we look at these rule packages will
9 look at them first and foremost through -- well,
10 first and foremost through two prisms, if you
11 will: One, the prism of getting to high-quality
12 results, because a result that isn't a
13 high-quality result, no matter how quickly you get
14 to it, isn't worth getting to in the business that
15 we're in; but we'll also look at these rules
16 through the prism of effectiveness, of efficiency,
17 of asking only for what we need to ask for from
18 our -- from the community that's filing papers in
19 the agency, getting as much information as we can
20 from the most effective sources, including
21 accumulating it internally where we can or not
22 even getting it in the first place where we no

1 longer need to, so that these rules that we're all
2 writing right now first and foremost come out
3 reflecting the most efficiency possible operation
4 we can create.

5 And if we can do that, we can really
6 challenge the issue of further -- squeezing
7 further efficiencies so that we can not use fee
8 increases as our first order of dealing with our
9 workload. So, to me, that is item number one.
10 But I think after you get done with looking for
11 those efficiencies, you invariably come back to
12 the issue of what do you want this agency to do?
13 What does the IP community want this agency to do?
14 What does the PPAC want this agency to do? What
15 does the America public want this agency to do?
16 And that's where you have to start the discussion
17 about what the fees are going to be in the end in
18 order to bring in enough money, in order to get on
19 top of our workload at some reasonable rate, if
20 that's, indeed, what we're going to try to do.

21 So as we thought through putting fees in
22 place in order to accomplish what, up until now,

1 we have believed was what the United States of
2 America wanted us to do, both the administration,
3 Congress, our community, the U.S. invention
4 community, the intellectual property practitioner
5 community, the IP ownership community, as well as
6 the interest of the American public.

7 We had been guided by our 2010 -- 2015
8 strategic plan. We had also been guided by what I
9 certainly believe, but again, I'd be happy to be
10 challenged on this, was the need to think about
11 the fees at the USPTO, much more like companies
12 think about what they charge for the products and
13 services they offer, where it would, frankly, be
14 hard to find a viable American company that
15 heavily subsidized products for a lot of reasons,
16 including the leads to an unstable situation
17 financially, and that's what we found out several
18 years ago. And so we used as our first order
19 approach to setting these fees the view that we
20 wanted them to more closely reflect the cost of
21 services, and that's why you see the vast majority
22 of the fees are set actually quite closely to the

1 cost of services, more so than they were in the
2 past. And even those fees that aren't set to the
3 cost of services we've tried to get closer than we
4 were in most cases.

5 That, of course, then gets you to the
6 point of, well, if you're going to continue to
7 subsidize some of your services, which we propose
8 to do, you've got to find ways to make up those
9 subsidies, and you see that approach reflected in
10 the proposed fee schedules also through looking at
11 policy levers that appear to us anyway to be in
12 the best interest of our country in order to make
13 up the subsidies on the back side.

14 You also have the issue that this
15 agency, as Peggy, as of yesterday, still had about
16 655,000 unexamined applications sitting here in
17 the USPTO with zero dollars and zero cents of
18 accumulated funds to do that work. And so it's
19 sort of very basic math that if the American
20 public ever wants us to actually catch up,
21 somewhere we're going to have to collect money to
22 do that. And we're going to have to collect more

1 money than the output -- I mean than the input of
2 the agency would naturally call for, because in
3 all those past years, we didn't collect enough
4 money, and some money went away through diversion.

5 So, you know, we either decide as an IP
6 community that it's not all that important to get
7 on top of our workload, I frankly think that would
8 be the wrong decision, but I'm happy to accept it
9 if that's what the American people want us to do,
10 or we conclude we've got to somehow get money to
11 do 655,000 pieces of work that we don't currently
12 have. And that, you know, after the -- at the end
13 of the day and whatever further efficiency
14 improvements can be made, leads to some
15 substantial fee increases.

16 And that's how you see the first draft
17 of the fees that we came out that asked for a 10
18 percent aggregate increase in fee collections in
19 2013, and then about another 5 percent in 2014,
20 which leads us to a point where we can overcome
21 the 655,000 cases that we're still sitting on in
22 the 2015/2016 timeframe, and be in a position that

1 I fully expect we can get ourselves into, where
2 we'll actually be looking at decreasing fees after
3 that. So while there are other ways to accomplish
4 dealing with the backlog, that's the way to do it
5 as quickly as possible.

6 Now, that's not to say there isn't more
7 than one approach. And we certainly can have a
8 very good discussion and a very productive
9 discussion about the individual fees and which
10 ones should be set at which levels, and we're very
11 open to that discussion. And we can even have a
12 discussion about whether the goals are the right
13 goals or whether those should be revisited in some
14 sense.

15 The goals can be spread out over a
16 longer period of time. That's clearly something
17 that would have implications, both positive and
18 negative, but certainly could be used as a tool to
19 spread out the fee increases. And other tools can
20 be employed that would, once we've decided as a
21 community what we want our goals to be, other
22 financial tools can be employed that will get our

1 fees to the level in order to achieve all of that
2 over time.

3 Let me just conclude then by saying that
4 the rules that we've proposed, while very
5 comprehensive, and while we've benefited from a
6 lot of good public input even before we put the
7 draft of them out that we put out last week, we're
8 very anxious to get lots more input.

9 We've got plenty of time in our process
10 here before we go to final rules to further refine
11 them. And we have already learned -- I certainly
12 have already learned about a number of ways that
13 we can improve those rules, and we're already
14 looking at ways to do that. So totally open to
15 making further modifications to everything that
16 we've come out with. We've obviously tried very
17 hard to do our best job on the initial draft. But
18 the good thing about the IP community is, there is
19 so much expertise that you can quickly start to
20 find things that you didn't consider and
21 improvements that you can make. So we want to
22 make sure we get a lot of input. The PPAC's

1 leadership is going to be key throughout the
2 process, not just tomorrow, but I'll come back to
3 the fee setting part in just a moment.

4 And then relative in fee setting, while
5 we have done our best to put out a sensible
6 starting point based on all of the information
7 we've got available and an alternative schedule
8 that says, look, you know, if it's -- the decision
9 to go forward with an approach that maintains a
10 status quo, here's what we think we can
11 accomplished based on maintaining the status quo,
12 this truly is the start of a discussion.

13 The first time we're ever -- in the
14 history of the agency we're going through a
15 process like this. We're extremely fortunate to
16 have the PPAC, people who know from both knowledge
17 of the agency and knowledge of how our fees impact
18 our community, we're extremely fortunate to have
19 you here to guide this process and help marshal
20 input so that we can make the changes we need to
21 make.

22 My view, as I've already said,

1 everything is open for discussion. There are no
2 sacred cows. We're prepared to go back to first
3 principles as much as we need to, consistent with
4 recognizing that, like everything else in life,
5 you get what you pay for, and if you want to pay
6 less, then, you know, you need to be prepared for
7 the output that you're going to get that matches
8 up against what you're willing to spend.

9 So lastly I would say that, you know,
10 for all the changes that we're seeing at PTO, you
11 know, brought on by the AIA and all the other
12 things that the management team here is trying
13 hard to do to improve the agency, we would not be
14 where we are without the PPAC and the great advice
15 and the great teaming and support that we're
16 getting. And it's really, to me, conversations
17 like the one we've having today and those we'll be
18 having tomorrow and in the weeks and months going
19 forward, as we're right in the thick of
20 implementing this legislation, that will really
21 create an agency that five years from now we'll
22 all be able to look back on and say, oh, my God,

1 you know, we've made some really, really big
2 improvements here.

3 So please hang in there with us and help
4 us do this the right way. We've got a, you know,
5 really great shot at it, and we're right in the
6 middle of it. So thanks very much.

7 And, Damon, with that, I'll turn it back
8 over to you.

9 MR. MATEO: Dave, thank you very much
10 for your comments. Thank you also for your kind
11 remarks about PPAC. I've been here long enough
12 that I can probably say that, in particular, I'm
13 delighted to work with you. I have come into the
14 USPTO not just faced by additional challenges
15 layered on by AIA, but also struggling with some
16 legacy challenges. And I'm delighted to be a part
17 of the process where a reinvigorated PTO rises to
18 the occasion. And we have seen manifest changes,
19 and to the extent that we're able to contribute to
20 those positively, we're delighted to do so and
21 will continue to be delighted to do so. And
22 hopefully you can continue to look to us to

1 provide that sort of unique, hybrid role that we
2 do so well, hopefully.

3 We're part PTO, part private sector, so
4 hopefully we're able to provide a bridging
5 function. And we'll be doing some of that
6 tomorrow in the fee setting hearings, soliciting
7 public input, and hopefully being able to ask
8 clarifying questions to get everybody on the same
9 page.

10 So thank you again, Dave, I very much
11 appreciate it. We'll look forward to that. We'll
12 hear more about the hearings actually in the next
13 session. But, again, thank you very much, Dave.

14 Okay. So why don't we move back, or
15 rather let's move forward. We don't want to
16 flip-flop. Thank you, Dave. Move forward with
17 our next presentation, which will be process
18 reviews, Brad Huther, senior advisor.

19 And, Brad, as a preamble, I do
20 appreciate your patience. Thank you.

21 MR. HUTHER: Actually Dave provided a
22 very good segue into this entire presentation, so

1 I won't repeat the parts that he's already given
2 to you. But about a year and a half ago, as part
3 of the Kappos plan to achieve one of the key
4 elements of the strategic plan aimed at
5 strengthening and attaining managerial excellence
6 throughout the PTO, he talked to me about the
7 notion of coming back, this is my third sojourn
8 into the PTO, to help him work on a certain
9 element of the process, the improvement campaign
10 that he just described to you. The area that I'm
11 focused on is principally in terms of management
12 process review. So I'll describe it briefly to
13 you.

14 It's rather complicated, but the main
15 message that I want to try to get across at the
16 outset is that this is a process aimed as much at
17 finding cost savings as it is at improving
18 processes enterprise-wide as opposed to solving
19 just individual problems one by one.

20 These types of methods that you see
21 depicted on this graph are not new to the Patent
22 and Trademark Office. They've been practiced off

1 and on for the last 20 years. The focus has
2 tended to be on business unit only efforts, as I
3 just mentioned, trying to take a broader
4 perspective. Looking at opportunities to
5 streamline processes that cross boundary lines is
6 what this particular part of the Process
7 Improvement Program in the PTO is all about.

8 In terms of things like Six Sigma and
9 Lean Six Sigma, they have different
10 characteristics. They're aimed, on the one hand,
11 at strengthening the quality aspects of what
12 transpire here, then, frankly, eliminating
13 variation in how things happen, and I'll give you
14 an example of how that was practiced in one of the
15 studies that I'll report on briefly. Lean Six
16 Sigma tends to focus on let's do a cheaper,
17 better, faster methodology. And these things have
18 been practiced along with business process
19 reengineering since the 1990s here. And we've
20 tried to take a look at the best practices that
21 are used by industry and other government agencies
22 that employ them, as well, to achieve some of the

1 process improvements that I'll describe for you
2 briefly.

3 These are the -- everything that goes
4 through those methodologies leads to a business
5 case, a proposal for what we hope will be
6 significant, but at the same time, radical process
7 change. Things that are beneficial certainly to
8 the customer is the number one focal point,
9 secondly, to our stakeholders, and third, not
10 necessarily in that order, to our employees and
11 the people who support the employees here in the
12 Patent and Trademark Office.

13 So these are the areas that have been
14 focused on over the last 18 months. You've
15 already been given a briefing on the PATI project.
16 Before this analytical effort was undertaken, the
17 PATI initiative would have been undertaken as a
18 contractor furnished service at an estimated cost
19 of \$18 million in FY11 alone. As a result of the
20 business case analysis process and using the
21 various tools that it's showing you, eight
22 alternative options to that were considered. And

1 the one that you saw demonstrated to you today is
2 a PTO internally sponsored optical character
3 recognition way of generating XML text, not at 17-
4 or \$18 million in the first year, but less than \$2
5 million.

6 A prior year funding analysis sounds
7 rather dull, but financial analysis is part of it.
8 And when we looked at where some monies that had
9 been obligated or otherwise committed for
10 expenses, we found that some of them were still
11 sitting on the books as far back as 1997. It
12 wasn't for lack of due diligence on the part of
13 the PTO, but rather the organizations with which
14 we collaborated.

15 Groups like the International Trade
16 Administration and the State Department had some
17 very peculiar business practices that when we
18 finally sat down and worked with them, we were
19 able to eliminate a lot of those outside imposed
20 forces on our inability to take money that wasn't
21 being used very effectively and rechannel it into
22 areas that could meet current operating

1 priorities.

2 I think you've been briefed in previous
3 meetings on the Universal Laptop Program. That
4 program sponsored a new initiative, again, looking
5 at processes, how do we provide laptops, not just
6 how can we find a more cost-effective way of
7 buying them. But one of the things that Dave had
8 set out at the very beginning was a simple goal
9 that when a new employee walked into the PTO on
10 his or her first day, somebody was standing there
11 saying, here's your laptop, it's baselined to meet
12 all of your individual performance needs with the
13 right software, the right storage and the like.
14 And we were having problems doing that. I'll talk
15 to you about how we modified that through the work
16 of a separate project team that built on the
17 original universal laptop business case.

18 In our Public Information Services Group
19 -- that is, again, an enterprise component that
20 crosses our boundaries -- they provide services
21 for patents, they provide services for trademarks,
22 as well as for some of their own direct clients.

1 But it was not based on the strategic plan to be
2 primarily a web-based system. Lots of paper
3 records, lots of ways of continuing to provide
4 customer services that had a very low value
5 proposition. And I'll describe to you in a moment
6 how we were able to completely transform what that
7 unit and our CIO's operation now does in a fully
8 electronic way compared to the outmoded way of
9 before.

10 Likewise, in the Office of
11 Administrative Services, they had been using a
12 number of business practices to support the patent
13 and trademark groups. And through the leadership
14 of that project team, they were able to eliminate
15 lots of processes that had become a little bit
16 overly stale. They improved everything from how
17 employees are protected in this building to how
18 our IT assets are monitored with state-of-the-art
19 equipment. Things that were not really a part of
20 the original thinking of the group now have become
21 substitutes for those things with significantly
22 better processes, as well as significantly lower

1 cost.

2 And then finally, in the Office of
3 Patent Information Management, of which you've
4 listened to Fred Schmidt and Terrell Morris
5 describe to you the PATI project, there we took a
6 look at an organization that had been designed a
7 number of years ago to fulfill a bit of a Catch-22
8 situation; that is, if the office of the then CIO
9 was not able to provide hardware and software and
10 move the assets that the patent examining corps
11 needed, well, then Patents created a unit to do
12 that, to monitor it, to make sure things could
13 happen as promptly as possible.

14 By using the universal laptop approach,
15 it created a whole new paradigm in which as part
16 of the outcome of the OPM study, they refocus
17 their energies on only two fundamental objectives:
18 One, making sure that the cooperative patent
19 classification gets implemented well and timely
20 and produces the quality benefits that it's
21 intended to do; and secondly, to transition the
22 existing information technology legacy systems to

1 the next generation patent PE2E style system.

2 This type of support of the patent
3 examining corps, therefore, was not really
4 consistent with their process mission. And we
5 created a vehicle under the analysis that enabled
6 the creation movement of some 30 people from OPM
7 into the CIO operation. We centralize all of the
8 budget authority, all of the procurement
9 authority, and all of the accountability for
10 delivering to patents and everybody else in the
11 PTO the hardware and software that they needed
12 using Six Sigma style standards, whereas before,

13 Percent customer satisfaction rates the
14 performance metric used as a result of this
15 analysis and by imposing process changes within
16 patents itself, where they were obliged to provide
17 better notice, more accurate information to the
18 CIO. We now have achieved since October 1st an
19 accuracy rate of 99.97 percent, a quantum leap in
20 a relatively short period of time.

21 So what does all this translate into
22 real terms? I mentioned at the beginning that

1 money is an important factor in any of these
2 analysis, but it's not the only one. But in this
3 case, you can see where the \$50 million in process
4 savings have been generated. It's a function of
5 contracting the changes. We've eliminated over 12
6 or 13, I think, is the latest count on these
7 contracts, but modified the balance to eliminate
8 the low-value proposition items. If it's really
9 not a critically supported need that has high
10 return on the investment, it's been eliminated
11 without, we believe, much in the way of
12 degradation, if any, in the actual performance of
13 the work of the organizations that were affected.

14 If you walk across the other side of
15 this floor, you'll see what had been grossly
16 underutilized space, some 14,000 square feet. And
17 when we degenerated the business case with the
18 data, we were able to convince the public, who did
19 not want to give it up because they liked the way
20 it worked before, but the data, like all business
21 cases if they're done properly, were compelling.
22 And so we met with the stakeholders involved, the

1 NEPRA Group and others, and there was no
2 significant opposition to the notion that we
3 closed down more than 100 workstations that could
4 not be justified either for the expense of the
5 equipment or for the space.

6 That's now being reprogrammed into new
7 uses of that space which otherwise would have had
8 to have occurred. In all, we've saved about
9 100,000 square feet of office space currently
10 occupied, everything from the old public search
11 facility on the second floor to -- we work closely
12 with Bob Budens and his members on eliminating
13 what had previously been declared useful prior art
14 at the time of the move from Crystal City to here.
15 More than 85 percent of that and 10,000 square
16 feet of paper has now been turned away. And the
17 space is being reprogrammed to other purposes.
18 Otherwise, we would have had to have gone into the
19 market to capture.

20 MR. MATEO: Excellent. If you would,
21 please, in the interest of time, if you could
22 provide sort of a summary wrap up.

1 MR. HUTHER: Yes.

2 MR. MATEO: Please, if you would.

3 MR. HUTHER: These are the direct patent
4 savings. Out of the 50 million, 16 effect
5 directly into the patent business unit, the
6 balance elsewhere. And I've talked about some of
7 the process benefits, so I don't think I need to
8 go over any of these other than to maybe just give
9 you two examples.

10 One of Dave's major concerns at the
11 beginning was, we were not getting the kind of
12 program support from the Patent -- then called
13 Patent and Trademark Depository Libraries, of
14 which there are more than 80 throughout the United
15 States. Working with the Patent Depository
16 Library leadership, we completed redesigned and,
17 frankly, revamped what is now the Patent and
18 Trademark Resource Center framework, away from our
19 supplying to them things like optical disks or
20 paper copies or microfilm. It's now fully online
21 with new performance metrics to gauge what the
22 public benefit of those resource centers is and

1 how we can translate it into progressing to the
2 next generation of full digital capability as the
3 libraries themselves are capable.

4 So I think I'll stop there. You've
5 gotten the flavor of the types of process
6 improvements that are here. Most importantly is,
7 this is also part of Dave's underlying interest in
8 wanting to nurture next generation leaders. So
9 everything that I've described to you has been
10 done under the leadership of a middle manager
11 who's been trained to use these tools and to
12 become more proficient in their use and the
13 continuing use of it to refresh these improvements
14 as a part of their daily management leadership
15 responsibilities. So I'll stop there.

16 MR. MATEO: Thank you very much. And I
17 do apologize for cutting you short. We had 15
18 minutes on the agenda, which we could probably
19 quadruple and still not have enough time. Process
20 improvement, efficiency, efficacy are all near and
21 dear I think to most PPAC members' hearts, and
22 that is something I would actually like to explore

1 more deeply. So if you'd be amenable, perhaps you
2 can participate with us on one of our work session
3 calls or certainly we can plan a little more fully
4 to have you present at our next quarterly meeting.
5 I'd very much appreciate that.

6 MR. HUTHER: I'd be quite happy to.

7 MR. MATEO: Thank you very much. And
8 with that, we'll move on to Janet Gongola, who
9 will speak with us about AIA, America Invents Act,
10 a two-phase discussion. I think we're going to
11 hit the broad strokes. And then in anticipation
12 for the fee setting hearings tomorrow, Janet will
13 lay out some of the context and logistics for
14 that, as well. So if you would, please.

15 MS. GONGOLA: That's correct. Thank you
16 very much. As always, it is a pleasure to be with
17 PPAC. And I hope as I go through the talk this
18 afternoon, you will feel free to interrupt me with
19 any questions you might have. I will begin by
20 giving you kind of an overview from where -- how
21 we've advanced since the last quarterly meeting in
22 December. So I'll start the discussion.

1 We have 20 provisions that the act has
2 to -- or that the agency has to implement that
3 relate to patent and trademark operations. We are
4 working on 9 of those provisions right now that
5 have to be implemented on a 12-month timeline. So
6 the provisions must be ready by September 16th of
7 this year.

8 So on the slide in front of you, I know
9 the font is relatively small, so hopefully you can
10 see it in the handout materials. This slide
11 features the five -- well, four provisions that
12 relate to Patent Office operations on the patent
13 side of the house.

14 We issued our proposed rules for these
15 provisions beginning in early January, and it
16 spanned until the end of January. There's one
17 provision, number four, that relates to the OED
18 statute of limitations. That's clarifying some
19 language that's in the statute regarding how the
20 office will determine when the statute of
21 limitations for disciplining a practitioner for
22 misconduct is triggered.

1 That provision went into effect this
2 past September 16th. And our Notice of Proposed
3 Rulemaking is simply clarifying some language.
4 Now, the following slide covers the contested case
5 provisions as I like to call them, the new
6 proceedings that involve trials before the Board
7 of Patent Appeals and Interferences. We released
8 our Notices of Proposed Rulemaking on February 9th
9 and 10th of this year, and that was a little
10 behind the schedule that we had anticipated. It
11 was our great hope to have those Notices of
12 Proposed Rulemaking available to the public by the
13 end of January. We were delayed somewhat due to
14 the various levels of oversight. And I'll talk
15 more in a moment how we plan to recoup the time
16 that we lost in that delay.

17 So going into all of our proposed rules,
18 everything you saw on the past 2 slides, we
19 considered 171 comments that we received from the
20 public in advance of our proposals. And we
21 sincerely appreciate the public submitting those
22 comments to us because they really refined our

1 thinking on certain provisions.

2 I also want to stop for a moment and
3 thank all of you for helping us to develop our
4 proposals. You were instrumental in our review
5 processes when we cleared the proposals, you gave
6 us very valuable feedback. We incorporated not
7 all of it, but much of it, and we thank you for
8 bringing to our attention issues we need to
9 continue to consider going forward as we have our
10 official 60- day public comment period and we go
11 to build our final rules. So in addition to the
12 two of you, POPA and PPAC in this room, we also
13 received input from the Department of Commerce and
14 OMB to complete our clearance process of our
15 proposals before we made them available to the
16 public.

17 Now, I want to be clear, in many of the
18 packages you will see fees proposed, particularly
19 for those packages where the services are brand
20 new, supplemental exam and the contested case
21 provisions.

22 The fees that you see listed in those

1 proposals reflect our authority to set fees under
2 Section 41D of Title 35. That means that those
3 fees were set using a cost recovery model. So
4 that stands in contrast to our fee setting
5 authority under Section 10 of the America Invents
6 Act, where under that act we do not have to set
7 fees under a cost recovery basis. We certainly
8 can if we want to, but we are not statutorily
9 obligated to.

10 So I want to make the distinction for
11 you all as well as the public that the fees
12 reflected in our proposals are cost recovery
13 dollars. The fees going forward, which we will
14 talk about when we get to the fee setting process,
15 do not necessarily reflect cost recovery. They
16 may, but they also may be a subsidized fee, so
17 it's below cost recovery, or to recoup, we might
18 set fees slightly above cost recovery.

19 Now, here is the timeline we've been
20 talking about since basically the act passed in
21 September. And I want to point out for you,
22 because we were a little delayed in issuing our

1 proposed rules for the contested case proceedings,
2 I don't want there to be any concern that the
3 public will be short changed in their comment
4 period at any point along the process.

5 The public will always have the full
6 amount of time to comment. So following our
7 proposal, they will have 60 days. And once we
8 come out with our final rules, the public will
9 have a minimum of 30 days to understand the scope
10 of our proposals.

11 Where we will shave off time is internal
12 to the agency. In the large block that runs from
13 April to June of this year, that's the time period
14 within which the agency has to take the public
15 feedback and build our final rules. So any extra
16 days that we need to shave off, we plan to shave
17 off from our time to build those final rules. So
18 the public will never be adversely impacted by the
19 delay that we experienced of about two to three
20 weeks.

21 Now, fee setting authority, I think I'm
22 going to hold on this since my following segment

1 is going to talk in more detail about the fee
2 process. So now I'll turn to some of the studies
3 that the act required us to conduct. On this
4 slide is the total scope, you've seen it before.
5 I'm going to focus on the first three entries in
6 the table. These are studies that we either have
7 completed very recently or we have ongoing.

8 So the first study that we completed is
9 the International Patent Protection for Small
10 Business Study. This study asked the agency to
11 try to identify ways that the government, or more
12 particularly the Patent Office, might be able to
13 financially assist small businesses in foreign
14 filing patent applications and prosecuting them in
15 foreign patent offices. We conducted the study in
16 conjunction with partners at the Department of
17 Commerce and the Small Business Administration,
18 delivering our report on time to Congress in
19 January.

20 Now, our report made four specific
21 recommendations. First we suggested that the
22 government in general should engage in diplomacy

1 to try to achieve harmonization in our laws, in
2 particular the fee structures between the United
3 States and foreign patent offices.

4 Through the study, several witnesses
5 testified that there was difficulty for them to
6 achieve foreign filings because they were confused
7 about the legal requirements in various systems
8 around the globe. Because of that confusion, they
9 were deterred from making foreign filings. They,
10 likewise, expressed that there was concern about
11 the fee structure. It's very costly for a small
12 business often times to make foreign filings. And
13 so perhaps if we could persuade other patent
14 offices to come up with a discount structure, the
15 50 percent small business -- small entity discount
16 or the 75 percent micro entity discount, that
17 could be of great assistance to small businesses.

18 Second, we concluded that we should try
19 to help expand education for small businesses
20 about the importance of making foreign filings.
21 Many small businesses explained that, for them,
22 it's a choice between making a foreign filing and

1 hiring employees to try to commercialize in the
2 United States. And when placed in that situation,
3 they typically chose hiring employees. But the
4 education that they need to understand is that on
5 the front end, that might help them, but on the
6 back end, when they attempt to commercialize a
7 portfolio, it will be much more difficult for them
8 to do so if they can only offer a U.S. patent
9 rather than a global patent portfolio.

10 Third, we talked about the concept of
11 engaging with industry to see if there might be a
12 way that large businesses might be able to, in a
13 venture capital style, fund smaller businesses
14 with the idea that large businesses eventually
15 would acquire the small business.

16 And then lastly, we determined that we
17 should collect more information about ways that
18 the government itself can help through a grant or
19 a loan program. None of the witnesses went so far
20 as to advocate that the government should outright
21 loan money or make a grant to a small business, so
22 our study did not go that far.

1 Now, the second study was prior user
2 rights. We investigated the scope of prior user
3 rights available in other industrialized countries
4 in collaboration with the Department of State,
5 U.S. trade representatives and the attorney
6 general. We also delivered this report in
7 mid-January and it contained six recommendations.

8 So first we determined that prior user
9 rights, as we now have them built in the America
10 Invents Act, are consistent with the prior user
11 rights laws in other industrialized countries. We
12 did not find that there was any sort of adverse
13 affect that our prior user rights provision would
14 have on start-up companies, independent inventors,
15 small businesses or universities. However,
16 because the new prior user rights provision has
17 been in effect for all of four months, we advised
18 that the agency should revisit this concept when
19 we write our report about the scope of the America
20 Invents Act in 2015.

21 Next we determined that the prior user
22 rights provision is consistent with both trade

1 secret and patent protection as available in the
2 patent laws today. It struck the right balance.
3 We, likewise, thought that the prior user rights
4 provision was necessary when -- in view of our
5 upcoming migration to a first inventor to file
6 system. Prior user rights are critical in that
7 system given that there's an urge for many to rush
8 to the Patent Office and file, but keeping prior
9 user rights in the law for some applicants could
10 potentially curb the urge, and they can maintain
11 safely their inventions in trade secret status.

12 Now, Director Kappos testified before
13 Congress on February 1st about our prior user
14 rights report. He shared our findings, which I
15 didn't cover today, but are available in the
16 report itself, as well as the recommendations we
17 made.

18 Now, next we have a study that's ongoing
19 right now. It's the Genetic Testing Study, and it
20 asks the agency to consider ways that a second
21 opinion type genetic testing could be made
22 available in situations where there's a gene

1 patent in place, and that patent is licensed to a
2 particular company that makes the principal test.

3 Now, we have sent out a Federal Register
4 Notice calling for the public to come to testify
5 at a hearing and submit written comments to the
6 agency. Our first hearing will be this Thursday
7 and our second hearing will be March 9th. The
8 locations are listed on the slide. Our comments
9 from the public are due on March 26th. And we
10 will take all of the comments, the testimony we
11 receive, and compile it into a report that we will
12 release in mid-June.

13 Now, our programs -- I was going to
14 cover satellite offices, but you've already heard
15 about that, so I will skip it. This slide
16 features for you our composite listing of the road
17 shows that we have going on to talk about the
18 proposed rules that we discussed on the first
19 couple of slides, as well as our hearings. So we
20 plan to visit for the road shows seven different
21 cities between mid-February and early March. The
22 purpose for our road shows is to explain our

1 proposals to the public so they will be in a
2 position to give us feedback about those
3 proposals.

4 We will also have a chance to have
5 dialogue with them at the road shows. They're
6 full-day events. We have a large team of people
7 attending the road shows to be able to answer
8 questions, talk to the public, make sure the
9 public is in the best position it can be to give
10 us the feedback we need to build those final rules
11 that we will be doing over the summer months.

12 Now, apart from the road shows, I
13 thought you might be interested in knowing a
14 little bit about our other outreach activity.
15 Since the America Invents Act passed last
16 September, we have done 98 speaking engagements
17 across the country. Most of them, more than 80
18 percent are live. The balance are in webinar
19 format. And this slide shows for you the
20 breakdown of where we are doing those
21 presentations. Pretty much it's from east coast
22 to west coast.

1 And on the last slide for you, I thought
2 you might also be interested in knowing about this
3 AIA microsite that we talk about as a location for
4 housing all of our implementation information.
5 This slide shows for you our top 30 microsite
6 users by city. So you can see, at a minimum, our
7 top 30 users have at least 50,000 accesses onto
8 the microsite. At the highest are New York,
9 Chicago, and the beltway community of Washington,
10 D.C., and Alexandria. In these three regions,
11 each city has an access of over 300,000 hits on
12 the microsite. New York seems to have the most
13 with over 575,000 hits on our microsite.

14 Do you have any questions for me? Okay.
15 Shall I turn to the next presentation, please, and
16 we'll go into more detail about the fee setting
17 process and the fee setting hearings.

18 Okay. So under the scope of the America
19 Invents Act, as the director indicated, we've been
20 given great authority to be able to set our fees,
21 but we carry tremendous responsibility in
22 exercising that authority. The act gives us much

1 guidance in doing that authority. It certainly
2 involves the Committee in the process. And that's
3 what I want to talk about with you all today, the
4 role of the Committee and the specific fee setting
5 hearings we will be conducting over the next
6 couple of days, explain for you all what planning
7 we've done to execute the hearings, and how the
8 public can get involved in those hearings to
9 participate.

10 So under Section 10, you all are
11 required to hold at least one hearing. The agency
12 is required to deliver to you in advance of that
13 hearing information about our proposed fee
14 structure so that the witnesses can testify at the
15 hearing about those proposed fees. The agency is
16 also required to assist PPAC in holding those
17 hearings by providing resources, facilities and
18 publicity.

19 So to that end, we together collaborated
20 on the preparation of a Federal Register Notice
21 announcing the hearings to the public. The first
22 hearing will take place tomorrow at the PTO's

1 facilities in the Madison Auditorium in
2 Alexandria. The second hearing will take place
3 next Thursday, February 23rd, in Sunnyvale,
4 California, at the Sunnyvale Public Library.

5 Both hearings will be webcast so that
6 the public can watch them live. There will also
7 be the opportunity for the public to give
8 real-time input into the hearings by using the web
9 chat feature, similar to that that's used for the
10 PPAC quarterly meetings.

11 The hearings will be transcribed, so the
12 record will be made available on our microsite, as
13 well as your microsite, after the hearings are
14 complete, and they will be recorded so the public
15 can view the hearings.

16 Then written comments that the public
17 would like to submit either following up on their
18 testimony or in lieu of coming to the hearings and
19 giving testimony are due by February 29th.
20 There's a little window around the February 29th
21 deadline. But the comments are important for you
22 to receive by that date because you need to take

1 that feedback into consideration in building an
2 ultimate report that you will provide to the
3 agency. And you all have agreed to provide that
4 report to us in June. So we can't extend the
5 comment deadline too far because you need to have
6 the information.

7 Now, our fee setting materials were
8 delivered to you all, as well as the public, on
9 February 7th. And the bullet points on the slide
10 list for you what those materials entailed. I
11 won't go through them to any substantive degree.
12 There's an executive summary, proposed fee tables,
13 aggregate cost, and that information is available
14 on both our AIA microsite, as well as the PPAC
15 microsite.

16 You, likewise, on February 7th, provided
17 a list of questions to the public. I believe that
18 your intent behind the questions, a sample of

19 which is listed on this slide, is to help focus
20 the public on areas where you would like to
21 receive testimony, or they may consider submitting
22 written comments to the agency. So a full listing

1 of six questions with multiple subparts are posted
2 on the PPAC website for the public to view.

3 This slide features the agenda for our
4 hearing tomorrow at our Alexandria campus. There
5 will be four witnesses giving testimony. There's
6 a correction on this slide. AIPLA will be giving
7 testimony, but only represented by one person.
8 And there's a new person who's going to be giving
9 testimony coming from Jones Day law firm in New
10 York. But in total, there will be four witnesses
11 who have prescheduled to give testimony. And then
12 once the window for prescheduled testimony closes,
13 we'll open the floor to anyone in attendance who
14 would like to give unscheduled testimony. The
15 unscheduled testimony window could run as long as
16 3:00 in the afternoon. We have the facility
17 space. But if it does not run that long, we will
18 close the hearing in its natural course whenever
19 the unscheduled testimony wraps up.

20 Now, to access remotely the hearing, to
21 be able to view it on the website, as well as do
22 the online chatting, this slide features the

1 information for dial-in and access codes. I won't
2 read the information, but please consult the slide
3 set if you're interested in the remote accessing.

4 MR. MATEO: And, Janet, actually, just
5 before you get off of that, is that information
6 also available on the AIA microsite and the PPAC
7 site?

8 MS. GONGOLA: Yes.

9 MR. MATEO: Okay. Just to make sure --

10 MS. GONGOLA: Dialing -- remote
11 accessing is available at the head of the agenda,
12 which is posted on both locations: AIA microsite,
13 PPAC microsite.

14 MR. MATEO: I just wanted to make sure
15 everybody knew that. Thank you.

16 MS. GONGOLA: Yes. I'll skip this
17 slide. It goes over a layout of the facility so
18 you understand where everybody's seated. This is
19 the agenda for the February 23rd hearing in
20 Sunnyvale, California. To date, we have three
21 witnesses scheduled to give testimony at that
22 site, followed by unscheduled testimony. And then

1 again, as with the hearing here, we will close it
2 out at the conclusion of the unscheduled testimony
3 at whatever time that may be.

4 This slide features information about
5 accessing remotely the hearing in California. And
6 this information is also available both on the AIA
7 microsite and the PPAC microsite on the hearing
8 agenda for February 23rd.

9 The last thing I'll cover is the
10 protocol that PPAC has unanimously agreed to
11 follow in conducting the hearings. The PPAC
12 chairperson will lead the hearing, but any member
13 of PPAC may participate in the hearing. PPAC
14 members should be in listening mode, meaning that
15 you are collecting information from the public.
16 PPAC should not be responding to questions or
17 commentary unless the questions are of a
18 procedural type nature. But they shouldn't be
19 responding to witness testimony, nor is PPAC going
20 to solicit consensus from the audience or try to
21 get the audience to reach any form of a
22 recommendation to make to the agency about the

1 proposed fee structure.

2 PPAC then -- however, they can ask a
3 reasonable number and reasonable type of follow-up
4 questions to the witnesses who will be giving
5 testimony. Now, as I indicated earlier, after
6 PPAC concludes the hearing, you will prepare a
7 report for the agency once you've agreed to supply
8 to us by the middle of June. That date for the
9 PPAC delivery of the report coincides with a
10 period of time that the public will have to
11 comment on our proposed rulemaking that we will
12 publish in early June in the Federal Register.

13 So when the public sees your report,
14 they can give comment to the agency not only about
15 your report, but also about the proposed fee
16 structure that we will release in the Federal
17 Register in early June. So there will be two
18 bites at the apple for the public to give the
19 agency feedback.

20 MR. BORSON: Janet, just a clarifying
21 question. Here on this slide you indicate the
22 early July timeframe. Is that --

1 MS. GONGOLA: Oh, I'm sorry, early July.

2 MR. BORSON: Okay. Thank you.

3 MS. GONGOLA: I stand corrected. Other
4 questions about the basic logistics for the
5 hearings?

6 MR. MATEO: No, I think we're good.

7 MS. GONGOLA: Okay. Well, thank you
8 very much and I look forward to our dialogue with
9 the public tomorrow.

10 MR. MATEO: Thank you very much, Janet.
11 That concludes the agenda with respect to formal
12 presenters. What I did want to do is, at the
13 moment now, turn it over to the Committee to see
14 if there were any open topics, issues or things
15 you wanted to comment on before we start to wrap
16 up logistically, et cetera, for the day.

17 Okay. Well, that was easy. So I want
18 to -- on behalf of the PPAC, I want to extend --
19 or a great warm thanks to all of the presenters
20 for all of the work that went into providing these
21 presentations. It was our great pleasure to hear
22 from you. We look forward to working with you in

1 the future on each of these.

2 And with that, I will formally adjourn
3 this public session of the USPTO Patent Public
4 Advisory Committee. Thank you again.

5 (Whereupon, at 2:38 p.m., the
6 PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

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

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Notary Public, in and for the Commonwealth of
Virginia

My Commission Expires: July 31, 2015

Notary Public Number 258192

