

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE

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

(9:03 a.m.)

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3 MR. BORSON: I'd like to welcome you all  
4 to the public session of the Patent Public  
5 Advisory Committee Meeting. My name is Ben  
6 Borson. I'm the temporary chair in lieu of Damon  
7 Matteo, who was unable to join us today.

8 We have a relatively full agenda. So,  
9 I'd like to remind everybody to try to keep track  
10 of our time and I will help you with that and  
11 we'll move ahead smartly and have a very good  
12 session.

13 The Patent Public Advisory Committee is  
14 made up of nine representatives from various  
15 industries in the innovation sector and all of us  
16 have taken an oath to represent the wider  
17 innovation community and not our own individual  
18 interests, our own individual clients or  
19 institutions.

20 So, with that said, I'd like to go  
21 around the table and have everyone introduce  
22 themselves. Please.

1 MS. FOCARINO: Good morning, Peggy  
2 Focarino, commissioner for patents.

3 MR. FAILE: Good morning, Andy Faile,  
4 Deputy Commissioner for Patent Operations.

5 MS. LEE: Michelle Lee, PPAC.

6 MR. MILLER: Steve Miller, PPAC.

7 MS. MCDEVITT: Valerie McDevitt, PPAC.

8 MS. FAINT: Catherine Faint, PPAC.

9 MR. HIRSHFELD: Drew Hirshfeld, Deputy  
10 Commissioner for Patent Examination Policy.

11 MR. MURPHY: Frank Murphy, Deputy Chief  
12 Financial Officer.

13 MR. BUDENS: Robert Budens, PPAC.

14 MS. KEPPLINGER: Esther Kepplinger,  
15 PPAC.

16 MR. SOBON: Wayne Sobon, PPAC.

17 MR. FOREMAN: Louis Foreman, PPAC.

18 MR. BORSON: Okay, thank you. First  
19 item on our agenda is a report from Dave Kappos,  
20 the Director of the PTO, and he is not here at the  
21 time. So, perhaps, we could rearrange the agenda  
22 and have some opening comments from Peggy

1 Focarino.

2 MS. FOCARINO: Okay, sure. Good  
3 morning, everyone. It's a pleasure to be here  
4 today with you and give you a very high level of  
5 what's going on in the patents organization before  
6 we get into the more detailed agenda items.

7 But the first thing I wanted to make you  
8 aware of is since we met last February, that the  
9 patents organization has undergone realignment and  
10 one of the challenges that I saw as Commissioner  
11 for Patents was providing my senior leadership  
12 team with the correct tools and they needed  
13 flexibility to manage a growing workforce and a  
14 more virtual workforce. So, as we move forward  
15 also with implementing the AIA and also our  
16 strategic plan, we continue to have heavily invest  
17 in organizational growth. So, to me, those  
18 challenges, we realigned our senior leadership  
19 team in the Office of the Commissioner for  
20 Patents.

21 Specifically, we have three new Deputy  
22 Commissioner positions that have been created to

1       this effort and they consist of the Deputy  
2       Commissioner for Patent Operations, which is Andy  
3       Faile, Deputy Commissioner for Patent Examination  
4       Policy, Drew Hirshfeld, and Deputy Commissioner  
5       for Patent Administration, Bruce Kisliuk. And I'm  
6       just thrilled to have these three individuals who  
7       are extremely talented and have a great skill set  
8       and I think it's a tremendously strong team and  
9       certainly we'll be able to take on all the  
10      challenges that we're currently facing and the  
11      things that we need to put in place.

12                So, shifting gears a bit, we have the  
13      AIA that we are currently implementing. We  
14      implemented seven provisions within the timeframes  
15      prescribed and we have 13 additional provisions to  
16      go as well as two programs, but we remain on track  
17      to meet these statutory effective dates and  
18      deadlines as set forth in the AIA.

19                We've successfully implemented  
20      prioritized examination or track one that allows  
21      applications to be processed and completed within  
22      12 months and since the program began, we have

1 received almost 4,000 applications and that has  
2 generated 450 allowances and more than 160 issued  
3 patents. So, definitely a good option for those  
4 who want a quick disposition of their  
5 applications.

6 In addition to AIA, we've also been  
7 focusing on reducing our backlog. As you well  
8 know, our backlog currently stands at just over  
9 637,000 applications. Our first action pendency  
10 is at 22.6 months. Total pendency is 33.8 months  
11 and you'll get a lot more detail on this from Andy  
12 Faile in his report out on operations.

13 Other things that we would like to  
14 discuss with you this morning are updates on the  
15 budget from our CFO. You'll also get a  
16 legislative update from Dana Colarulli. Janet  
17 Gongola will be joining us for updates, what's  
18 happening in the AIA, what's the latest. You will  
19 hear a bit about our reengineering efforts in the  
20 patent side of the house. Also, from OCIO, an  
21 update on IT infrastructure. We would like to  
22 talk a little bit about the international

1 initiatives that are currently going on and Bruce  
2 Kisliuk will give you an update on that. And then  
3 Chief Judge James Smith will be joining us to talk  
4 about the current state of operations at the Board  
5 of Patent Appeals and interferences. So, we look  
6 forward to your thoughts. We welcome your  
7 comments and questions as we move through the  
8 healthy agenda that we have here today.

9 So, now, I'd like to take a moment to  
10 highlight just a few of our priorities in patents  
11 for the remainder of Fiscal Year 2012. We're  
12 working really hard on our hiring goal. We have a  
13 goal of 1,500 examiners in FY12. We already have  
14 800 onboard, we have another few hundred that have  
15 accepted offers for almost 1,100 both onboard and  
16 accepted, and we're really confident that we'll  
17 meet our goal of 1,500 hires. So, really good  
18 news on that front.

19 We'll continue to work on implementing  
20 the AIA. We have a cooperative patent  
21 classification effort that started and we'll be  
22 working on that for the next few years and we'd

1 like to hear more about these efforts. We will  
2 hear more from Bruce later today on that, later  
3 this morning.

4           Continuing to make communication and  
5 collaboration with our applicants and stakeholders  
6 one of our top priorities and hopefully you  
7 continue to experience that. We need to be  
8 diligent and creative in looking for ways to  
9 effectively manage our employees, particularly as  
10 we transition to more remote locations and we have  
11 an increasing virtual workforce.

12           I think most of you know we'll be having  
13 our first satellite office in Detroit open in  
14 July. July 16 is to be specific. And so, it's  
15 critical that we focus on being effective managers  
16 in a virtual work environment. We will also be  
17 working to develop more RCE initiatives.

18           Currently, we have two that are in place, two  
19 pilot programs, and we are continuing to focus on  
20 that effort in particular.

21           The "Best Places to Work" is one thing  
22 that I'd like to talk about just as something that

1 we're focused on as far as organizational  
2 excellence. Every year, the Partnership for  
3 Public Service comes out with the rankings of  
4 "Best Places to Work" in the federal government.  
5 In 2007, we were ranked 172nd out of about 260  
6 federal agencies, and last year in 2011, we were  
7 ranked 19th. So, I think that really speaks to  
8 some of the progress that you see that we are  
9 making.

10 Our attrition rate is very low and my  
11 goal as commissioner is to make us the best place  
12 to work in the federal government, to continue to  
13 focus as a management team on process improvement,  
14 workforce improvement, and continuing to give our  
15 examiners the best tool and also a rewarding  
16 environment. And that will help us and it will  
17 help our stakeholders as we continue to retain top  
18 talent in our examiners, gain more experience, and  
19 are able to perform high- quality examination for  
20 our stakeholders.

21 So, with that, I am going to turn the  
22 discussion over to the Deputy CFO, Frank Murphy.

1                   MR. BORSON:  Actually, if we could have  
2                   Director Kappos make a few remarks before we get  
3                   into your discussion, Frank.

4                   MR. KAPPOS:  Sure.  Thanks, Ben.  
5                   Thanks, Peggy.  I'm sorry to interrupt, Frank.  
6                   We'll turn over to you our critical financial  
7                   issues in just a minute.

8                   Peggy's done an excellent job of  
9                   summarizing sort of in a very quick nutshell what  
10                  we've got going on.  Thanks, Peggy, and I think I  
11                  truly couldn't say it better that we've got a lot  
12                  of balls in the air from implementing this  
13                  ambitious legislation to just getting the backlog  
14                  and quality where you all need them to be, where  
15                  our country needs them to be.  And you can tell  
16                  we're running those plays, we've gotten tremendous  
17                  value from the PPAC, from this team in terms of  
18                  guidance, in terms of input, ideas, and you see  
19                  those reflected in the initiatives that we're  
20                  putting together.  So, I think of this group as of  
21                  board of directors in a sense and consider these  
22                  meetings to be incredibly important in having the

1 kind of interchange that enables you to guide us  
2 so we can go off and continue implementing things  
3 that are going to be valuable to the USIP  
4 community.

5           So, rather than repeat anything that  
6 Peggy's already gone over, what I thought I would  
7 mention in just a few minutes is a couple of  
8 really big-picture themes that we all need to be  
9 thinking about. Before I get to that though, I  
10 will mention fees and the fee proposals that we're  
11 working on and we truly value the hard work that  
12 PPAC is doing and we know because we're right in  
13 the middle of the all the issues with trying to  
14 set fees appropriately how hard it is to get the  
15 right balance. Very much looking forward to input  
16 from the PPAC and we will be using it and  
17 following it in order to come to what we hope will  
18 be a fair, balanced, reasonable, productive Notice  
19 of Proposed Rulemaking as we enter the rulemaking  
20 process in the run-up to our first set of fees.  
21 So, thank you in advance for that and we're  
22 looking forward to your recommendations.

1           In terms of the bigger picture issues  
2       that I wanted to mention, one of them is the, I'll  
3       say it now, increasing, continuing, building  
4       anti-IP narrative and rhetoric that you hear  
5       playing out in otherwise responsible media, major  
6       U.S., and global news media. In Europe, it's even  
7       been described as an existential debate about the  
8       need for intellectual property protection per se.  
9       I mean, asking the question at its very core, and  
10      the way it plays out in the U.S. is the smartphone  
11      patent wars and isn't this all the fault of the  
12      patent system? And it's something that as a IP  
13      community and particularly the leaders of the  
14      community in this room and on the PPAC, I think we  
15      all need to be paying very careful attention in  
16      thinking through what parts of those criticisms  
17      are valid and what we need to do in order to build  
18      a better IP system in light of those criticisms.

19           And then also thinking about what parts  
20      of those criticisms are not valid and what we need  
21      to do as an IP community to correct, respond to  
22      those inappropriate criticisms, and what we need

1 to do to set a more balanced and positive  
2 framework in which non-lawyers, non-technical  
3 people, even non-business people, our country in  
4 general can think about intellectual property, not  
5 only importantly members of Congress, members of  
6 government in general, helping them to think about  
7 intellectual property in a balanced way and a  
8 complete way that, as I put it in recent testimony  
9 in Congress, number one, does not make the patent  
10 system the victim for the behaviors of those who  
11 might use patents in various ways, but, number  
12 two, also recognizes that these kinds of flare-ups  
13 of competitive marketplace issues happen from time  
14 to time. They've been happening for hundreds of  
15 years, and they're actually a part of the natural  
16 marketplace development when breakthrough  
17 innovation meets follow-on innovation and  
18 marketplace exploitation. Perfectly normal.

19 So, I think there's a bigger picture  
20 issue involving the role, place, and perceptions  
21 about intellectual property in general and patents  
22 in particular in the global ethos that we as

1 leaders in the IP community need to be thinking  
2 about and helping to get right, get fact-based,  
3 get on an appropriate footing.

4           The other thing that I'll mention also  
5 on a big picture level is the globalization  
6 opportunities presented on the back of the AIA for  
7 making some dramatic improvements in the IP  
8 landscape outside of the U.S. and between the U.S.  
9 And other countries. And so, in that regard, I  
10 just got back from an overseas trip that included  
11 visits in both Asia and Europe, and I think it's  
12 fair to say that the atmosphere relative to  
13 cooperation between patent systems and patent  
14 offices on laws and processes and information  
15 technology has never really been more positive,  
16 more fruitful, more fertile, whether it's the  
17 concept of global patent law harmonization,  
18 getting our patent systems to be more similar so  
19 that when people file patent applications, they  
20 can prosecute them inexpensively all around the  
21 world and get efficient protection. Whether it's  
22 that topic, which boils down to the subtopics like

1 the grace period and secret prior art and those  
2 kinds of issues or whether it is coordinating  
3 operations of our agencies better through vehicles  
4 like the PPH and through better procedural  
5 handling of patent applications. Tremendous  
6 traction on that, also.

7 Or whether it is lastly information  
8 technology infrastructure, and in that regard, we  
9 presented just over the last month a brand-new  
10 proposal that's known as Global Dossier that was  
11 created here at USPTO and then some work done to  
12 refine with the JPO, and I hope that you'll get a  
13 chance to take a look at that. The Global Dossier  
14 is the name of it and it's a vision for how  
15 information technology and new processes can  
16 enable patent applicants in the U.S., but also  
17 anywhere in the world, to make a single electronic  
18 filing and have then the patent offices just share  
19 everything they need to share, no filing of formal  
20 documents and copies of things and ribbon copies  
21 and affidavits and signatures and all of that  
22 stuff that you currently have to do to move

1 applications around the world. We'd eliminate all  
2 of that, everything on a single global IT  
3 infrastructure that enables applicants to just  
4 tick the appropriate boxes and have your  
5 applications and papers moved where they need to.

6           So, obviously, a lot that needs to be  
7 done to build that vision, but I, frankly, have  
8 been so pleased, just thrilled with the fast  
9 uptake that that concept has gotten. It went from  
10 initial presentation just over a month ago to  
11 being accepted by the IP Five, people from the  
12 industry, IP Five, who were in the room when we  
13 presented it in Europe last week from a number of  
14 the reputable U.S. IP associations, as well as  
15 Asian and European associations were just  
16 thrilled, picked it up quickly, and tasked us, the  
17 offices, and themselves with building this vision  
18 starting immediately in a very step-by-step  
19 methodical approach and some of the other patent  
20 offices have picked this up very, very quickly,  
21 too.

22           So, just the big picture there is we can

1 now on the back of AIA, we can think global, we  
2 can think efficiency, we can think cooperation, we  
3 can think harmonization in ways that we never  
4 could before for the first time now since we've  
5 got the AIA in place and we've got very willing  
6 partners overseas to engage on this. So, with the  
7 help of the PPAC and the leadership of this group  
8 as the brain trust that knows exactly what's  
9 needed in these regards and some good work that we  
10 can do here at USPTO and the cooperation we can  
11 get with the user community, there's literally  
12 nothing we can't do at this point to improve the  
13 way the system operates globally.

14 So, Ben, those were the comments I  
15 wanted to make, and with that, I'll turn the  
16 meeting back over to you.

17 MR. BORSON: Why thank you very much,  
18 David. It's very promising news. And I'd just  
19 like to offer the services of the committee in  
20 this Global Dossier Project. If there's anything  
21 you can identify that we can do to contribute to  
22 that effort, I don't know, I don't speak for other

1 members of the committee right now, but I think  
2 it's a fabulous idea and I really look forward to  
3 seeing it come to fruition.

4 MS. LEE: Ben, if I could.

5 MR. BORSON: Yes. Yes, Michelle.

6 MS. LEE: I have a question for Director  
7 Kappos. Thanks very much, Director Kappos, for  
8 your comments there, and I completely agree with  
9 you on the high-level big pictures. I wanted to  
10 focus back then on kind of the anti-IP rhetoric  
11 and see did you have specific things in mind where  
12 we could all -- I mean, I welcome that discussion  
13 and I think it'd be very good for the IP community  
14 as a whole, but if you had concrete ideas or if  
15 there are folks whom you think PPAC should work  
16 with on your team, we'd welcome hearing that and  
17 following up on that.

18 MR. KAPPOS: Well, yes, thanks,  
19 Michelle. It's significantly about  
20 communications, and, so, we certainly can have  
21 some cooperation going on with our communications  
22 function here, but it's also a lot about the role

1       that you all play as leaders and that the PPAC  
2       plays in the IP community.

3                So, for instance, I sent a letter in  
4       response to one of the articles that I thought was  
5       just flatly filled with garbage from the Wall  
6       Street Journal, and they fortunately printed at  
7       least part of that letter. But you guys can do  
8       the same thing, whether on behalf of the PPAC, as  
9       a group of the PPAC, or even as individual  
10      companies, when the major media just gets it  
11      wrong, somebody needs to say something. That's  
12      the most obvious thing.

13              The second thing though I think is that  
14      we need to be providing another context, we need  
15      to change the discussion, change the debate and do  
16      a much better job of pointing out all the  
17      positives about intellectual property and some of  
18      the associations, I think, are doing a good job of  
19      trying to move in this direction, but I think that  
20      the USPTO and in cooperation with the PPAC can  
21      play a much larger role in championing the  
22      positives about intellectual property on a

1 national, but also on a regional basis.

2           So, as an example, every state, every  
3 county in this country, there are patents and  
4 trademarks issuing every single week and there are  
5 people who are building businesses based on them  
6 who are huge fans of what happens here because  
7 they got a patent and they were able to hire  
8 people and make a product and go into production  
9 and build a business. Same thing on the trademark  
10 side. And so, this is where PPAC has reached into  
11 various communities across the country where  
12 there's, I think, there's tremendous cooperative  
13 opportunity to be telling those stories, not  
14 necessarily on a national basis, but on a  
15 regional, state, county, and local basis that  
16 sends a very different message.

17           So, the people in central California, as  
18 an example, should understand that it's the  
19 Sylmar, California, company that created the 8  
20 millionth patent that addresses macular  
21 degeneration that is enabling Americans who are  
22 blind to see. That's actually pretty important

1 and that company wouldn't exist if it weren't for  
2 the patent system. That's the kind of story that  
3 needs to be told.

4 And so, when people come out with this  
5 garbage about frankly, well, the smartphone patent  
6 wars are all the fault of the patent system, it's  
7 the response that balances that that says no, the  
8 cure for macular degeneration, that's what the  
9 patent system's about. That, I think, will do a  
10 lot to help rep-center the discussion and put it  
11 on a more even keel.

12 So, those are the kind of practical  
13 ideas that I have in mind. There's probably a lot  
14 more we could do in some discussions to, I think,  
15 step up to our responsibility to reframe this  
16 debate.

17 MR. BORSON: Very good. Any other  
18 comments or questions from the floor or from the  
19 committee members?

20 MR. MILLER: I have one. Director  
21 Kappos, your group has been very busy with the  
22 implementation of the AIA and very responsive, I

1 think, to public comments. We've seen that with  
2 the oath and declaration rules. You stated  
3 publicly in the past that the office would  
4 continue to do that and look for ways to improve  
5 the rules after they're implemented. Could you  
6 just comment briefly on your position on that?

7 MR. KAPPOS: Thanks, Steve. That, to  
8 me, is really, really important. So, oath and dec  
9 is a good example. We did our level best in the  
10 first iteration of that and I can remember and  
11 June and I worked together on that and other  
12 people, Bob Bahr and Andy and others, and came out  
13 with a set of rules that were a move in the right  
14 direction, but about one step on a road that  
15 needed to go about, I don't know, seven or eight  
16 steps, and it was through getting those comments  
17 and the input from the IP community that we were  
18 all able to go, and June can vouch for me on this,  
19 oh, my God, there's so much more we can do here.

20 So, it clearly works and I can't  
21 pre-disclose the final rules, right, but we  
22 certainly have taken onboard all of the great



1 stick by what I've said. We're going to go back  
2 into a comment period either immediately on  
3 September 16 or shortly thereafter and we'll have  
4 to figure out, but this is a good area where PPAC  
5 input could be good.

6 So, help us out with this. Do you think  
7 we should go into a comment period on each  
8 individual rule or do a general comment period on  
9 all the rules, wait three months or six months,  
10 whatever period of time to get a little bit of  
11 experience with post-grant opposition and those  
12 heavy post- grant procedures and then do a  
13 specific roundtable and input and revise and  
14 iterate the rules on those? So, there's some  
15 tactical decisions we need to make about how we do  
16 this, but I strongly believe we can make these  
17 rules better with some iteration, that we will  
18 learn over time there's no way we're going to get  
19 them all perfect, and, so, we have to accept this  
20 view and champion, in fact, revel in the  
21 continuous improvement kind of approach. It's  
22 worked so well to date that, I mean, I just

1       couldn't see doing it any other way.

2                   MR. SOBON:  On that point, Director  
3       Kappos, I think one of the issues I see and I  
4       think the patent community sees is AIA and with  
5       the new regulations and rules gives the patent  
6       office powerful new tools and they will need  
7       retuning as we move forward, but a lot of it gives  
8       a lot more powerful tools to the office in its  
9       discretion in terms of how it actually -- and you  
10      can only do so much with the rule versus what the  
11      office does with those rules and tools.  And I  
12      think there is a balancing act and effect on how  
13      the office uses those things to improve patent  
14      quality and ensure the right patents issue for  
15      innovators and but also that there is greater  
16      certainty for those who actually have patents and  
17      clarity of their ownership to create a more stable  
18      ownership environment so that we don't have the  
19      kind of blowback you're seeing in commentary about  
20      the patent system and I wondered your thoughts on  
21      how you see the office using those tools for those  
22      sometimes opposing, but aligned purposes for a

1 more just and appropriate patent system.

2 MR. KAPPOS: I certainly agree, Wayne.  
3 It's all about balance and it's about trying to  
4 come to approaches that will champion the world's  
5 strongest and most balanced IP system. Certainly  
6 in implementing these rules, I don't have in mind  
7 at all that we will do anything whatsoever to  
8 denigrate the strong USIP system.

9 I mean, the most recent example the  
10 intervention we made just the other day in that  
11 copyright infringement suit out in Midwest. This  
12 is the U.S. Government, Department of Justice, the  
13 USPTO saying we will defend a strong patent system  
14 and we're doing that every way we can. And so, I  
15 think of the AIA and the way we implement the  
16 rules as finding that balance point that creates  
17 the strongest system by doing the best job of  
18 engendering clarity, speed, precision, right,  
19 which enables businesses to do businesses. So,  
20 when I think of balance, that's the kind of  
21 balance that we're trying to achieve.

22 So, to take an example, in this

1 fee-setting area, there is one school of thought  
2 for the post-grant fees. It's set them extremely  
3 low so that the system can be used as much as  
4 possible. So, there's some validity to that. And  
5 then there's another school of thought that says  
6 set them as high as possible because you don't  
7 want to create a cottage industry of people just  
8 opposing every interesting patented issues and  
9 gumming the system up. And so, that's a classic  
10 example and then both points of view have some  
11 validity to them.

12 So, you got to find what the right sweet  
13 spot is in between and the way I think about that  
14 is, obviously, we've taken a lot of input and you  
15 guys and PPAC will see new approaches and you'll  
16 give us guidance that will help us get to the  
17 right level, but in that area, in my view, the  
18 real action is in doing those post-grant processes  
19 fast and precise with high accuracy and putting  
20 all the resources into them with our ALJs and our  
21 board that we need to because if we do that and  
22 you're a patentee who's got a great patent, you

1 get that patent then reconfirmed quickly and  
2 inexpensively. Now you've got a really, really  
3 solid asset and if you're a patentee that doesn't  
4 have such a great patent, you get to find out  
5 about it without having spent a lot of money in  
6 frustration over a period of time.

7 So, that's why I think you said it  
8 right, Wayne, our interests turn out to be all  
9 well-aligned, whether you're in the position of a  
10 manufacturer or a patentee. What you want is a  
11 system that produces decisions on rights quickly  
12 and accurately at reasonable costs. You're just  
13 balancing all three of those things off here.

14 MR. BORSON: Any further comments from  
15 the committee or from the floor? Just as a  
16 reminder, I'd like to invite those of us that are  
17 listening on the web that if you do have a  
18 question, you can transmit it to PPAC@uspto.gov  
19 and we will be able to address your question, maybe  
20 not in real-time, but certainly during the course  
21 of this meeting or afterwards.

22 Well, Dave, thank you very much. We

1 appreciate your thoughts and your time.

2 MR. KAPPOS: Move on to Frank.

3 MR. BORSON: Frank, please. Yes.

4 MR. MURPHY: And, Esther, I know that  
5 you also had some comments. Did you prefer to go  
6 first? I'll go first, okay.

7 I want to thank the PPAC for allowing me  
8 to come give an update on the budget. Taking a  
9 look through the 2012, 2013, 2014 outlook.  
10 Starting on that first slide, you'll see our  
11 fiscal conditions are currently stable. Our  
12 budget spending is in line with our plan. We  
13 spent about 46 percent of the budget by mid-year.  
14 We do anticipate an acceleration later in the  
15 year, particularly, as Peggy had alluded to, as  
16 we've already hired 800 examiners. We have  
17 another 300 that have accepted and we fully expect  
18 to hit the 1,500 mark for fiscal year 2012. So,  
19 we will have acceleration of our spending, and our  
20 operating reserve estimates are targeted to be in  
21 the vicinity of \$120 million at the end of the  
22 year. We've largely recovered from the start of

1 the year dip that was due to the large number of  
2 filings that came in in advance of the 15 percent  
3 fee surcharge. Currently, our revenue is about 7  
4 percent below our planning levels compared to  
5 where it was in the first quarter, where it was 18  
6 percent below. And we've collected about \$1.5  
7 billion so far through May, which is about 60  
8 percent of the planning that we've had for the  
9 year.

10 We are very closely monitoring those  
11 revenue streams. We know that the likelihood of  
12 meeting our initial Track-One filings, which we  
13 had built in at 10,000, is more likely to come in  
14 closer to 5,000, and we've adjusted the revenue  
15 streams accordingly. And we do anticipate a surge  
16 in revenue towards the end of the fiscal year with  
17 the planned implementation of the CPI fee  
18 adjustment, and that proposed rulemaking was  
19 published May 14, and the comment period closed  
20 yesterday. So, we plan to implement that on  
21 October 1.

22 For Fiscal Year 2013, our outlook is

1 good, assuming that our Section 10 fee rule is  
2 implemented in a timely manner. The fee proposals  
3 that we outlined in our February PPAC session have  
4 been improved based on the feedback from the PPAC  
5 members and the public. We heard you, especially  
6 in the area where you were concerned about the  
7 pace of growth of the operating reserve, and  
8 you'll see that the Notice of Proposed Rulemaking  
9 that will come out will have lower fees that will  
10 extend that time for growing that operating  
11 reserve.

12 The NPRM has been developed and vetted  
13 internally, and the draft was provided to PPAC at  
14 the end of May. For that next to last bullet, I  
15 have a good update: Where we say "very soon,"  
16 "very soon" is now past tense. It was sent  
17 internally this morning for comments and we're  
18 still assuming a March 13 implementation date for  
19 the updated fees, but when the proposed rulemaking  
20 comes out, we'll have the 60- day comment period,  
21 so, obviously, the fees could further change,  
22 based upon the comments that you all have.

1           Looking at where we're at with the  
2           current environment, the initiatives that we have  
3           planned, we'll continue to move forward into the  
4           new fiscal year. We've already mentioned the  
5           1,500 patent examiners for fiscal year 2012. We  
6           have another 1,500 patent examiners that we plan  
7           to hire in Fiscal Year 2013. Our  
8           Patents-End-to-End and other information  
9           technology initiatives are continuing, and our  
10          current patents production levels are going to be  
11          maintained.

12                 We do have some caveats because in the  
13          world of budget and finance, there are always some  
14          unknowns. Obviously, we would have to change any  
15          of our forecasts depending upon what happens with  
16          our revenue trends, especially any transitional  
17          changes that may be impacted by the changes to the  
18          Section 10 rulemaking. There's the large unknown  
19          that could always happen if there's any changes  
20          that would be tied to the current or potentially  
21          new administration, and we do have the effects of  
22          the government-wide budgetary policies. We do



1 fact incorporate the final decisions on the form  
2 and structure of the updated fees, then the  
3 associated revenue levels that we have, and we  
4 anticipate that at next PPAC meeting we should be  
5 able to discuss our updated budget projections  
6 with you.

7 Are there any questions before we turn  
8 it -- yes, Steve?

9 MR. MILLER: I had one question on your  
10 slide number five, I believe, the outlook for  
11 2013. You said that patents will continue with  
12 their plans of hiring 3,000 new examiners over the  
13 next years, but the third bullet said current  
14 patents production performance levels will be  
15 maintained. I'm a little confused by that and  
16 that if we're hiring 3,000 new examiners,  
17 shouldn't production levels go up so that we're --  
18 but maybe I'm thinking about it wrong in terms of  
19 how the office looks at production levels. So,  
20 could you clarify that for me?

21 MR. MURPHY: Absolutely, Steve, and  
22 thank you. That's one that I certainly will

1 clarify. The intent there, that last bullet, the  
2 performance levels as projected based on those  
3 additional hires. So, we have, in fact, adjusted  
4 the pendency goals, the backlog goals based upon  
5 the additional hires who are coming in, and that  
6 last bullet could be clarified to say based on  
7 that projection, we're not changing that because  
8 we've already built into the model the additional  
9 hires coming onboard.

10 MR. BORSON: Okay, thank you. Esther,  
11 do you have anything further?

12 MS. KEPPLINGER: Yes, I just wanted to  
13 give the public an update of PPAC activities in  
14 the AIA Section 10 fee- setting arena, and to  
15 dovetail with what Frank indicated, as you know,  
16 the USPTO had put up proposed fees and in  
17 February, the PPAC held public hearings in both  
18 Washington, D.C., and Sunnyvale, and the public  
19 provided comments based on those proposed fees.  
20 The PPAC then reviewed what we heard from the  
21 fee-setting hearings. Actually, most of the PPAC  
22 attended those hearings, and we provided feedback

1 to the USPTO based on what we heard from the  
2 public and as you heard Frank say, the PTO has  
3 taken those comments into consideration, and, so,  
4 the NPRM that comes out will reflect some changes  
5 as a result of the initial proposals that were put  
6 out and the comments that they received from both  
7 the public and from the PPAC.

8 The NPRM, which will be the Notice of  
9 Proposed Rulemaking on the fees, is expected to  
10 come out. As you heard Frank say, it's currently  
11 being reviewed internally in the government. It's  
12 expected to come out in July, and the PPAC is  
13 currently working on the draft report, the report  
14 that we are obligated to provide to the public.  
15 We expect to make that report public immediately  
16 following the publication of the NPRM. So, the  
17 public then will have the advantage of the new  
18 proposed fee schedule along with the PPAC's  
19 considerations of the original fees and the  
20 newly-changed proposed fees when they're providing  
21 public comment back to the USPTO on that NPRM.  
22 So, the public can expect to see the PPAC report

1 in July immediately following the NPRM.

2 Anybody else have comments about that?

3 MR. BORSON: Thank you, Esther. Wayne,  
4 please?

5 MR. SOBON: Just to add, one thing that  
6 I think the office no doubt got comments from the  
7 public on the recent NPRM on the CPI adjustment.  
8 There is some very natural central confusion about  
9 how these various things relate between the 15  
10 percent surcharge, the anticipated CPI adjustment,  
11 and the separate Section 10 fee-setting process  
12 that we have had our public hearings about and  
13 provided preliminary input to the office. And I  
14 know Director Kappos in his blog commented a bit  
15 about that to clarify that, but I think I would  
16 just make a recommendation I don't think you can  
17 do enough to help explain to the public how these  
18 various things interrelate and how they are  
19 separate and that the Section 10 fee-setting  
20 authority and process is intended to completely  
21 replace and be separate from the current, if you  
22 will, interim surcharge and CPI adjustments for

1       this phase until you get full implementation of  
2       your fee-setting authority.

3               So, I would just recommend that you can  
4       use various different methods and we will do the  
5       same to the extent we can, but to help explain how  
6       those things relate. Because I think the natural  
7       assumption or view is that these things are just  
8       stacking and we're having fee increase upon fee  
9       increase upon fee increase. And so, I think to  
10      the extent that when you finally publish the NPRM  
11      and discuss that with the public, providing clear,  
12      easy way to see how that you are achieving the  
13      legislative goal of overall aggregate revenue to  
14      cover the expenses and how that relates to the  
15      current year's surcharge and CPI increase, I think  
16      that will be very helpful to the public to  
17      understand that because I think there is a natural  
18      confusion there.

19              MR. BORSON: Yes, I would add,  
20      dovetailing on that comment, that as the new fees  
21      do go into effect and the public has an  
22      opportunity to see them and work with them, we,

1 I'm sure, are going to be getting comments and  
2 feedback. And so, to take off on Dave's point  
3 about we may not have it right the first time, I'd  
4 like to invite the public and members of the  
5 committee and you, Frank, and everyone else on  
6 that side to keep an open mind about how things  
7 are going. I think finding the right balance here  
8 is always the challenge, especially given the fact  
9 that the fees are probably going to go up in ways  
10 that -- unprecedented, that is ways that have not  
11 happened before, and I think we should expect a  
12 lot of comments, some of which would be over the  
13 top and overstated, some of which may not be  
14 overstated, and we need to take them all  
15 seriously. So, I would expect that we would  
16 probably have a further opportunity to provide  
17 comments and maybe tweak and adjust those fees as  
18 time goes by.

19 Okay, any other comments from the  
20 committee or from the public? If not, then we can  
21 move ahead.

22 I would like to make one other

1 announcement. We've had an addition to our  
2 agenda. At 12:10, that's during the lunch hour,  
3 Terri Raines will come and present an update on  
4 the text to patent scheme. This is part of the IT  
5 infrastructure rebuild, and, so, I just wanted to  
6 let you all know that from 12:10 to 12:30, we will  
7 have that lunchtime demonstration.

8 So, that being the case, I'd like to  
9 move ahead then to the legislative update with  
10 Michelle Lee and Dana Colarulli.

11 MR. COLARULLI: Michelle, I don't know  
12 if you want to give any opening, but I'm happy to  
13 start, as well.

14 MS. LEE: Why you go ahead and get  
15 started?

16 MR. COLARULLI: Great. Well, Frank  
17 benefited me by the fact he was extremely  
18 efficient, but I think the legislative update can  
19 be fairly efficient, as well. So, thank you again  
20 for letting me provide this update.

21 I'll start with I have a few what I'll  
22 call pithy slides. Short, but full of meaning.

1 And then happy to answer any other questions that  
2 folks have.

3 The legislative team of PTO is very  
4 focused on a number of upcoming hearing  
5 opportunities. We've had a few to talk about  
6 where the AIA is. We have another coming up next  
7 week. So, I'll address that, but our narrative in  
8 those really is focused on many of the things the  
9 director has started this session off. Let's keep  
10 the public informed where we are in implementing  
11 AIA, but we should also make sure we're pointing  
12 to the opportunity that the AIA provided for  
13 really substantive international discussions.  
14 I'll mention that when we talk about hearings.

15 We've been continuing to update a lot of  
16 interested Hill staff on AIA, where we are in the  
17 details, and as you can imagine, a number of Hill  
18 staff have their own provisions that they're very  
19 interested in in knowing where we are and  
20 updating. That includes the provision on  
21 satellite offices. So, again, a lot of our time  
22 has been spent on fielding questions where we are

1 in that process and how soon we both open our  
2 Detroit office and how soon are we to announce the  
3 next few. So, not much to report there,  
4 unfortunately, but there's a lot of interest on  
5 the Hill and we're trying to facilitate that  
6 discussion.

7 So, a few slides here. First, on IP  
8 legislation, there continues to be discussion  
9 about whether there's an opportunity to move  
10 forward on some technical corrections to the AIA.  
11 Certainly, as we've gone through the  
12 implementation process, we've seen some things  
13 that we've spent more time with it, even more time  
14 with the text, and seen some things that we think  
15 could be clarified, updated.

16 I think in the public discussion, what  
17 I've seen, come across, not provisions that PTO  
18 has put on the table, but things that the public  
19 have been concerned about, that is how is the  
20 grace period going to be specifically read in the  
21 bill? Is it going to be read the way that it was  
22 intended to work in the new AIA scheme?

1           Some discussion, in fact, there was a  
2 hearing earlier this year, as well, in a report  
3 that this office authored on prior user rights,  
4 did the legislation hit the right balance or is  
5 there more that it should have done? And then,  
6 frankly, the discussion about when is it  
7 appropriate to make those changes? So, that's  
8 another conversation that I hear going on in the  
9 Hill. There is some debate over whether it's a  
10 technical or not, the estoppel provision for  
11 appeals and post-grant opposition proceedings here  
12 at the PTO. So, that's certainly one of the  
13 things that are on the next.

14           I will say that staff now can engage the  
15 PTO, as well, to ask us if there are other things  
16 that we think should be clarified. Certainly, the  
17 first on our list was some of the effective dates,  
18 that as time goes by, may become moot, depending  
19 on when legislation is introduced. This is a  
20 number of provisions in the bill that fell to the  
21 umbrella effective date on one year of enactment  
22 that's very quickly coming to September 16, and

1 that date, those might be moot.

2 There are other changes. Inconsistent  
3 uses of patent ability versus validity in some of  
4 the language. So, we've tried to go through with  
5 a further fine-toothed comb and, as I said, I  
6 think the engagement with the public; the  
7 rules-making process has helped us in that process  
8 and tried to identify some additional things  
9 there.

10 I will say one of the things that we  
11 also identified early on was a goal of the  
12 legislation was to coordinate the new proceedings  
13 with the PTO with litigation, and there were a few  
14 that we're calling dead zones, which we believe  
15 were unintentional places where, for example, a  
16 pre-AIA patent was filed, but was unable to file a  
17 post-grant opposition and unable to file an inter  
18 partes reexamination. It certainly wasn't the  
19 intent of the legislation. Certainly, legislation  
20 there to address those types of situations may be  
21 appropriate and I know the Senate staff have been  
22 thinking about that.

1           Needless to say, that discussion is very  
2 fluid and I can't tell you that I'm certain on  
3 whether there will be an opportunity to move  
4 forward, but I can tell you the Hill is engaging  
5 the PTO and as they're looking at proposals and  
6 asking for our technical assistance, and we're  
7 happy to provide it.

8           Two other things I'll mention. The  
9 second item here, which is our appropriations and  
10 as Frank, I think, alluded to, the FY13 looks good  
11 for us both appropriators at the level of fee  
12 collections that we had requested, adjusted by the  
13 Congressional Budget Office, but that all looks  
14 good, also includes language that was discussed  
15 during the enactment of the AIA to ensure that we  
16 can access fees. So, from our perspective, the  
17 appropriations process is moving along well and  
18 the outlook is good for the office.

19           The last thing I'll mention which is  
20 something that my office has been engaging the  
21 Hill on, is moving forward on two pieces of  
22 implementation legislation for international

1 treaties that have been fairly static for a number  
2 of years. In 2007 and in 2010, the administration  
3 sent up to the Hill two proposals, one to  
4 implement the Patent Law Treat, the PLT, a second  
5 piece of implementing legislation to implement the  
6 Hague Treaty on Designs, the Geneva Act of the  
7 Hague. Both good treaties for us to be a member  
8 of, provide real and tangible benefits to U.S.  
9 Filers. Certainly also moves us further in the  
10 direction of harmonization with the rest of the  
11 world and in particular I think there's a really  
12 good argument to say on the design side we should  
13 be actively thinking about harmonizing our system  
14 with the rest of the world and are there other  
15 changes? And that could be an additional  
16 component of some of our discussions  
17 internationally. Our step, clearly, is to become  
18 a member of the International Treaty.

19 So, I think both of those -- I'll give  
20 you -- this is somewhat of a preview of I think  
21 the director's testimony next week will be again  
22 saying these are important things for the U.S. to

1       become a member of and really have tangible  
2       benefits.

3                   Congressional reports.  Then next report  
4       due, as required under the AIA, is a report on  
5       second dependent genetic diagnostic testing.  
6       We've drafted a report.  I'd like to say it's in  
7       the final stages right now of administration  
8       clearance.  We hope to make the deadline which is  
9       this weekend, actually; technically, Saturday the  
10      16th.  So, we're trying to work through those last  
11      remaining issues and we're hopeful that we'll make  
12      the deadline.  It's always challenging working  
13      with our colleagues around the government,  
14      especially on a large report.  So, we'll keep  
15      working diligently on that hopefully to make that  
16      deadline.

17                   And then there are a number of  
18      additional reports that have come up in our  
19      appropriations discussions.  I'll highlight two.

20                   One, the discussion about economic and  
21      national security.  This is one that our  
22      appropriations chairman has been very interested

1 in. There are a couple issues here. One, should  
2 the criteria for national security applications be  
3 updated? And he's asked us to facilitate a  
4 discussion about that. Two, whether there it  
5 makes sense to implement a similar structure for  
6 economic security, and that's an interesting  
7 dialogue. And, third, this chairman has been very  
8 concerned about 18-month publication.

9 So, we put out a Federal Register notice  
10 that the comment deadline ends June 29. We have  
11 gotten some comments in, although, I understand  
12 that we may get more as the deadline approaches.  
13 And, certainly, I encourage the public to take a  
14 look at that notice and send us their comments.

15 I'll mention a second that came up  
16 specifically in the draft language for the FY13  
17 appropriations language, and that's interest in  
18 trademark squatting. This is an issue that PTO  
19 has been very focused on internationally, in  
20 particular hosting trainings for U.S. companies in  
21 China, hosting a dialogue about how to address  
22 situations where a trademark owner is maybe pulled

1       into a situation where their mark is being  
2       infringed upon in a foreign country. So, I think  
3       we'll have a big story to say in our report to the  
4       appropriators on that one.

5               Congressional hearings. This is  
6       actually an incomplete slide. In fact, for the  
7       website, we may want to update this one. Recent  
8       and upcoming, and I mentioned some of these  
9       already. Prior user rights, defense. There was a  
10      House Judiciary Subcommittee hearing on that issue  
11      based on the report that PTO delivered to the Hill  
12      in February. There was then our annual testimony  
13      to our House appropriators on March 1. We had  
14      then an additional hearing in front of the full  
15      House Judiciary Committee on March 16 that the  
16      director testified at. That was an update on  
17      where we are on AIA, and frankly, it was the first  
18      time we were in front of that chairman since the  
19      bill had been enacted. So, we took the  
20      opportunity not to just update where we are in the  
21      process and talk about a few of the challenges,  
22      but frankly also talk about a lot of the other

1 things that this group talks about a lot. All of  
2 the other things not in the legislation to improve  
3 operations to get down the backlog and to hire the  
4 workforce that we need. We took that opportunity  
5 to have a broad testimony, so, I encourage you to  
6 take a look at that.

7 Upcoming hearings. Two on the horizon.  
8 That's next week in front of the Senate Judiciary  
9 Committee. Having a similar discussion with that  
10 committee that we had March 16 with the House,  
11 again, the first time we'd been in front of this  
12 chairman, Chairman Leahy and that committee since  
13 the enactment of the AIA. So, a discussion about  
14 where we are in implementing it.

15 You heard from the director this morning  
16 his focus on the international forums and talking  
17 about the AIA. We've seen tremendous interest  
18 from the international community on the impact of  
19 the AIA and where we are in implementing. We'll  
20 talk about not only where we are in front of the  
21 Senate Judiciary Committee, but the impact on the  
22 international discussion, restarting some of those

1 substantive harmonization discussions. We're  
2 going to take that opportunity to go a little  
3 further and talk about the activities that we've  
4 been engaged in really full force since the  
5 enactment of the bill not just implementing it,  
6 but also internationally. As I mentioned, we'll  
7 also discuss the role of the PLT in the Hague in  
8 that discussion. So, that should be a good  
9 opportunity, I think, for the office to talk about  
10 what we're doing.

11 A second opportunity, we've been invited  
12 to return back in front of the House to the  
13 International Property Subcommittee on the 27th,  
14 and this is the second in a series of hearings  
15 that the subcommittee is holding focused on IP  
16 issues, in particular focused on patent issues,  
17 trade secret issues, and market accessibility  
18 issues, some of which are teed off of the recent  
19 special 301 Report issued by USDR identifying  
20 where countries are in their IP protection. So,  
21 that will be an all government panel. The  
22 previous hearing was all industry and we'll be

1 participating in that hearing, as well.

2 Last slide for me, I wanted to touch on  
3 our outreach to stakeholders and Congress. This  
4 is something that a number of us from PTO today  
5 and in many other forums talk about -- in fact,  
6 you'll hear more from Janet Gongola when she gives  
7 a more detailed update on the AIA implementation,  
8 but certainly from the legislative side, reaching  
9 out to the Hill, actually not only responding to  
10 their questions, but proactively trying to pull  
11 our Hill staff into a discussion about why the  
12 work that we do here at PTO is so important, and,  
13 frankly, give them a better perspective of what a  
14 patent examiner does, what a trademark examiner  
15 does, and what our international experts are doing  
16 on a daily basis. They're frequently hit by  
17 questions about the impact of IP.

18 We have, and I pull the PPAC into that  
19 role, a responsibility and a duty to help  
20 facilitate those questions, put all of the media  
21 attention on IP in more context. We're taking  
22 that role seriously of certainly bringing staff in

1 for a congressional day in the life has been a key  
2 part of that. We're planning one of those here in  
3 the next few months as we looks towards August  
4 recess when Hill staff have more time to get off  
5 the Hill. It's sometimes challenging to get them  
6 to cross the river, but we've been able to do it  
7 and we'll continue to do that. Certainly, and I  
8 mentioned some of the issues already, that  
9 congressional staff have asked us to come up and  
10 brief on. We're also trying to as we find  
11 downtime really strengthen those relationships  
12 with our Judiciary Committee folks who have  
13 interest and others.

14 Janet will talk more about upcoming  
15 roadshows on AIA implementation, how we're going  
16 to go about once the first to file rules are  
17 published, facilitating that dialogue.

18 I'll mention one last thing because it's  
19 just an issue of interest. This week, Politico,  
20 which is a news publication, widely read by folks  
21 in D.C., published a survey about advocates that  
22 frequently walk the halls of Capitol Hill and

1       their Hill staff and the wide disconnect sometimes  
2       there is between communications. Again, that's  
3       something that I think my office is trying to take  
4       on as a challenge not just, again, responding, but  
5       educating folks about the importance of IP and all  
6       the things that we do. I recommend the article  
7       because it was a very interesting dynamic between  
8       potentially lobbyists and the technology they use  
9       and Hill staff and how that's changing and frankly  
10      providing some challenges to the work that folks  
11      outside the office, but certainly advocates here,  
12      my staff at the PTO also face. So, we'll continue  
13      to try to keep up, educate, respond, and to try to  
14      serve, communicate the way the rest of the agency  
15      is doing so effectively.

16               MR. BORSON: Well, thank you very much,  
17      Dana. I appreciate your comments, and just as a  
18      reminder to those on the Hill is that Washington  
19      crossed the Delaware in a small boat in the  
20      midwinter, and, so, it should be easier to take a  
21      train across the Potomac.

22               MR. COLARULLI: You would hope. Thank

1       you.

2                   MR. BORSON:  Anyway, very good.  Are  
3       there any quick comments?  We're right on time for  
4       our next presentation, and if there are no further  
5       comments for Dana, let's move ahead to the AIA  
6       implementation update.

7                   And Michelle and Janet, we're very good.  
8       Thank you very much.

9                   MS. GONGOLA:  Good morning, everyone.  
10       It is always a pleasure to be with PPAC and our  
11       stakeholder community to give you the opportunity  
12       to ask me questions and share about our AIA  
13       implementation efforts.

14                   So, I want to begin this morning by  
15       talking about the various rulemaking that we have  
16       ongoing.  Presently, we are working very hard to  
17       deliver final rules on both the patent-related  
18       provisions of supplemental examination, inventor's  
19       oath and declaration, pre-issuance submission, and  
20       citation of patent owner statements in a patent  
21       file.  We, likewise, are working hard to deliver  
22       our final administrative trial rules for inter

1 partes review, post-grant review, and covered  
2 business method review.

3 Now, if you look at the timelines that  
4 we've generated, in the green boxes, we reflect  
5 for you the status of our final rules. Those  
6 rules are currently in front office review and  
7 will very soon be leaving the agency to begin the  
8 interagency review process. So, we are projecting  
9 between these two steps that we will deliver final  
10 rules across these nine different provisions in  
11 late July or early August of this year.

12 Now, the final rules were created with  
13 the benefit of more than 350 public comments.  
14 One-third of those comments were directed to the  
15 patent-related provisions and two-thirds went to  
16 the board provisions, and as Director Kappos has  
17 indicated, we have made modifications from our  
18 proposed rules to our final rules based upon the  
19 feedback we received from the public. In fact, I  
20 think that you'll see with our inventor's oath  
21 declaration cited as an example by Director Kappos  
22 that the movement has been significant. Our

1 proposed rules will not look too much like our  
2 final rules because of the feedback we received  
3 from all of you.

4 Now, one comment I want to make on the  
5 proposed to the final has to do with fees. Across  
6 select packages, such as supplemental examination  
7 and the administrative trial rules, we received  
8 public feedback that the fees were too high. Now,  
9 we have to set fees for these particular  
10 provisions at this point in time under our Section  
11 41(d) fee-setting authority. That authority  
12 requires the agency to set fees to recover the  
13 costs of the service. This means the agency  
14 doesn't have a great amount of flexibility then in  
15 setting the fees. So, what you'll see from  
16 proposed to final is not likely to be great  
17 changes, however, when the agency exercises our  
18 Section 10 fee-setting authority, that's when we  
19 will have greater flexibility to modify the fee  
20 amounts. So, stay tuned for about five months  
21 from when our final rules come out for  
22 supplemental and the administrative trials to when

1 the Section 10 rules come out and you will see  
2 greater modifications, but I want to be sure you  
3 all understand how the fee process is working so  
4 there's no surprises in the final rules that come  
5 out towards the end of the summer.

6 Now, for all of these final rules, we  
7 will have them out for your review and  
8 understanding by August 16. You can count on that  
9 as the drop-dead date.

10 Now, as Dana mentioned earlier, we are  
11 intending to do a series of cross-country  
12 roadshows to teach you about our final rules and  
13 you are hearing it first today the locations of  
14 those roadshows. We'll be running from September  
15 10 through September 28 three straight weeks from  
16 east coast to west coast. During week one, we  
17 will be in Minneapolis, Alexandria, and Los  
18 Angeles. During week two, we will hit Denver and  
19 Detroit, and then the last week of the Month of  
20 September, we will be in Atlanta, Houston, and New  
21 York City. The intent for the first week, which  
22 is before the September 16 effective date, is to

1 webcast all three roadshows as well as record  
2 those roadshows and make them available on our  
3 website so that anyone in the public can access  
4 them, view what our teachings involve, before the  
5 final rules become effective. Now, we will be  
6 hosting these events at our Patent and Trademark  
7 Resource Centers and detailed agenda will be  
8 posted on our microsite tomorrow, breaking down  
9 for you exactly what we'll do at what points in  
10 time so you can join us throughout the day.

11 Now, next is our micro entity  
12 rulemaking. We are presently sitting in the  
13 public comment period. We released a Notice of  
14 Proposed Rulemaking on May 20. This rulemaking  
15 elaborates the process by which an applicant must  
16 claim micro entity status, how to pay fees as a  
17 micro entity, the process for notifying the office  
18 of loss of micro entity status, as well as the  
19 process for making an adjustment to a fee payment  
20 made in the wrong amount. We are hopeful that the  
21 public will comment on our proposals and comments  
22 must come in by July 30 of this year.

1           Oh, one last thing I should mention on  
2           the micro entity provision, the 75 percent  
3           discount that's associated with micro entity  
4           status will not become effective until the agency  
5           exercises its Section 10 fee-setting authority and  
6           new fees produced under that authority are put  
7           into place which won't happen until March of 2013.

8           Now, the first inventor to file  
9           rulemaking is likewise ongoing. In this process,  
10          we are sitting in the very first box preparing a  
11          Notice of Proposed Rulemaking, as well as a  
12          proposed guidance document. Those two documents  
13          are in front office clearance and we're projecting  
14          next Monday to begin the interagency clearance  
15          process. Our goal then is to release both  
16          documents to the public for a comment period in  
17          late July, early August. We are also going to be  
18          extending the comment period from our ordinary 60  
19          days for the first inventor to file documents a  
20          little bit longer until the beginning of October  
21          to allow for us to talk about our proposed first  
22          inventor to file rules and guidance at the fall

1 roadshows.

2           Additionally, as Dana indicated, we plan  
3 to have a roundtable during August, probably the  
4 first week in August sometime. The date's a  
5 little inflexed depending upon the length of time  
6 we spend in the interagency clearance process, but  
7 we intend to focus this roundtable exclusively on  
8 the first inventor to file provisions so that we  
9 give the public the maximum opportunity to provide  
10 feedback to us for this rulemaking.

11           Okay, then the last rulemaking which I'm  
12 not going to cover because I believe it was  
13 addressed pretty fully in Frank and Esther's  
14 presentations is our fee-setting process. The  
15 reminder here is that our new proposed fees  
16 likewise will be released in July, early August  
17 timeframe, opening 60-day public comment periods.

18           Now, I want to take this opportunity as  
19 we close on talking about the rulemakings to thank  
20 PPAC for their extensive involvement. You have  
21 been tremendous in giving us support through the  
22 process, guidance, feedback. We have delivered to

1       you enumerable documents for you to comment on and  
2       you have timely reviewed everything and we are  
3       very grateful to you for that input. The same  
4       goes to our stakeholder community for the input  
5       they've given us on our proposed rules and we hope  
6       that continues as we go forward.

7               As Director Kappos indicated, we are  
8       going to be engaging an iterative rulemaking  
9       process. So, when we put out our final rules  
10       before August 16, our proposed rules on fee-  
11       setting first, first inventor to file, micro  
12       entity, we won't get it right the first time on  
13       every finite aspect, so, we do expect to engage in  
14       a subsequently rulemaking process down the line so  
15       we want the dialogue to continue with PPAC and  
16       with the stakeholder community so we can make the  
17       necessary tweaks to our proposals and final rules  
18       to get them into top form.

19               Now, we'll move from our rulemakings --

20               MR. BORSON: Esther, you had a quick  
21       question.

22               MS. GONGOLA: Oh, I'm sorry.

1                   MS. KEPPLINGER: It's not a question; I  
2                   just wanted to say one thing about the  
3                   fee-setting. Just for clarification for the  
4                   public, the PPAC works in subcommittees. So, we  
5                   have subcommittees on many of the topics, and on  
6                   the fee-setting for the AIA Section 10  
7                   fee-setting, we do have a subcommittee. And so,  
8                   all of the discussions and the documents that the  
9                   USPTO gave to us, it come to the subcommittee of  
10                  the PPAC, not the full committee of the PPAC, and  
11                  that subcommittee is Damon Matteo, Ben Borson,  
12                  Wayne Sobon, and me. So, I just wanted to clarify  
13                  that.

14                  MS. GONGOLA: Any other comments at this  
15                  point? Okay, so, I will move from our rulemaking  
16                  process into the various studies. This slide  
17                  lists for you the three studies that the agency is  
18                  required to complete within the first year from  
19                  enactment. Two of the studies are complete; the  
20                  international patent protection and the prior user  
21                  rights study, and as Dana indicated, we are  
22                  ongoing right now with the genetic testing study.

1       Because he covered the status of that study in  
2       detail, I won't go into it any further. So, just  
3       be watching for our report on that study to come  
4       out very, very soon.

5               Okay, now, the last area is the  
6       programs. This slide lists for you the four  
7       programs that the act requires the agency to have  
8       running within a period of time, one year,  
9       sometime thereafter up until 2014. We have  
10       completed two of those programs, the pro bono and  
11       diversity of applicant. We are working right now  
12       to get the Patent Ombudsman Program finalized, and  
13       likewise on the satellite offices, which I'll talk  
14       a little more in detail.

15               I want to mention the Pro Bono Program  
16       was running on September 16, the effective date,  
17       as it was required to be. Our first Pro Bono  
18       Program was in Minneapolis, Minnesota. We have  
19       since expanded that program to include Denver, and  
20       this summer, we will be working with a taskforce  
21       to create clearinghouse where pro bono potential  
22       candidates can provide their patent ideas and

1 their patent application drafts for clearing and  
2 sort of a screening process to identify what  
3 applications should be connected with an attorney  
4 to help that pro se pursue a patent filing and  
5 then prosecution before the office. Now, the  
6 goal, also, is by the end of the calendar year, we  
7 will have programs operational in additional  
8 locations; northern, southern California, Texas,  
9 Washington, D.C., Virginia, Maryland area, and  
10 then beyond this calendar year, there's plans for  
11 11 additional locations to be running by the end  
12 of 2014 calendar year.

13 Now, the Satellite Office Program, we're  
14 required to open three satellite offices in three  
15 years. We will be opening our first satellite  
16 offices, as you've heard, on July 13 in Detroit,  
17 Michigan, and in the summer, we will be releasing  
18 the locations of additional offices.

19 And then lastly, I thought you might be  
20 interested in the scope of our AIA-specific  
21 outreach. To date, we have given almost 200  
22 AIA-specific presentations across the country. On

1 the pie graph, you can see, as well as the table,  
2 the locations. It is our goal to reach all  
3 corners of the United States and eventually the  
4 globe with our AIA implementation activities,  
5 information about our proposed as well as our  
6 final rules. And then to do that, we've created  
7 our specific microsite.

8 The top graph shows for you from  
9 September 16 through the present, the utility of  
10 the microsite among the community. Basically,  
11 you'll see a rhythmic pattern across the weeks.  
12 Every Monday when we release new information, we  
13 see a spike in usage of the microsite. And then  
14 the table below lists for you the total number of  
15 usages. We've had almost 400,000 in separate  
16 accesses onto the microsite in the past 9+ months  
17 and then the table gives you a listing of the top  
18 10 pages that the public are accessing; 200,000  
19 usages are on the landing site and then from  
20 there, we roll down across patents, frequently  
21 asked questions, the legislative history page, and  
22 so forth.

1                   So, at this point, I'm pleased to  
2 receive any questions or other comments that you  
3 might have about our implementation activities.

4                   MR. BORSON: Thank you very much, Janet.  
5 Michelle? Esther?

6                   MS. LEE: One question for --

7                   MR. BORSON: Oh, please, go ahead.

8                   MS. LEE: Excuse me. One question for  
9 you, Janet, on the AIA microsite, the last slide  
10 there. Usage. Oh, that's the usage for the  
11 entire AIA issues, right, not the PTO website?

12                  MS. GONGOLA: No, that's just the  
13 specific AIA microsite.

14                  MS. LEE: Okay, got it.

15                  MS. GONGOLA: Four hundred thousand  
16 views.

17                  MS. LEE: Right, and then one other  
18 point just to reiterate is for the various  
19 provisions that are publishing their final rules,  
20 that's another opportunity for the public to  
21 provide comments for the revised rules, right?  
22 So, that's another opportunity?

1           MS. GONGOLA: So, once the final rules  
2           come out, sometime thereafter, we will be opening  
3           comment periods for the public to give us  
4           additional feedback on those final rules. But we  
5           have an e-mail address,  
6           aia\_implementation@uspto.gov. At any point in  
7           time, we are continuing to monitor that e-mail and  
8           receive public input.

9           MS. LEE: Thank you.

10          MR. BORSON: Wayne, please.

11          MR. SOBON: Yes, Janet. Obviously, the  
12          final rules, a lot of complicated material, and  
13          from what we've seen you do in the finished pieces  
14          of the new final rules at least sketch what has  
15          changed from the NPRMs to the final rule. I've  
16          had comments and requests and I think it'd be  
17          helpful if it's at all possible for the office,  
18          perhaps in separate materials, when you do publish  
19          the final rules to provide a redline version of  
20          the actual rule itself from what was in the NPRM  
21          to the final rule if you can to show what exactly  
22          was changed. And maybe a lot of red in some of

1       them, but to the extent that's possible, I think  
2       that'd be very helpful for the public to  
3       understand exactly what you did change from  
4       proposed to final.

5               MS. GONGOLA: Okay. No, that's a very  
6       good suggestion, and maybe what we could do is to  
7       provide a table indicating the high-level changes  
8       and then along with that perhaps a redline to the  
9       extent it's feasible, depending on the scope.

10              MR. SOBON: Yes.

11              MS. GONGOLA: Yes, thank you.

12              MR. BORSON: Any other comments from the  
13       committee? If not, thank you very much.

14              MS. GONGOLA: Thank you.

15              MR. BORSON: Thank you very much, Janet.  
16       I'd like to move ahead then onto our next topic  
17       and our last one before our break for lunch and  
18       this is on patent operations update from Andy  
19       Faile, Deputy Commissioner for Patent Operations.

20              So, Andy, please.

21              MR. FAILE: Thank you, Ben. Did you  
22       want to start or do you want me to go ahead?

1                   MR. BORSON: Oh, please go. Yes, go  
2 ahead.

3                   MR. FAILE: Okay, a lot is happening in  
4 patent operations. There are a number of slides  
5 and a good bit of data, so, it may be helpful to  
6 the extent possible if we can hold questions until  
7 the end and we'll circle back.

8                   The first slide you see in our packet is  
9 kind of our filing distribution, our UPR and RCE  
10 filings. In the purple, there are the serialized  
11 filings and at the bottom are the RCE filings in  
12 blue to kind of give you a sum total of the  
13 filings. We're tracking this historically. This  
14 particular slide goes from 2001 to present. The  
15 very last bar is kind of our actuals for 2012.  
16 The bar to the left of that is our projected where  
17 we'll be at the end of 2012.

18                   A couple of quick notes on this. We're  
19 projecting a 5.2 percent growth over 11. We're  
20 tracking about at that level. You can notice on  
21 the blue kind of the RCE filing behaviors. It's  
22 an interesting pattern. Over the last couple

1 years, the RCE filings have leveled off a bit.  
2 We're projecting a bit of an increase this year,  
3 but you see from 2010 and 2011 a little bit of a  
4 flattening off of those filings.

5 Our next slide is the unexamined patent  
6 application backlog. We see a pretty healthy  
7 trend line here from September of 2008 to present.  
8 We're basically coming down to the current level  
9 as of June 5 of 636,700 and some applications in  
10 the backlog shooting for our end of the year  
11 target of about 621. So, that trend line looks  
12 pretty promising there. You can see a number of  
13 dips and a little bit of increase. It largely  
14 corresponds to our end of the quarters and the  
15 different levels of work received at those  
16 particular points.

17 Part of the patent backlog reduction is  
18 due to our COPA effort, Clearing the Oldest Patent  
19 Applications, and here's a slide which you've seen  
20 before. Pretty busy. I'll go through a little  
21 bit of it. Kind of updating our progress on that.

22 We're looking at the oldest cases in the

1 office and you can see the combination of the kind  
2 of purple and blue bars centered on a particular  
3 day and the height of those bars corresponding to  
4 the applications on that particular month. What  
5 our COPA initiative does is we go through and we  
6 kind of rearrange these cases and get them to  
7 examiners based on the resources we have, doing  
8 some kind of preplanned shifts to very light  
9 technology areas using the resources that we have  
10 in those areas to work on those cases.

11 We've also put kind of an office goal  
12 that we want to get 260,000 of the oldest cases  
13 done in this fiscal year. Currently, we're  
14 tracking very well to that. As you see in the pie  
15 chart, we're at 191,610 cases towards that goal,  
16 leaving us about 68,400 cases to go. This looks  
17 pretty good, looks like we're on track to hit  
18 those by the end of the year. That effort shows  
19 up in the previous graph in that trend line of the  
20 backlog moving down.

21 The RCE backlog on the other hand is  
22 rising. It's currently at about 89,000, just

1 short of 90,000. As you can see, the trend line  
2 there was a bit of a dip in the last month or so  
3 and it's kind of leveled off to a certain extent,  
4 but still, the overall growth of the RCEs,  
5 tracking back from September 2009 to present is on  
6 the increase.

7 So, RCEs are a focus of interest for us  
8 and the next couple slides talk about a few  
9 different things that we're doing with the RCE  
10 issue. This is a very busy data slide. The  
11 purpose of this is to kind of give you a little  
12 bit of a background on one of the initiatives that  
13 anything had a genesis with a couple of our PPAC  
14 members, Wayne and Esther, and thanks again, you  
15 guys, for suggesting this along with a few other  
16 initiatives.

17 What we did with this is kind of took a  
18 look at the data of RCEs and the relationship  
19 between those and IDs. Basically, this tracks  
20 through the fiscal year on the year column all the  
21 way to the left with the total number of RCEs  
22 filed in that particular year. Then if you move

1 over three columns, you'll see that there's a  
2 column titled "IDSs Filed with RCE." It's about  
3 14,419. And of those, when we did the RCE, we  
4 sent a non-final out on only a small portion of  
5 those, about 7.8 percent or about 1,100 or so.  
6 So, we looked at that and it seemed to us that  
7 most of the RCEs filed after allowance, the art  
8 would turn up in an IDS and we'd turn around  
9 re-allowing the case. We thought this would be a  
10 good instance that we could look at that  
11 particular population, come up with a program that  
12 would allow us to stay in the issue stream without  
13 having the applicant to file an RCE. Just a  
14 little bit of the data that we were looking at  
15 behind that particular issue.

16 That turned into what we called our  
17 Quick Path IDS Pilot. We mentioned this last time  
18 that we were looking at this particular pilot. We  
19 got together with Robert and his folks in POPA,  
20 worked on a pilot. It's a little bit less than a  
21 month old now. It's just started. We've got  
22 probably about 100 or so different submissions so

1 far on that program that's just starting. The  
2 feedback, we're generally getting kind of  
3 anecdotal feedback on the frontend is that people  
4 do seem to like it. This is a place where they  
5 can stay in the issue stream without having to file  
6 that RCE, reduces our RCE filings, as well. Some  
7 more data to come on this.

8 The second thing we looked at in  
9 reducing a need for filing RCEs is our After Final  
10 Consideration Pilot, and in this pilot, we're kind  
11 of looking at the window after final to see if we  
12 can get some of these cases into the allowance  
13 stream without the necessity of filing an RCE.  
14 We're kind of looking at amendments that are very  
15 close to allowance.

16 So, in this particular program, again,  
17 in working with Robert and the POPA folks, we put  
18 a little bit of other time for the examiners at  
19 this particular pressure point here so they would  
20 have some compensation to look at cases that were  
21 close to allowance in hopes of getting those into  
22 the issue stream. We ran this for a good bit of

1 last quarter and we just agreed on an extension  
2 with POPA to run this for another quarter to get  
3 some extra data on this to kind of see how this  
4 was working out.

5 The very, very early indications, it  
6 looks as if we're getting about a 4 percent bump  
7 in cases that are converted to allowance to having  
8 to go through the RCE route. So, it looks like  
9 some promise here and another program that we're  
10 testing to see if we can open up that aperture a  
11 little bit after final and get cases allowed.

12 Kind of a third component is a very new  
13 idea, the RCE Outreach Proposal, and this is kind  
14 of taking a holistic look at the RCE issue in  
15 general and kind of getting at a root cause  
16 analysis of why RCEs are filed. We think there  
17 would be a pretty big input for us to understand  
18 from the outside's perspective filing behavior and  
19 RCEs and kind of marry that with the data that we  
20 have internally of what we're seeing in RCE  
21 filings. The outcome of this, we hope to gather  
22 data through focus sessions in partnering with the

1 outside, PPAC helping us in this effort, getting  
2 that data, bringing it in, analyzing it, analyzing  
3 it with our data, and looking for things such as  
4 best practice documents in ways RCEs can be  
5 avoided, things that already exist out there today  
6 that we can just highlight. Also, looking at  
7 tweaks to our examining prosecution pipeline that  
8 we find where cases are getting stuck that we can  
9 make some improvements there.

10           And then third, to construct programs  
11 similar to the Quick path IDS and the After Final  
12 Program targeted at different parts of RCE that  
13 the data lends itself to as we look at different  
14 parts of this prosecution pipeline that we could  
15 put programs into place to avoid those RCEs. This  
16 is kind of a generalized data-gathering effort.  
17 We'll analyze those results and we'll turn those  
18 into one of those three outcomes.

19           Okay, here's our graph on first action  
20 pendency and total pendency, tracking from FY09  
21 through FY12. As you can see, on total pendency  
22 on the first line, we're just a little bit under

1 our target average pendency of 34.7 months and  
2 we're right on target on our first action pendency  
3 in kind of the green arrows as we track through  
4 there. It looks like we're in pretty good shape  
5 for both of those traditional measures at the end  
6 of the fiscal year.

7 This is our forward-looking pendency, a  
8 different way to look at things, and this is  
  
9 basically for cases filed on the date in the  
10 bottom, this is the months that it would take to  
11 get a first action based on the firepower we have  
12 now, our anticipated firepower in the future, and  
13 current and future projected workloads. It's kind  
14 of a forward look at pendency.

15 This chart shows our first action  
16 pendency and total pendency and these are  
17 projections running from FY10 to FY16. As you can  
18 see, we project a trend line down on both of these  
19 based on our patent model, and our big goal of 10  
20 months first action by 2015 and 20 months first  
21 action by 2016 is shown kind of as the triangle at  
22 the very bottom. We're looking at just about 10

1 months, maybe a little bit under, and then at the  
2 top, our first action pendency, the traditional  
3 measure hitting our 20-month mark in FY16.

4 This slide shows our 12-month rolling  
5 average of actions per disposal. The 12 months  
6 average kind of smooths out the graph. The next  
7 graph I'll show you, kind of the month-to-month  
8 and see some of the different activity there.  
9 We're tracking here at about 2.5 actions per  
10 disposal and this is a traditional measure we've  
11 used for some time.

12 As we looked more at this measure, we've  
13 come up with a new slide and I'll spend a little  
14 time on this to go through kind of a new way we're  
15 looking at the actions per disposal type of issue.  
16 And the green line you see there, that's our  
17 actions per disposals, some which were last graph,  
18 but it's not a rolling average, it's a monthly  
19 snapshot, therefore, you see all the different  
20 movement per month. We're looking at two  
21 different new measures now which we may think will  
22 give us some insight as far as efficiencies. One

1 is rejections and terminal disposal by month.  
2 That's the blue trend line you see there and  
3 that's basically looking at what rejections we put  
4 out divided by the terminal disposals in a month.  
5 The terminal disposals are allowances are  
6 allowances and abandonments, and that would be the  
7 final abandonment of the case. So, when the case  
8 is finally allowed or finally abandoned, we'd have  
9 a data point, we look at the rejections to that  
10 point and we plot that particular trend line. So,  
11 that's going to give us an interesting different  
12 way of looking at the actions per disposal type of  
13 issue.

14 On the bottom, we're looking at the  
15 miscellaneous actions. So, you have rejections in  
16 cases and you have miscellaneous actions and we're  
17 tracking that in a similar fashion on the red line  
18 to see what type of miscellaneous actions we have  
19 in a particular case once it has reached terminal  
20 disposal. So, a couple of different cuts looking  
21 at kind of the actions per disposal on a higher  
22 level.

1                   This graph shows our 12-month rolling  
2                   average allowance rate. As you can see, the trend  
3                   line continues to creep up. We're currently just  
4                   a little bit over 50 percent as of the beginning  
5                   of the month.

6                   Looking at some attrition data, this is  
7                   our 12-month rolling average of our attritions  
8                   less transfers and retirees. The graph takes on a  
9                   little bit of a different axis in the circled area  
10                  where we're kind of jumping from year to month by  
11                  month, give you a little bit more of a granular  
12                  look at the last several months, and we're  
13                  basically holding pretty steady at a little bit  
14                  over 3 percent, 3.31 percent as of May of this  
15                  year.

16                  A number of the presenters today have  
17                  mentioned our hiring effort. This gives you a  
18                  little bit more of a look at our progress towards  
19                  our 1,500 hires for this year. This has been a  
20                  very interesting effort and a very good effort  
21                  partnering with our OHR folks and our patent folks  
22                  in hiring. We began the year off a little slow

1 and there was concern that we needed to kind of  
2 get the hiring machine ramped up. So, we did a  
3 number of internal tweaks between our OHR  
4 department and patents in trying to get a more  
5 streamlined process and get a healthy applicant  
6 pool for which to meet our 1,500 hiring goal.

7 At the very bottom there kind of gives  
8 you the summary of the number of examiners onboard  
9 currently, 802 new examiners onboard. Accepted  
10 offers out there are 253, which puts us a little  
11 bit over 1,000 examiners accepted or onboard in  
12 the office and we have a pipeline so far of about  
13 195 offers pending. So, we're constantly  
14 monitoring our offers pending pipeline. To the  
15 extent we get low there, we look at recruiting  
16 efforts, outreach efforts to try to bring more  
17 examiners in.

18 We're still looking for double Es,  
19 computer engineers, given the backlog and the  
20 growth, that's our greatest area of need now. So,  
21 we're trying to target those, as well. Those are  
22 largely in the TCs 21, 24, 26, and 28, although,

1 we certainly do need double Es in other technology  
2 centers. For example, the medical device area of  
3 3,700.

4 This chart also gives you kind of a  
5 breakdown on a per TC level of the pending offers,  
6 the accepted offers, and the onboard hires. Gives  
7 you kind of a sense where those hires have been  
8 placed so far. And those look like we're on track  
9 for our 1,500 end of the year target.

10 Shifting over to quality, there was a  
11 great effort between the office and PPAC some time  
12 ago to come up with a different look at quality  
13 and not just looking at the final allowances and  
14 the in process review. And this pie chart kind of  
15 gives a good graphical illustration of that, but  
16 we're basically looking at quality in kind of a  
17 composite or a matrix.

18 There are seven different components to  
19 it. It includes sampling of cases in our  
20 traditional error rate or our compliance rate  
21 measures and marries that kind of with some  
22 perception data from both internal and external

1 surveys. Again, a great collaboration with the  
2 PPAC on this. You can see the different parts of  
3 the pie there. Each one has different weights.  
4 We crank that through a matrix. I have a slide to  
5 show on that, as well. And this gives us kind of  
6 a quality indicator. It's kind of a health  
7 indicator of the quality that we have at any given  
8 moment or any given measurement time.

9           And what we're actually doing here is  
10 we're looking at the end of our strategic plan in  
11 2015 and kind of backing down from there. We want  
12 to be at 100 percent of all of our measures for  
13 each one of the components at the end of 2015,  
14 when our strategic plan is to be updated. So, we  
15 kind of split that down and we have kind of a  
16 march to that 100 percent marker for each year.  
17 So, you can see in fiscal 2012, 56 is a 48 percent  
18 to 56 percent range. We want the matrix as a  
19 whole to be in that range and we march up there 65  
20 to 73, 83 to 91, et cetera, to ultimately get at  
21 100 percent.

22           We started out kind of 11 with our

1 baseline. We were a little bit over 30 percent of  
2 our way up to the FY15 goal. We're doing pretty  
3 well this year. We're trending a little bit above  
4 our range at 63.8 percent largely due to the  
5 results we've received on both our external and  
6 internal perception surveys, which we'll get into  
7 in a minute.

8           This kind of breaks down that pie chart  
9 a little more at granular level into the different  
10 component metrics, a definition for each one of  
11 those, the weights that you saw in the pie chart  
12 there in the column are base year numbers that  
13 we're starting from and then our stretch goal,  
14 that is the number for each one of the components  
15 that we expect to hit or we're aiming to hit in  
16 FY15 when the strategic plan is to be updated.  
17 The green there is our current level of  
18 performance and then the combination of the weight  
19 of that element and the performance drives the  
20 component score which adds up to our 63.8 percent  
21 that we're at currently.

22           This is another look at the different

1 levels. This gives you kind of the percentage of  
2 where we are in that particular level with the  
3 quality component score at the end there. Again,  
4 it's 68.

5 One of the things I mentioned before in  
6 some of our performance and the quality index so  
7 far that's gotten us up to the 60 percent level is  
8 our internal and external surveys. This is a  
9 graph showing in the red there kind of  
10 historically our external surveys and the numbers  
11 you see there are ratios. The way we're  
12 calculating this is the ratio of positive to  
13 negative responses. Obviously, you want that  
14 ratio as high as you can possibly get it.

15 You can see kind of the trend line of  
16 the external surveys, they kind of bumped up there  
17 in the fourth quarter of 2010, dipped down a  
18 little bit, and then we've had a pretty dramatic  
19 increase from FY11 fourth quarter through the  
20 second quarter of FY12. These are semiannual  
21 surveys. It basically goes out to applicants and  
22 it gets a perception of the level of quality we do

1 and we've gone up from a ratio of three negative  
2 responses all the way up to five.

3           Similarly, you'll in the internal  
4 quality survey, the blue line with the boxes, that  
5 we moved from a 4.3 to a 5.1. So, we kind of have  
6 both of our perception of quality both from an  
7 internal point of view and this is basically our  
8 examiners commenting on our training tools and  
9 also the incoming applications they see from  
10 applicants moving up from about a 4.3 to a 5.1  
11 level. So, we have kind of both of our perception  
12 surveys as part of our composite either a 5.1 or  
13 5.0 level of good to negative responses. So,  
14 that's causing the jump in the quality composite  
15 itself.

16           Track One, prioritize examination, or  
17 Track One. O-n-e, not one. So, here's some data  
18 on that. As Peggy mentioned earlier in her  
19 opening remarks, we're just a little shy of 4,000  
20 filings; 855 of those filings were the very last  
21 month of last fiscal year and as both Frank and I  
22 believe Dana mentioned, that we have the 10,000

1 cap on Track One filings per year. So, of our  
2 total to date of 3,904, 855 came from the last  
3 month of last year. We just implemented  
4 September. And then you can kind of see the  
5 filings by month leading up to our current level,  
6 about 3,000 or so this year. The total for the  
7 program itself over the life is at 3,904.

8           There's some interesting data here.  
9 I'll highlight a few different things. Actually,  
10 starting at the bottom set of boxes, and I'll read  
11 these off, they're a little bit difficult to see,  
12 of those cases, we've had about 2,200 almost 50  
13 first actions completed. As Peggy mentioned  
14 before, 169 issues so far out of the program and  
15 457 allowances. One of the interesting stats is  
16 the very last one, the average for the cases that  
17 have run the cycle in the program, the average  
18 days from the petition grant to allowance or final  
19 rejection is averaging 129 days. So, if speed is  
20 something that one desires, this program is  
21 actually producing that.

22           Going back to on the bottom, the second

1 box from the right, the average days from petition  
2 grant to first office action, basically, once the  
3 petition is granted, it gets to the examiner, it  
4 gets cued up for action. We're doing that at an  
5 average of 43 days, a little under 44 days, which  
6 is really a good achievement so far.

7           If you jump up to the line before that,  
8 you'll see that our average days from the Track  
9 One hitting the office to the petition decision is  
10 a little bit longer than that at 47.3 days. We've  
11 taken a look at that number. We obviously want to  
12 reduce that processing on the frontend to the  
13 extent we can. So, we've looked at the different  
14 things that are happening, and in kind of a  
15 troubleshooting looking at data and feeding that  
16 back into an analysis, the troubleshooting there  
17 was there's kind of two processes at play.

18           One is the actual going through the case  
19 for the formalities review, people that go through  
20 to make sure everything is correct with the  
21 application, the petition is submitted, et cetera,  
22 and then there's kind of a loop back for the

1 petition itself to the tech centers. So, we were  
2 kind of doing that sequentially where we would  
3 spend some time in our Patent Application  
4 Processing Division, then we'd go to the TCs and  
5 sequentially look at the petition decision. That  
6 was adding into our 47 days. So, we've kind of  
7 looked at that and we were going to do that  
8 process in parallel from this point on where we're  
9 going to be able to decide the petition and have  
10 the formalities part done together and we think  
11 that looks like about a 14-day or about two weeks  
12 savings off of that 47 days. We just started  
13 doing that very recently, so, hopefully by the  
14 next PPAC, we'll have an update where we're able  
15 to shorten that average days to petition decision.

16 Just some other ongoing efforts, just a  
17 few quick sketches of these. We continue to do  
18 training. We have another round of interview  
19 training coming up. The number of interviews  
20 we're doing is on the rise and we certainly hear  
21 from the community at least anecdotally that  
22 examiners reaching out and being accessible for

1 interviews. So, we're going to do another round  
2 of training following on our initial round to kind  
3 of shore that up. We have a number of new  
4 examiners in the office and we want to make sure  
5 we capture them, as well.

6 We're also looking at ISO-9001  
7 certification. We have that certification for our  
8 Patent Training Academy and for our OPQA Division,  
9 and we're looking to see if that particular  
10 certification can be applied elsewhere within the  
11 office.

12 The Central Re-Exam Unit, I don't have  
13 the stats in front of me now, but they've done a  
14 number of different process improvements in  
15 shortening their processing times to date on  
16 pretty much all their measures, they've come down  
17 in their processing times. So, a pretty good  
18 success there.

19 We have a new workflow element of the  
20 Examiners Performance Appraisal Plan, our Docket  
21 Management System, which is basically the rate at  
22 which work moves through in the various categories

1 that the examiners work on. This was kind of a  
2 product of our Performance Appraisal Plan  
3 Taskforce with Robert and the POPA folks. The  
4 Document Management System is a very  
5 data-intensive, data-driven system where we're  
6 basically looking at clocks on each piece of work,  
7 measuring those clocks against standards and  
8 examiners are coming up with a score much like  
9 their productivity element that they have in their  
10 actual moving of work through the office.

11 And the last is employee engagement.  
12 We're looking at our EVS, Employee Viewpoint  
13 Survey. We're looking at some things there that  
14 we can look at to make some improvements to try to  
15 do the best we can there. This all links up to a  
16 very theme for the office that Peggy mentioned in  
17 her opening remarks about trying to turn the USPTO  
18 into one of the "Best Places to Work" in the  
19 federal government. We think we're in a pretty  
20 good trajectory from where we were before on that  
21 line, and, again, use employee engagement as a big  
22 part of that. So, we want to try to make that a

1 top goal of the office and move us in that  
2 direction.

3 MR. BORSON: Andy, thank you very much.

4 MR. FAILE: Thank you.

5 MR. BORSON: Thank you very much for  
6 that brief overview.

7 There are a number of things that you  
8 touched on. I'd like to start the conversation  
9 with one and that is the still-stated goal of 10  
10 and 20 months first office action and final  
11 disposition. And I wanted to ask what you  
12 envision could be done in order to address the  
13 issue of compact prosecution of that and part of  
14 that would be the analysis of secret prior art  
15 under 103.

16 MR. FAILE: Okay. So, obviously,  
17 compact prosecution is a big focus of what we want  
18 to do to hit both our first action and overall  
19 pendency goal. We've had a number of different  
20 trainings on that and the subcomponents of that  
21 are particular trainings such as interviews,  
22 looking at interviews to move cases along.

1 Looking at different programs that not just from  
2 an examiner's point of view, but from the outside  
3 point of view, such as the After Final Program,  
4 where we can go in and look at different parts of  
5 the prosecution pipeline, put a program into place  
6 to get things quicker to final disposition to kind  
7 of shorten up there. So, we're kind of looking at  
8 a number of different initiatives, kind of adding  
9 the aggregate of that together to kind of make our  
10 10 and 20.

11 Another big piece of that is obviously  
12 hiring, getting the resources in the office to  
13 address that. As many have mentioned today, we're  
14 scheduled to hire 1,500 this year, 1,500 next  
15 year. A key component of that is targeting those  
16 3,000 examiners to the areas of backlog, making  
17 sure we're making smart choices in getting matches  
18 between our incoming new hires and areas of  
19 backlog. So, a lot of different things going on  
20 in there.

21 We also want to focus on in our Patent  
22 Training Academy, as new examiners come in, get

1 the ideas of compact prosecution embedded there,  
2 get the ideas of working with the outside through  
3 interviews and other mechanisms to move cases  
4 along. So, it's a pretty big opportunity with  
5 3,000 different examiners coming in now to kind of  
6 get everyone started on the same place towards  
7 working towards compact prosecution, ultimately  
8 hitting our 10 and 20 goals.

9 MR. BORSON: Do you have any sense of  
10 what metrics you might be able to apply to that to  
11 determine how effective you are in generating a  
12 culture of compact prosecution?

13 MR. FAILLE: Okay, probably the biggest  
14 metric to use is our Quality Index Reporting, our  
15 QIR metrics. We have 70, 80-some different  
16 metrics to basically look at the prosecution of an  
17 application and we can find where we are in any  
18 particular metric and where an examiner is and to  
19 the extent we have outliers, we'd want to identify  
20 that, address that with training, and try to bring  
21 everyone back into the loop.

22 This was a good effort with PPAC when we

1 constructed the Quality Index matrix, the seven  
2 components we discussed earlier. One of the  
3 components of that is the Quality Index Reporting.  
4 There's a number of metrics under there that we're  
5 looking at that we have put in there an additional  
6 ones that each TC, depending on the makeup, nature  
7 of the TC, technology and trends, and that  
8 particular TC, they may look at any one of the  
9 other different 80 metrics, and to the extent  
10 there are outliers there, try to identify those  
11 and bring those back into more of a statistical  
12 norm.

13 So, the QIRs is a very rich dataset, it  
14 gets very granular, enables us to go and pinpoint  
15 different areas where we're having problems and be  
16 able to look at that and address it. Hopefully,  
17 through training and then go on from there.

18 MR. BORSON: Okay, you did mention one  
19 thing that sort of intrigued me and that was that  
20 you have ways of tracking how much time an  
21 examiner might spend on a particular project. You  
22 used the term "clocking." Did I understand that

1       correctly or could you explain that a little bit  
2       more to us?

3                   MR. FAILE:  Sure, and I'll certainly  
4       invite Robert to join in, who's been a part of our  
5       talks on this.  Ben's referring basically to our  
6       Document Management System.  This is a new element  
7       in the Examiner's Performance Appraisal Plan,  
8       again, replaced our old workflow element.  The  
9       basic general idea of the system is that we have  
10      cases in different categories; we have an  
11      amendment category, a special new category,  
12      returns, returns back from publications after  
13      finals, et cetera.  Each one of these categories  
14      have a date, an expected average day, and we put a  
15      clock on each piece of work for an examiner, an  
16      examiner works that particular case off within  
17      those timeframes.  If they meet it by the middle  
18      point of the timeframe or the beginning part of  
19      the timeframe, then their score enhances.  If they  
20      wait a little bit longer, their score diminishes.  
21      So, on kind of a macroscopic level, it's a way to  
22      assign a time value or a clock and we're tracking

1 the work through all the different categories and  
2 then in the nature, kind of the QIR composite that  
3 we talked about, we take all those particular  
4 scores and we form a composite of their actual  
5 document management score and at the end, that's a  
6 number very like our production scale that  
7 indicates an examiner's progress.

8 MR. BORSON: Thank you. Robert, I don't  
9 know if you wanted to elaborate on that any more.

10 MR. BUDENS: Well, I think you covered  
11 basically what it does. It pretty intensely  
12 measures the work going out off of examiners'  
13 desks similarly to the production system pretty  
14 rigorously measuring how much work is going out  
15 off of their desk.

16 MR. FAILE: And sorry, Esther, this is a  
17 classic case of what Director Kappos mentioned  
18 earlier where we started out with the solution.  
19 It took us far the way down the pipe and we're  
20 continuing to iterate. In fact, we just literally  
21 within the last couple of days finished our next  
22 iteration of this. As we put it into play, there

1 are a number of different areas we're looking at  
2 that we want to make some improvement on. We just  
3 finished kind of our third look or third iteration  
4 or tweak on the system.

5 MR. BORSON: Okay, Esther, please.

6 MS. KEPPLINGER: I'll comment and the  
7 changes that you made in the docket management,  
8 some of them are quite good in the sense that, as  
9 I heard you got returned cases, so, cases from  
10 printer rushes, cases from various places to  
11 actually have a timeframe for getting them moved.  
12 So, that's a really good step forward.

13 One thing I would say, Ben, to your  
14 question is that while it's called "clocking,"  
15 it's not the amount of time that the examiner  
16 spends on the case, it's rather whether or not  
17 they've moved that case from their docket within  
18 the set time period.

19 MR. BORSON: Yes, I understand that.  
20 Thank you. Peggy?

21 MS. FOCARINO: Yes, just one thing I  
22 wanted to add with the new Docket Management

1 System, unlike the old workflow element, the  
2 timeframes in the new system, in other words, the  
3 "clock," as Andy referred to, the number of days  
4 that we would like the examiner to work on the  
5 particular case, is related closely to patent term  
6 adjustment. Which the old system existed before  
7 that legislation was implemented. So, one of the  
8 goals in our crafting the new docket management  
9 element was to more closely match the timeframes  
10 that are discussed in patent term.

11 MR. BORSON: Okay, thank you. Steve?

12 MR. MILLER: Yes, Andy, on your  
13 statistics for Track One, you measure in terms of  
14 numbers or days. Is there some way to look at the  
15 percentage of allowances like you do for other  
16 cases or the percentage of cases that are allowed  
17 on a first action so that the public could get a  
18 good sense as to how those programs are working?  
19 And do you have that statistic that you could  
20 share?

21 MR. FAILE: Not in front of me, but we  
22 certainly can get that. Are there particular

1 things that you guys would want to see in addition  
2 to the data on here, if you could send those to  
3 me, we certainly can work those in.

4 MS. FOCARINO: Yes, and I should just  
5 add, Steve, that we've talked about including more  
6 data points as the data sec gets richer. Because  
7 we show you that type of data for PPH and other  
8 programs that we have. So, I think --

9 MR. MILLER: I think that would be  
10 helpful because you're projecting 10,000. I think  
11 there's a reason why we've only hit 3,000, but the  
12 more people see statistics and see how the program  
13 works, that they may be more likely to use this  
14 system.

15 MS. KEPPLINGER: So, dovetailing on what  
16 Steve has said, one of the things I think is, for  
17 example, actions per disposal, which in the PPH  
18 cases show that fewer touches of the case both by  
19 the office and by the applicant. So, that's  
20 cheaper prosecution. So, if you can get that kind  
21 of information, I think it might motivate more  
22 people to use it. And, similarly, if it shows

1 that there's a slightly greater chance of getting  
2 an allowance out of it, again, that encourages  
3 people to use it.

4 Because my personal experience, I found  
5 that the office is working even harder to try to  
6 work with us to identify allowable subject matter.  
7 They're not allowing anything that they wouldn't  
8 otherwise, but are working much more  
9 cooperatively. So, that's a really positive thing  
10 for this program.

11 MR. FAILE: Those are good suggestions.

12 MR. BORSON: Yes, I just wanted to touch  
13 on a question I asked you earlier, which is:  
14 Given the fact that we're now six months plus on  
15 the 15 percent fee increase, have you see any  
16 change in the number of new applications being  
17 filed on a month-by-month basis?

18 MR. FAILE: Yes, I took a quick look at  
19 that based on the conversation before. It looks  
20 like we had a little bit of a bump, as one would  
21 expect, right before the surcharge kicked in and  
22 we had pretty much a leveling of that afterwards,

1 maybe a slight increase, but pretty much a  
2 leveling. No drastic behavior either before or  
3 after. If I have that right, Greg, as far as the  
4 data. What we can do, Ben, is get you a chart;  
5 get PPAC a chart on that.

6 MR. BORSON: The reason that I raised  
7 that is that it goes to the assumptions about  
8 elasticity for the fees. I mean, it's more of a  
9 touchstone than it is an actual important metric  
10 itself.

11 MR. FAILE: I understand.

12 MS. LEE: I'm sorry --

13 MR. BORSON: Yes?

14 MS. LEE: Can I ask one follow-up  
15 question?

16 MR. BORSON: Yes, sure. Go, please.

17 MS. LEE: So, Andrew, so, when you say  
18 stayed flat, you mean stayed flat meaning it did  
19 not dip below the pre-bump rise? So, in other  
20 words --

21 MR. BORSON: Yes.

22 MS. LEE: -- the application's never

1       dropped below the original or the earlier pre-fee  
2       increase filing rates from what you could tell?

3               MR. FAILE: That's my understanding, but  
4       let me shore that up.

5               MS. LEE: Okay, great. Thanks.

6               MR. BORSON: Esther, please.

7               MS. KEPPLINGER: Oh, sorry, Andy, I had  
8       a question on the slide that you had, page 12,  
9       slide 12, which it shows actions per disposal by  
10      months and rejections in terminal disposals by  
11      month. One of the questions I had, I think as you  
12      defined terminal disposals, you characterized  
13      those as allowances and abandonments, and my  
14      concern with that is that, of course, every RCE  
15      has an abandonment and no applicant would consider  
16      that to be a terminal disposal because they're  
17      filing an RCE. The first case gets abandoned and  
18      it's a continuing prosecution. So, that case is  
19      really not abandoned, it's really kind of an  
20      artifice that the office has used, but it's the  
21      same file wrapper and that's really not a terminal  
22      disposal.

1                   So, while I think it's good that you're  
2 looking at these things, I do have a concern that  
3 that's quite misleading when we still have a  
4 significant number of RCEs being filed.

5                   MS. FOCARINO: This abandonment would  
6 not include the RCE abandonment.

7                   MS. KEPPLINGER: Great, and that's good.

8                   MR. BORSON: Okay, last quick comment,  
9 Robert. We need to break. We're over time.

10                  MR. BUDENS: I don't know how quick it's  
11 going to be, but I want to look back --

12                  MR. BORSON: Well, make it quick,  
13 Robert.

14                  MR. BUDENS: I want to look back at  
15 slide and slide 14, Andy, because this is giving  
16 me some serious heartburn. Looking at our  
17 projections for months to first action, 10-month  
18 goal, but I see when I look down at going out to  
19 2015, 2016, we're getting pretty close to hitting  
20 the ground here at eight months and when I look at  
21 an attrition rate that's pretty much stable right  
22 now and a workforce of roughly 9,000 examiners

1 plus or minus by 2013, I'm highly concerned that  
2 if we have any kind of economic switches again  
3 that could result in lower filings or anything  
4 else and we're going to smack the ground hard in  
5 the workforce. We've already seen what happened  
6 once before with our colleagues in trademarks.

7 At the risk of sounding like the emperor  
8 has no clothes and incurring the wrath of my  
9 colleagues here on the PPAC, is there any  
10 discussion going on as to whether 10 months is  
11 really a good viable goal because that sounds to  
12 me like from the looks of your graphs, we're  
13 cutting it awfully darn close to where we would  
14 not be able to respond quickly enough to avoid  
15 nasty kinds of actions on the workforce.

16 MR. FAILE: I'll leave it to the larger  
17 discussion on the goals for you guys to talk  
18 about. One point I would make, Robert, understand  
19 the concern and, obviously, we're all keen on that  
20 particular concern. What we've built into the  
21 model is the projected number of hires this year  
22 and that year to give us kind of a soft landing

1 where we're not crashing hard, but we're kind of  
2 coming down on that slope and bottoming out and  
3 getting into a steady state where we have a  
4 working inventory of cases at this 10-month level.  
5 So, that's a key component of this is looking at  
6 the model and constructing that kind of soft  
7 landing so we don't crash and burn post 2015 and  
8 2016. So, a very big concern on our particular  
9 part, as well.

10 MR. BUDENS: As a follow-up, before --

11 MR. BORSON: I hate to do this, but we  
12 are over time. We have now 10 minutes for lunch  
13 to meet back here at 12:10. What I'd suggest,  
14 Robert, is that we can carry this conversation on  
15 at the end of the meeting at 2:00. We have an  
16 opportunity for some wrap-up and further  
17 discussion.

18 Andy, do you think you might be around  
19 for that, 2:00 at the end of the meeting? I just  
20 wanted to make sure that you're all satisfied that  
21 we've touched on these issues, but we do have a  
22 clock, it's our own clock that we need to be aware

1 of here.

2 Okay, so, at this point, I'd like to  
3 take a break for lunch. It'll be short, maybe 10  
4 minutes, 15 minutes, after which we'll all come  
5 back here and during the lunch hour, we'll have a  
6 demonstration of the text to PTO Program. So,  
7 thank you very much, and for those of you that are  
8 viewing us online, please, can either stay on the  
9 line or reconnect with us in 10 minutes.

10 (Recess)

11 MR. BORSON: Okay, it's my great  
12 pleasure to introduce Terri Raines. Terri is the  
13 manager of the Text 2 PTO System, which is part of  
14 the IT Rebuild System that we've been talking  
15 about for some years. And so, she has a  
16 demonstration and a bit of a discussion.

17 Now, in the interest of time, we are  
18 behind schedule by about 15 minutes at this point.  
19 So, if we could move things along, I'd appreciate  
20 it very much, Terri.

21 So, Terri Raines, thank you for joining  
22 us.

1 MS. RAINES: Thank you very much for  
2 having me. We'll get started.

3 USPTO is committed to modernizing their  
4 system, software, and architecture through the  
5 organization and one of the things that we're  
6 currently looking at with my team is looking at  
7 how patent applications are filed. So, we want to  
8 talk about the opportunities and the partnership  
9 that we wanted to develop with our external  
10 stakeholders, including this group. So, thank you  
11 very much for sharing your lunch hour and I will  
12 try to be as brief as possible.

13 A lot of slides in your deck. There are  
14 some videos that I want you to look at though that  
15 kind of give a demonstration of this prototype  
16 system. And I've already talked through this  
17 slide so we can move forward.

18 The main goal of the Text 2 PTO System  
19 is to receive texts within the Patent System when  
20 you're filing your patent application  
21 specification and we'll talk today about how we  
22 envision this may be accomplished. The process,

1       however, involves a lot of outreach to external  
2       stakeholders, and, again, we're at the beginning  
3       of this journey, we're not at the end, and we want  
4       to hear from our users as to how they would like  
5       to see this accomplished.

6               The benefits are kind of obvious to us,  
7       although as we continue to talk to other groups,  
8       additional benefits for external stakeholders are  
9       discovered, but we're talking about the accuracy,  
10      potential automation of formalities checks, and  
11      then using the text, this very powerful text in  
12      the backend to being able to do analytic reports,  
13      providing claim trees upfront and then looking at  
14      the patent family maps to understand the  
  
15      relationship between the applications.

16             The text that is submitted will be used  
17      in software systems for our examiners. These  
18      systems are being automated, as well, and the  
19      stovepipe systems are being consolidated into a  
20      single user interface where this powerful text  
21      will be used for the same type of analytics  
22      throughout the examination process all the way

1 through grant and publication. Our focus when  
2 we're looking at Text to PTO and the discussions  
3 that we want to have with our external  
4 stakeholders really talks about the ease of use  
5 for applicants.

6 Right now, 96 percent of all the patent  
7 applications that are filed are coming in through  
8 EFS Web electronically. Most of them are coming  
9 in as image-based PDFs. About 40 percent of them  
10 are coming in as text-based PDFs. So, we're  
11 already getting some texts from our external  
12 stakeholders. We're very thankful for that, but  
13 we want to have another venue to accept text  
14 within the USPTO. So, there would be no more  
15 scanning of the PDF. You can upload a single file  
16 instead of the four different files that you're  
17 currently requested to upload. A really exciting  
18 part and something that I want show you downstream  
19 is how you can make amendments on a copy of your  
20 original file and using track changes, we would  
21 put the amendment into the USPTO required markup  
22 language and this is a browser-based tool, so,

1       there is nothing to download or install.

2                   So, the main idea is to author your  
3       patent specification in MS Word, and I want to  
4       stop here a minute. We went out to our electronic  
5       filers and we found that 80 percent of the folks  
6       that were filing authored their specification in  
7       Microsoft Word. So, this seems to be the  
8       low-hanging fruit. We want to start here. We  
9       don't want to end here. We want to take any XML  
10      specification that comes in the door properly  
11      formatted.

12                   So, why do we want to look at MS Word?  
13      Microsoft currently creates a file called a Doc X  
14      File in versions 2007 and higher. It saves it as  
15      a Doc X. X means XML. XML language is language  
16      that a computer can read. If you think about  
17      HTML, that's the language that web pages display  
18      to humans, but XML is computer-based language.  
19      That's the language that we're using in our  
20      backend systems and that's the language that we  
21      would like to receive your specifications in.

22                   I'm going to skip through this. The

1 applicants' concerns. That was a flowchart. You  
2 all can look at that later. But the applicants'  
3 concerns are what if we left track changes on our  
4 document and some of that information wasn't  
5 information that we wanted considered in our  
6 patent application. This validation wizard will  
7 alert you that these track changes have been left  
8 on and show you how to remove them. Meta data,  
9 proprietary information left into your document as  
10 far as property files, you'll also be alerted  
11 about that.

12           And then how can you be sure that the  
13 contents haven't changed? From the time you  
14 author it in your office from the time that it's  
15 received at the USPTO, there is a hash marking  
16 algorithm. It mathematically calculates the  
17 content of the specification based on the data.  
18 We're not going to go into that, but we are  
19 working on that to assure you, provide a level of  
20 assurance that this document has not changed from  
21 the beginning to the end.

22           Okay, so, this is a video and I will

1 talk through this. Jeff, if you can start the  
2 video, that would be great.

3 (Video is shown)

4 MS. RAINES: So, again, this is a  
5 web-based browser with standard Windows  
6 functionality. You go to your environment and you  
7 select the file that you want to validate. You  
8 can see where it's uploaded into the browser, it  
9 displays in that little path, and then it goes  
10 through all of the things that we're currently  
11 looking for in this prototype tool, patent  
12 application parts and contents will be checked,  
13 tracked revisions will be checked. We will look  
14 for comments within the document; we'll look for  
15 the document properties. So, that's the metadata  
16 that you don't want to send. We'll make sure that  
17 the fonts are legible, we'll look for any  
18 bookmarking, assure that the text formatting is  
19 appropriate, and any other invalid content.

20 The next part of the video shows you how  
21 you can check to make sure that the sections of  
22 your document are properly identified, and this,

1       again, is how we envision doing it. This is a  
2       prototype. So, as we talk and do outreach, we'll  
3       make sure that this works within the confines of  
4       your office environment, as well.

5                So, right now, you can see that  
6       invention description is highlighted by the red  
7       tagging. This will not remain on your document.  
8       This is just part of the wizard, and you can say  
9       yes, this is correct, that is where my  
10      specification starts or you can say not correct.

11               We'll step really quickly through  
12      claims. And then abstract are marked the same  
13      way. Because all of the green arrows came up,  
14      this told you that the document was properly  
15      validated and that there were no errors in it.  
16      This is what I'm calling the happy path just for  
17      conversation purposes, okay? We will be able to  
18      not go through the happy path, as well, but for  
19      time's sake, we're going to move forward..

20               The next part that we're going to talk  
21      to, and, again, I'm sorry, this is a very long  
22      presentation, is that we're going to talk to the

1 amendments because when we talk to the Legal  
2 Secretaries and Administrator's Conference, this  
3 is the part that really got their attention. So,  
4 I wanted to make sure you all were aware of it, as  
5 well.

6           Once your original file is uploaded to  
7 the USPTO, filed through EFS Web. So, if it's not  
8 broke, don't fix it, right? And the EFS Web, it  
9 seems to be working fine. So, we would use the  
10 same interface currently to file this text  
11 document. You can then go back using the  
12 confirmation information on your original filing  
13 receipt and download the text file from USPTO or  
14 use the file that exists in your current  
15 environment.

16           We did hear that there were some cases  
17 when a new attorney came to a law firm that they  
18 weren't able to bring soft copies of all their  
19 files, and, so, this feature, being able to  
20 download the text back from PTO seemed to be a big  
21 benefit. You would then edit your file with track  
22 changes left on and then run it through an

1 amendment validator. You saw where the first  
2 validator was looking for text and track changes  
3 and it didn't want to see that. So, this  
4 amendment validator will take your track changes  
5 and put it into the appropriate USPTO markup  
6 language. Optionally, you will also create a  
7 cover page for you if that's something that you  
8 desire.

9 So, we're going to watch this video, as  
10 well. We're only going to see the claims portion,  
11 but you can amend any portion of your document as  
12 appropriate. So, this is the original file.  
13 Either it was downloaded back from USPTO or it was  
14 in your environment and we're going to play.  
15 There we go.

16 (Video is shown)

17 MS. RAINES: Okay. So, they're just  
18 showing you the original file here and using track  
19 changes, they're going to modifications. I think  
20 they're going to cancel one, change one, and then  
21 add an additional claim at the bottom of this  
22 page.

1           Once they make these changes, you'll  
2       save your document. And so, we go through this,  
3       close. Then you can see at the top where it says  
4       "amendment validation," this browser page is a  
5       little bit different, so, you browse for that  
6       changed copy of your document and you run it  
7       through the amendment validation portion. It  
8       checks for all of the same things, embedded  
9       proprietary information, et cetera. This portion  
10      of the video shows you saving this document and  
11      generating the hash code that we talked about.  
12      And then the next portion of the video is going to  
13      be a side-by-side comparison showing you the  
14      marked up document and then the appropriate  
15      mark-up language when it's ready to go to USPTO.  
16      Again, this validation wizard and this  
17      functionality, although it doesn't show optional,  
18      this is optional. You can continue to do your own  
19      markup if this is what you choose to do, but this  
20      was very well received during the demonstration  
21      that we provided. And although this is difficult  
22      to view here, I think in your handout, you'll be

1       able to see the markup language a little bit  
2       better.

3               All right. So, the next portion of the  
4       video is we'll talk about using this text. And  
5       so, this is talking about the formalities checks  
6       and the analytical reporting. The abstract  
7       summary information, because of the text on the  
8       backend, all of this information could be made  
9       available to electronic filers once they file or  
10      once they provide that text back to us. So, it  
11      would count the number of words in the abstract.  
12      It would also show the claims summary and  
13      dependencies and I'll show you the claims tree  
14      next.

15              So, this is the family patent map  
16      showing continuity. So, this would allow you to  
17      check the continuity. This information would come  
18      from the application data sheet. When submitting  
19      a PDF, that has XML behind it. We can also use  
20      that information at USPTO and provide this  
21      information back to you in a meaningful form.  
22      This is the results of the claims tree layout.

1       So, currently in the enhanced examiner interface,  
2       they come up with these claims trees in any way  
3       visually that's meaningful for them. The Legal  
4       Secretaries Conference, again, said this would be  
5       very helpful to look at prior to submission of  
6       their file.

7                   And we won't go through this. What I  
8       want to get to is the end. Okay. I know that was  
9       really fast and I talk fast to begin with, but I  
10      want to let you all know anybody that wants to see  
11      this at any time, send me an e-mail or give me a  
12      call and we will come to you or do a WebEx,  
13      whatever you desire, to go through this in a  
14      slower pace to where you have a better  
15      understanding.

16                   MR. BORSON: Why thank you very much,  
17      Terri. Awesome, this is great news. And I wanted  
18      to thank you and I also wanted to acknowledge  
19      Marti Hearst, who has started off with this big  
20      project here. So, I think you're bearing fruit.  
21      So, I think you should be appropriately proud of  
22      what's been going on, Marti.

1                   Okay, so, thank you very much.

2                   MS. RAINES: Thank you.

3                   MR. BORSON: We are, in fact, on time  
4 pretty much. So, thank you very much.

5                   What I'd like to do now is move on to  
6 the next topic on our agenda, which is a  
7 presentation by Jim Dwyer and Christian Chase on  
8 the patent process reengineering update.

9                   MR. CHASE: Good afternoon, everyone.  
10 The Patent Process Reengineering Team was  
11 challenged to streamline the patent application  
12 process to meet the challenges of adapting to  
13 rapidly evolving technologies and stakeholder  
14 priorities while ensuring success in meeting the  
15 goals of timeliness, quality, and efficiency. The  
16 team was organized in June 2010 to focus on  
17 aspects of pre-examination, examination, and  
18 post-examination processes to supply, redesign,  
19 and streamline processes and improvements to  
20 agency senior leadership and the patents and to M  
21 Team. These improved processes would be  
22 incorporated into the patents and to M Project to

1 support development of the new system  
2 architecture. The PPR effort, as we  
3 affectionately call it, also serves to meet the  
4 United States Patent Office 2010 to 2015 strategic  
5 goal to optimize patent quality and timeliness to  
6 facilitate achieving organizational excellence.

7 An executive sponsor, project director,  
8 and project coordinator were selected to lead the  
9 team. Subject matter experts representing all  
10 aspects of patent processing were identified and  
11 selected as members of the overall team and the  
12 team organized internal stakeholder outreach focus  
13 groups be leveraging affinity groups and open  
14 space technology facilitation. The outreach  
15 initiatives continued throughout the summer of  
16 2010 and continue to date. External outreach  
17 initiatives continue to date, as well.

18 Based on that stakeholder input, the  
19 team identified several areas within patents to  
20 analyze in Phase One. Working groups were formed  
21 for each area consisting of subject matter experts  
22 and core patent process reengineering team

1 members. Working groups were tasked with  
2 analyzing the current process in their area and  
3 developing a streamlined to-be process. They  
4 worked in 6- to 10-week timeframes, staggered over  
5 the fall of 2010 and winter and spring of 2011.  
6 Phase One Working Groups included restriction  
7 practice, double patenting process, color  
8 drawings, elimination of forms, classification  
9 transfers, CRU reissue, pre-exam streamline,  
10 enhancing technical knowledge between examiners,  
11 management operations, applicant office interface,  
12 post-exam streamline, IDS practice, and PCT  
13 processes.

14 Each working group followed a formal  
15 process improvement methodology based on Lean 6  
16 Sigma. That included documenting current  
17 processes, identifying issues at both the process  
18 and step levels, assessing the impact of those  
19 issues, identifying the root cause of each issue,  
20 identifying solutions to address the root cause,  
21 prioritizing the solutions, and reporting and  
22 validating their results.

1           The team also identified ongoing  
2 projects within patents and other business units  
3 with overlaps and interfaces with the  
4 reengineering projects. As these parallel efforts  
5 were identified, cross-functional teams were  
6 formed and regular communication was established  
7 with the lead organizational teams to eliminate  
8 duplication of efforts and to maximize results.  
9 External customers and stakeholders were engaged  
10 throughout Phase One via support from the Office  
11 of Patent Information Management's outreach staff  
12 and contractors. Stakeholder input and feedback  
13 was gathered at local meetings through focus group  
14 facilitation and we provided periodic status  
15 reports to Patent's Public Advisory Committee and  
16 gathered feedback from PPAC members and we thank  
17 you very much for taking the time to do that over  
18 the last two years and continuing to.

19           Stakeholder input and feedback was used  
20 as a factor in determining what processes to  
21 review. International communication was involved,  
22 as well. The United Kingdom Intellectual Property

1 Office and the European Patent Office are both  
2 undertaking similar efforts to the patent process  
3 reengineering and to end initiatives. We have  
4 communicated best practices with both  
5 organizations and vice versa.

6 Further, the IP5 Foundation projects for  
7 globalizing intellectual property processes and  
8 procedures provided important direction for the  
9 team's work as the agency is eager to support  
10 these projects. Expanding work-sharing  
11 initiatives also provide opportunities to reduce,  
12 rework, and streamline processes globally.  
13 Accordingly, all of these issues were taken into  
14 account throughout the project.

15 Phase one, most important part, results.  
16 Phase One ended about June 30 of 2011, so, last  
17 June. The working groups produced more than 200  
18 individual process improvement recommendations.  
19 All of the relevant recommendations have, indeed,  
20 been included in the patents and to end IT  
21 Improvement Project for inclusion in the new  
22 system requirements. Some recommendations have

1 already been implemented using our Legacy System  
2 or the systems we currently operate with.

3 An example here is from our Double  
4 Patenting Team and that's the electronic terminal  
5 disclaimers. In the first month of electronic  
6 terminal disclaimers, which was December of 2011,  
7 of the 104 electronic terminal disclaimers filed,  
8 28 resulted in allowances. Those allowances were  
9 issued within 9.5 days on average, down from 40.5  
10 days prior to electronic filing. The time from  
11 filing to a decision has been reduced to  
12 instantaneous, down from an average of 25.3 days.  
13 Further, no electronic terminal disclaimers have  
14 been disapproved, while prior to electronic  
15 terminal disclaimers, nearly 19 percent of  
16 terminal disclaimers were disapproved.

17 Long-term recommendations to be  
18 incorporated into IT System development include,  
19 for example, an applicant's ability to manage  
20 their applications online, for example, updating  
21 assignment data, application and amendment  
22 submission, requesting an interview with the

1       examiner via an interview button in PAIR or its  
2       replacement system, inventor name changes.  
3       Applicant controls their own data. Applicant  
4       would have the ability to review, change, and  
5       validate all data prior to publication. Also,  
6       electronic self-managed IDS submission was  
7       something that we recommended.

8                So, moving to Phase Two, the following  
9       teams have completed their work. As part of Phase  
10       Two, reengineering made resources available to the  
11       Sequence Listings Project, which was working on  
12       the new XML standard for WIPO standard.  
13       Application and publication numbering system  
14       changes which explore the potential for  
15       implementing the WIPO Standards 13 and 6 for our  
16       application and publication numbering.

17               COPA, of course, I'm sure we all know,  
18       working with the oldest applications in our  
19       backlog. The "stuck case" cleanup where we  
20       identified cases that have fallen through the  
21       cracks and gotten them moving again, lost papers,  
22       suspended cases, things of that nature.

1                   We also had a Petitions Working Group.  
2                   It was tasked with identifying and mapping all the  
3                   petitions and who has the responsibility to answer  
4                   them. The group investigated root causes on the  
5                   receipt of petitions and petitions flow and  
6                   whether there are better or more efficient  
7                   alternative to some of the current petitions  
8                   processes. Gaining consistency across the  
9                   enterprises was a goal of this group. Further  
10                  developing requirements for the End to End System  
11                  to track and route the to-be processes that arise  
12                  from this work was part of the scope of this  
13                  project.

14                  One of the solutions from this team has  
15                  been implemented and that is the e-petitions  
16                  initiative. As of June 1 of 2012, 25 percent of  
17                  petitions filed since implementation have been  
18                  decided electronically, thus saving four full-time  
19                  employees. This has allowed the Office of  
20                  Petitions to assist other areas of the office with  
21                  reductions of their backlogs as well as increased  
22                  efficiency and customer service within the Office

1 of Petitions itself.

2 We also took a quick look at the  
3 Cooperative Patent Classification. We reviewed  
4 potential risks, issues, and impacts of a new  
5 classification system and implementation  
6 internally. We looked at reengineering and patent  
7 reform or the American Invents Act to determine  
8 whether or not there were any potential collisions  
9 with previously suggested reengineering ideas and  
10 that was also delivered to Patent's leadership.

11 Moving on to Phase Three, the following  
12 teams are working throughout Fiscal Year 2010 in a  
13 staged fashion similar to Phase One. Appeals and  
14 Pre-Appeals, there's an internal processing  
15 analysis and recommendations for standardization  
16 and streamlining, which is ongoing. Commercial  
17 database usage, documenting advantages and best  
18 practices for examiner usage of commercial  
19 databases for searching for prior art, that's also  
20 ongoing. 371 or National Stage Case Processing,  
21 this is a traditional process improvement effort  
22 addressing these case. Draft work is completed.

1           Technical support staff implementation  
2           and phasing, this working group is tasked with  
3           analyzing the effective reengineering  
4           recommendations on the technical support staff and  
5           making recommendations as to how to address any  
6           such issues if necessary. That is also ongoing.

7           Workflow system functionality and  
8           business rules, this working group is tasked with  
9           building on the work completed for PFW in  
10          designing business rules which the new work system  
11          will be based upon and is working closely with the  
12          patent end-to-end teams, and obviously, that  
13          continues, as well.

14          Risk analysis, a team is identifying  
15          points in our current processes and procedures  
16          that expose the USPTO to malicious actions and  
17          designating impacts and mitigation options as well  
18          as response plans. Draft work is completed and  
19          we're scheduling meetings to report that out  
20          internally.

21          Management operations, employee  
22          relations. This working group is documenting

1 current processes and identifying process or  
2 procedure improvements in standardization  
3 opportunities and that work is ongoing.

4 Call centers. This group is analyzing  
5 all of the call centers or areas of contact for  
6 the agency and making recommendations for making  
7 the customer experience more efficient and helpful  
8 whenever and however our customers engage the  
9 USPTO. Preliminary findings indicate that  
10 significant savings may be achieved through  
11 centralization efforts and improved website  
12 interaction. Ongoing implementation work  
13 continues there.

14 Thank you, all, very much and if anyone  
15 has any questions, we'd be happy to answer them.

16 MR. BORSON: Well, Christian, first of  
17 all, I wanted to thank you for making your  
18 presentation direct and to the point. Very  
19 helpful.

20 I would like to invite the committee  
21 members to comment. I know that we had  
22 conversations yesterday in our subcommittee

1 meeting. But if there's anything else someone  
2 would like to raise, please.

3 MR. CHASE: Thank you, all, very much.

4 MR. BORSON: Very good, thank you.

5 Okay, now, we are exactly on time. So, and thank  
6 you very much for that. We will get back to you,  
7 Christian. Just as a reminder, we agreed that we  
8 would receive some further written documentation  
9 for certain things. So, we expect those in a  
10 timely or in due course. Is that the way to say  
11 it? In due course.

12 SPEAKER: Yes. Yes.

13 MR. BORSON: Okay, I would like to now  
14 move to OCIO. David Landrith is going to give us  
15 an update on OCIO. John Owens has sent his  
16 regrets. He is offsite at an important meeting,  
17 and, so, David, thank you very much for coming.

18 MR. LANDRITH: You're welcome. Thank  
19 you for having me here.

20 We have a brief summary for the OCIO  
21 activities, specifically with the universal  
22 laptop. Just to review, we began doing the

1 production deployment last year starting on March  
2 20. We have total deployments through June 1 of  
3 this year of 10,337, and all of the patent  
4 organizations have been 100 percent deployed.

5 For PE2E, this is a summary of our most  
6 active projects. You've already seen Terri's  
7 presentation on Text 2 PTO. We have patents  
8 examination tools and infrastructure. This is our  
9 core project for the backend of Patents End to  
10 End. We've completed the requirements for  
11 role-based access control. This is going to be  
12 key as we begin to roll this out to the corps and  
13 begin having examiners with different roles and  
14 it's key not just for security purposes, but also  
15 to allow for the interface to be customized and  
16 functions to be made available based on the role  
17 of the examiner.

18 We provided significant automation to  
19 the XML data intake process. This is the process  
20 whereby we extract data from the USPTO systems to  
21 provide it to the vendor and from the vendor when  
22 they provide converted data back so that we intake

1       it into Patents End to End, which is key for our  
2       continued ability to ramp that up as we prepare to  
3       deploy to the corps. For the Patents End to End  
4       office action, we are leveraging user centered  
5       design for the user interface. So, we've  
6       completed the user interface prototype for office  
7       actions and for workflow management. We'll be  
8       seeing some screenshots of that in a few minutes.

9               We're also in a process of finalizing  
10       the office action XML schema. It allows for us to  
11       facilitate authoring of office action in a way  
12       that examiners can use interactive templates and  
13       dynamically create content.

14               Here are some of the other key projects  
15       that we have. We have comprehensive patent family  
16       maps. This is a project to display complete  
17       historical genealogical data on patents. We've  
18       completed the initial solution architecture and  
19       data model for that.

20               So, PATI 1.1 is the infrastructure  
21       follow on to PATI 1.0. That is to scale the PATI  
22       infrastructure so it can serve us the full

1 examination corps and that has been successfully  
2 completed. The back file migration is the data  
3 portion of PATI which is the conversion of claims  
4 spec and abstract for the entire active back file  
5 through January 24 of this year. We are 96  
6 percent completed with the conversion and we have  
7 50 percent of that loaded as of last week. We're  
8 on a schedule to deliver 1.2 million patent  
9 applications totaling more than 56 million pages.

10 MR. BORSON: And, David, just a quick  
11 here. How far backwards are you planning to  
12 upload everything into the system?

13 MR. LANDRITH: Right now, we haven't  
14 looked at what our strategy is going to be for  
15 going back historically beyond the active back  
16 file. Our next priority is to begin continuously  
17 converting the active back file so that we're up-  
18 to-date in near real-time rather than doing  
19 batches of fixed timeframes. Once we've locked  
20 and loaded that process, we're going to begin  
21 looking at where we capture the most value for  
22 doing the historical groups of patents.

1           MR. BORSON: Yes, okay. The main reason  
2 for that question is there's a lot of information  
3 that applicants have to submit in the form of IDSs  
4 and not only foreign patent documents, foreign  
5 office actions, but also prosecution histories for  
6 U.S. cases under McKesson, and what I was hoping  
7 for is that at some point we may be able to  
8 capture all of that old information automatically  
9 through some kind of a checkbox in PE2E that would  
10 identify the cases and have the search tool  
11 automatically retrieve all that information.

12           MR. LANDRITH: Yes, one of our goals is  
13 to have an IDS database that allows for patent and  
14 non-patent literature to be stored and retrieved  
15 systematically that way. We don't right now have  
16 strong timeframes associated with that because of  
17 our emphasis on making sure that we get new  
18 functionality out to the corps. We also recognize  
19 that it is going to be very important to convert  
20 the back file. At this point, we're juggling  
21 releasing applications and retiring Legacy  
22 Systems. We're not sure exactly where that's

1 going to fall, what the velocity of doing it is  
2 going to be.

3 MR. BORSON: Sure, I understand that. I  
4 just wanted to make our wish known.

5 MR. LANDRITH: Sure, thank you.

6 MR. BORSON: Yes, Robert.

7 MR. BUDENS: Just a quick question,  
8 Dave. Just from my personal understanding because  
9 I'm getting an idea we have two different  
10 definitions here. We have the active back file.  
11 I'm guessing from the 1.2 million that that's the  
12 current backlog of pending applications and the  
13 applications that are in prosecution right now,  
14 but it's not looking at the U.S. Patent database  
15 or any of the old abandoned applications or  
16 anything like that. Is that what you referred to  
17 as just the "back file?"

18 MR. LANDRITH: Right, yes. So, there's  
19 the active back file, the applications that are in  
20 process of being prosecuted. Then the historical  
21 back file is what precedes that.

22 MR. BUDENS: Okay, thank you.

1           MR. LANDRITH: So, this is a quick  
2 overview of the scope of the office actions  
3 portions of Patents End to End. And because this  
4 is guided by user-centered design, we like to  
5 communicate the scope using screen shots of the  
6 prototype that we developed. You've seen this  
7 before. This is the docket. It's going to be  
8 fortified to support multiple roles and to  
9 integrate with the workflow solution.

10           This is the document viewing and case  
11 analysis tool that you've seen demonstrated.  
12 There's going to be a fluid transition between  
13 this application examining function and the office  
14 action.

15           Initiating the authoring phase of an  
16 office action takes us to this screen. What we  
17 see on the far left is the office action file  
18 management, which allows the examiner to manage  
19 current drafts of office actions. Next to that,  
20 there is an interactive template tool that allows  
21 the examiner to create preconfigured office  
22 actions. Then in frame number six up there, we

1 have an inline word processor for office action  
2 creation editing. Then to the far right is a form  
3 paragraph manager that allows user to drag and  
4 drop either canned content from the MPEP, the form  
5 paragraphs there or items that they've stored in  
6 their personal library.

7 On completion of an office action, the  
8 Patents End 2 End tool will automatically create  
9 all the electronic forms that are needed to create  
10 the office action and will automatically complete  
11 much of the forms using the information that has  
12 been accumulated during the examination process.

13 This is our mostly our Fiscal Year 2012  
14 timeline. We're nailing down our Fiscal Year 2013  
15 timeline. Some of the areas where we're seeing a  
16 lot of activity right now are the Patents End to  
17 End office action, which is second to last project  
18 in architecture and infrastructure. We have  
19 patent examination tools to infrastructure. Both  
20 of those are scheduled to release a major update  
21 at the end of this fiscal year. Patent  
22 examination tools and infrastructure is scheduled

1 to release to an art unit in November and then to  
2 the corps in March. With PE2E office actions  
3 getting a little bit ahead here, going to Fiscal  
4 Year 2013, we have scheduled to release that to  
5 CRU in September and then we're looking to release  
6 that to an art unit in April and then to the corps  
7 next October.

8 So, some of the other areas that you see  
9 getting a lot of activity here at the CPC  
10 database. The IP5 are ramping up and we have a  
11 lot of projects under conversion of Legacy data.

12 Risks and issues. These have stayed  
13 fairly stable. We have "availability of teams and  
14 resources," "ambitious scope of features." I'd  
15 add to that based on the timelines I just gave you  
16 we have aggressive deadlines. Scaling and  
17 improving the image to XML transformation process,  
18 Legacy data quality and contractor support for  
19 software development.

20 MR. BORSON: Well, David, thank you very  
21 much for that overview.

22 Are there any questions from the group?

1 Wayne?

2 MR. SOBON: Yes, David, maybe you can  
3 comment a bit where we had the presentation  
4 describing the new Text 2 PTO effort how that  
5 dovetails into this as then a forward-going,  
  
6 full-scale system once you complete the historical  
7 upload of the work.

8 MR. LANDRITH: Sure. So, you can see we  
9 have quite a bit of activity surrounding  
10 conversion of the information that we take in into  
11 XML, and, so, what we ultimately want to be doing  
12 is intaking all of the information or as much as  
13 we can and in XML rather than going through the  
14 conversion process. So, it is going to take some  
15 time to both deploy in XML, solution to  
16 applicants, and also for them to adopt it. So, we  
17 are going to be converting in the meantime, but  
18 the long-term goal is to be receiving the  
19 applications as structured applications that can  
20 go directly into patents.

21 Does that answer your question, Wayne?

22 MR. SOBON: Yes, and, of course, I'm

1       sure efforts are underway on this, but an  
2       education/cajoling of the applicant cohort to the  
3       benefits of this and to get them to be encouraged  
4       to do that I think would be very important. So,  
5       as you think it through the next year or two, I  
6       think that's going to be an important change  
7       management issue, global change management issue  
8       for your applicant pool. So, we're happy to help  
9       assist on that and to provide feedback to the  
10      extent you think is appropriate for that.

11               MR. LANDRITH: Thank you very much for  
12      offering that. You make a very good point. It's  
13      something we're going to have to coordinate very  
14      carefully.

15               MR. BORSON: David, I know that Terri  
16      Raines has left. I believe she has gone, but I  
17      wanted to ask you about the kinds of validation,  
18      not the tools themselves, but rather how you would  
19      approach getting user, specifically external  
20      stakeholder input into the validation tools. I  
21      know that we've had conversations in the past  
22      about the sensitivity of metadata in XML file and

1 I was just wondering if you had any plans to reach  
2 out to the user community to get input as to how  
3 effective that is likely to be or if there are  
4 problems how to change them.

5 MR. LANDRITH: We do plan and we are in  
6 the processing of reaching out to the intellectual  
7 property and the applicant community to make sure  
8 that we can do everything that we need to in order  
9 to sage anxieties relating to that. Moving from  
10 PDF to Word, we want it to be as non-disruptive as  
11 possible and making sure that we can address  
12 concerns upfront, whether they relate to  
13 appearances or substantive issues, making sure  
14 those are treated appropriately.

15 MR. BORSON: Yes, I was wondering  
16 whether or not you plan any active roadshows,  
17 roundtables, something of that nature. Maybe this  
18 is premature because this system isn't really up  
19 and fully operational at this point, but I think  
20 that might not be a bad idea because you're asking  
21 for a lot of people to make a major change in the  
22 way that they behave. I mean, currently, we write

1 a document in Word and strip out the metadata by  
2 scanning it in the PDF. So, we feel very  
3 comfortable about that process and many of us have  
4 this anxiety about metadata or other proprietary  
5 data being sent off to someplace, maybe stored in  
6 a cloud somewhere where who knows who will have  
7 access to it.

8 Marti, please.

9 MR. HEARST: Let me jump in. Thanks for  
10 your question, Ben. Yes, we just didn't have time  
11 in the 20 minutes allotted to address that very  
12 particular issue, but actually, the issue about  
13 metadata being left in the document is one of the  
14 number one concerns that are brought up by the  
15 stakeholders that we've been interviewing over the  
16 course of a year and we have a solution for that  
17 built right into the software for the tool. We  
18 have engaged in expert in open XML, which is the  
19 XML that Word produces and we can automatically  
20 strip that right out of the document for you if  
21 you like or we can give you instructions for how  
22 to remove it yourself from Word if you use it.

1           Also want to emphasize that we are not  
2           restricting this to Microsoft Word. It will work  
3           with Open Office version of Word and we will be  
4           supporting many other word processing tools, as  
5           well. So, I want everyone to be clear that it's  
6           not just Word.

7           And, also, we're going to be having  
8           focus groups here all summer at the office, as  
9           well as some roadshows. That's already planned.

10          We ended up describing this a little earlier than  
11          we meant to because we wanted to get a lot of  
12          public -- and we're really glad we're doing it,  
13          but we want to get a lot of public input on all  
14          the details. But we know that people are very,  
15          very concerned about leaving their proprietary  
16          information in the document. We know that's  
17          pretty much the number one concern and we already  
18          know how to address that. So, that shouldn't be  
19          an issue with the solution.

20          MR. BORSON: Well, very good, thank you,  
21          and I presume that all that metadata that you  
22          strip out will be stored in some easily accessible

1 file so that hackers can get into it easily. Is  
2 that right?

3 MR. HEARST: I guess I --

4 MR. BORSON: Yes, thank you, no answers.  
5 No comment, no comment.

6 Okay, thank you very much. Any other  
7 questions? Oh, yes, Steve, please.

8 MR. MILLER: Yes, I had a question about  
9 the automated prior art searches. Being an old  
10 mechanical guy who likes to page through and look  
11 at drawings, how are you thinking about automated  
12 searches with drawings or with chemical structures  
13 and is there something that we can do as users to  
14 try to help you with that?

15 MR. LANDRITH: At this point, the work  
16 that we're doing on automated prior art is  
17 exploratory. The solution that we currently have  
18 is several years old basic on semantic analysis  
19 tools that have been surpassed in functionality by  
20 quite a bit. We'd be very interested in  
21 information or assistance that could be provided  
22 by the intellectual property community in that

1 area.

2 MR. HEARST: But I would say image  
3 search is still not there technologically. I'm  
4 leading the search effort and we are going to be  
5 looking systemically at evaluating different tools  
6 for automatically suggesting documents based on a  
7 patent. We're going to do a systematic effort for  
8 that. We just started that up this summer. There  
9 are many, many competing vendors working in that  
10 space. So, the hard part there is selecting among  
11 the many options. But image search is still not a  
12 solved problem, so, I'm not claiming that we're  
13 going to have that to be perfectly honest, yes.

14 MR. BORSON: Any other comments or  
15 questions? Michelle, nothing. Okay.

16 Well, thank you very much, David and  
17 thank you very much, Marti.

18 Well, we do have a few minutes prior to  
19 our next topic, unless you just want to move  
20 straight ahead. Why don't we do that? Steve,  
21 you're here. Bruce, you're here. Oh, very good.  
22 Yes, Bruce, this is great. Okay, let's move ahead

1 and we'll capture a few minutes here. This will  
2 be international initiative update, please.

3 MR. MILLER: Yes, let me just kick it  
4 off a little bit if I could, Ben, and I think the  
5 office this year and as Director Kappos talked  
6 about this morning, they've continued to expand  
7 their international cooperation with foreign IP  
8 offices in the hopes of not duplicating effort,  
9 increasing or decreasing the backlog and  
10 decreasing processing time, and they're looking at  
11 a number of work sharing opportunities and we  
12 don't talk a lot about the great international  
13 work that the office is doing to try to cooperate  
14 with other offices. We have the IP5 Group, we  
15 have the Trilateral Group, but the larger patent  
16 offices, and we have PPH, the Patent Prosecution  
17 Highway, we have other opportunities that  
18 applicants can take advantage of to expedite  
19 prosecution and to get more uniformity across the  
20 globe. And we thought today we'd take the  
21 opportunity and highlight a couple of programs  
22 that are happening in the international arena and

1       then maybe have some follow-up about some other  
2       projects that are going on so the public can be  
3       aware of what's going on.

4               So, I'll turn it over to Bruce and to  
5       Charlie and they can do their pieces.

6               MR. PEARSON: Yes, thank you. It's my  
7       pleasure to be here to address you today. Of  
8       course, the PCT has been a very successful program  
9       since its inception. I think in 2011, it was over  
10      180,000 international applications filed and it is  
11      really the largest work sharing program in the  
12      world for patents certainly, and although it's  
13      been very successful, the feeling is that it can  
14      always be improved. Certainly small improvements  
15      in the PCT could result in very large improvements  
16      in the worldwide patent system.

17              So, given that, Director Kappos  
18      requested that we take a look at the system and  
19      see if we could come up with ideas for various  
20      improvements. Therefore, a team was put together  
21      and we looked at the PCT. I guess the number one  
22      item we looked at was how we improve the quality.

1 We also wanted to keep transparency in mind and  
2 make sure the work product could be used  
3 downstream and also to see what we could do  
4 simplify and streamline the system.

5           Anyway, we identified a series of rather  
6 diverse ideas and some of them are simple and can  
7 be implemented in the short-term. In fact, some  
8 of them can be implemented possibly multilaterally  
9 or even unilaterally, and, of course, some of the  
10 ideas are more complex and would require a great  
11 deal more time and effort. And I'd just like you  
12 to keep in mind that these are general concepts.  
13 We're just at really the conceptual stage and we  
14 expect that as they move forward, they can be  
15 modified and improved.

16           Okay, just we identified a dozen  
17 different items. The first was that of concept of  
18 making self-service changes somewhat similar to  
19 what we do with our e-petitions here in the USPTO.  
20 And under this proposal, applicants could make  
21 corrections to the bibliographic data under PC2  
22 Rule 92bis or priority claims, to add or correct a

1 priority claim, and this would be an automated  
2 system that would provide instant feedback as to  
3 whether or not the change was accepted.

4 The second idea was to have limited  
5 Chapter I claim amendments. Currently, under the  
6 PCT, at present, you're not allowed to amend the  
7 claims until after the search report is prepared.  
8 In certain instances, it would be advantageous for  
9 applicants and offices to allow some sort of  
10 limited claim amendment. Sometimes  
11 claim-numbering is flawed up on filing or the  
12 dependencies are erroneous or even we'll have  
13 duplicate claim sets or multiple claim sets where  
14 one was accidentally filed and the applicant would  
15 just assume cancel that second claim set, and, of  
16 course, as an office, wouldn't see any benefit in  
17 examining a set of claims that the applicant  
18 wasn't interested in.

19 The third idea was to simplify  
20 withdrawal of the international application.  
21 Sometimes, applicants like to or find it necessary  
22 to withdraw an application prior to publication,

1 and, currently, you need to obtain the signatures  
2 of all the applicants. Would like to just explore  
3 the idea of maybe relaxing that requirement to  
4 make it easier for applicants.

5           The fourth item was to standardize fee  
6 reductions for national phase applications, and  
7 under this concept, national and regional offices  
8 would offer a national stage fee reduction for  
9 national phase applications that contain only  
10 claims that had been indicated as having a  
11 positive outcome in the PCT say as the novelty  
12 inventive step and industrial applicability.

13           The fifth item would be to provide for  
14 some sort of international small or micro entity  
15 fee. Feel that certainly small entities can be a  
16 major contributor to economic improvement and job  
17 creation and to provide them some sort of  
18 incentive to use the worldwide patent system would  
19 be advantageous and this would be a type of  
20 program that would be available to all countries,  
21 not necessarily just the developing countries.

22           Okay, the next idea would be to

1 integrate the national and international phases.  
2 And we have a couple different concepts under this  
3 heading. The first would be that a PCT report not  
4 only would it be an international search report,  
5 it could also constitute a first office action on  
6 the merits in the national office that is serving  
7 as the searching authority and this would  
8 certainly consolidate the procedures and be  
9 somewhat more efficient.

10 As another option, we could require  
11 response to negative comments made during the  
12 international phase upon national phase entry. I  
13 think this is something that the EPO is currently  
14 doing and it will be interesting to see how it  
15 operates there.

16 The next item would be making it  
17 mandatory to record the search strategy and I was  
18 a little surprised to learn that all offices don't  
19 necessarily do that. And, of course, as a result  
20 of this would be made available to downstream  
21 offices so that the original search could be  
22 evaluated. Was a proper search done? Could it be

1       relied upon? It might facilitate reuse.

2                   And the next item is the concept of two  
3       or more offices working together in a  
4       collaborative manner to establish just one search  
5       report. We feel that such a search report would  
6       be a greater quality than would be prepared today  
7       and would be more useful in the national phase.  
8       Currently, the U.S. is participating in a  
9       collaborative search and examination pilot with  
10      the EPO and the Korean office and it's very  
11      interesting, the examiners work together and the  
12      feeling there is the quality is so high that  
13      little if any further work would need to be done  
14      in the national phase.

15                   Next item would be that of mandatory  
16      top-up searches or updated searches. Once again,  
17      I was a little surprised to learn that some  
18      offices in the world do not routinely update the  
19      search the next time they pick up a case say for  
20      chapter two examination. And we feel that this  
21      would serve to increase quality.

22                   Next item is the development and

1 implementation of the Global Dossier System and  
2 incorporating that into the PCT. Under this  
3 system, it would be a single automated portal, if  
4 you will, where an applicant could file on  
5 application and basically manage his entire  
6 international patent portfolio through this  
7 system. System could provide prompts such as say  
8 it's time to enter the international phase in  
9 Hungary, so, you want to do that, press this  
10 button and it'll happen automatically. And, of  
11 course, it would save having priority documents  
12 flying around the world.

13           The next item would be a formal  
14 integration of the Patent Prosecution Highway into  
15 the PCT. And I'm sure you're very familiar with  
16 the PPH, but this would be where the PPH would be  
17 formally integrated into the PCT and offices would  
18 fast-track the national stage applications, which  
19 presented only claims which had received a  
20 positive report in the international phase.

21           And the last item is to make the written  
22 opinion of the international searching authority

1 available to the public at publication and under  
2 the current system, a search report is prepared  
3 along with a little more detailed written opinion  
4 and it seems silly the search report itself is  
5 made available upon publication, but the written  
6 opinion remains confidential until 30 months have  
7 expired.

8           Okay, so, to date, we have submitted  
9 this plan to a number of international bodies.  
10 It's been considered in the trilateral, the IP5,  
11 and the week before last, we presented it WIPO to  
12 the PCT Working Group and the U.K. joined with us  
13 in this proposal. And, generally, the reaction  
14 has been quite positive to it. You might know at  
15 WIPO, there have been a number of contentious  
16 meetings in the recent past and it really received  
17 a positive response. And so, the idea is now that  
18 we would revise the document which is currently  
19 general concepts, provide a little more meat to  
20 it, draft amended regulations where we can, and  
21 then put it out there for further review and  
22 comment.

1                   Certainly, the last item here moved  
2 forward with Director Kappos in place. If you're  
3 not moving forward rapidly, you're losing ground.  
4 So, he's been a big proponent of this proposal.  
5 And so, we're hoping it can improve the worldwide  
6 patent system.

7                   MR. BORSON: Why thank you very much.  
8 That was a very nice overview. A lot of detail.  
9 Obviously, there's a lot that's going on and we're  
10 going to be very interested to learn more about  
11 each of those specific items.

12                   And I think, Steve, you have probably  
13 learned more about these than any of us. So, you  
14 will get our phone calls.

15                   MR. MILLER: That's why we're big users.

16                   MR. BORSON: Yes.

17                   MR. MILLER: So, I know will continue to  
18 monitor this and keep everyone up-to-date.

19                   MR. BORSON: Yes, very good. Thank you.  
20 Charlie, I did want to ask you a relatively kind  
21 of short-term question. Many of these proposals  
22 or ideas you've talked about are long range,

1 big-ticket, big items that will solve problems in  
2 the long run, but there are those of us that are  
3 actually engaged in forum shopping for searching  
4 authorities, and I wondered if you had any  
5 thoughts or comments about how that issue might be  
6 resolved. I mean, some people, in fact, are going  
7 to the Russian IP Office. Korea, of course, has  
8 been used widely. EPO has been used widely, U.S.  
9 has been used. So, that's sort of one question  
10 about forum shopping.

11           The other is that for those that do use  
12 the U.S., I don't know what the timeliness is of  
13 receiving a search and written opinion prior to  
14 the national phase. I know that that has been an  
15 issue in the past and I don't know whether it's  
16 still an issue or if you have any thoughts about  
17 that.

18           MR. PEARSON: Certainly, yes. As far as  
19 the U.S. is concerned, we recently went to a  
20 program of contracting out the PTC searches, and  
21 since that has occurred, the timeliness has  
22 improved greatly, and as I recall last year, with

1 over 90 percent of the search reports were  
2 prepared within 18 months from the priority date,  
3 which was a big improvement over past practice.  
4 So, I think as far as that is concerned,  
5 timeliness in the U.S. has been greatly improved.

6 We're looking at quality, the work of  
7 the contractors is being reviewed in our Office of  
8 Patent Quality Review, much like the review that  
9 U.S. office actions gets. So, we're looking at  
10 that.

11 Now, as far as other searching  
12 authorities, you mentioned Russia has come onboard  
13 as a competent searching authority for the U.S.  
14 Their views are quite inexpensive. It's going to  
15 be interesting. I think they've only received  
16 about 400 requests since they became competent,  
17 but it's been ramping up. So, and we had a  
18 meeting with a group from Korea yesterday and they  
19 are very interested in our contracting out their  
20 thinking about contracting out their PCT searches.  
21 So, we spent a fair amount of time explaining how  
22 we go about it there.

1                   MR. BORSON: Well, do you think there  
2 might be an issue with contracting to different  
3 entities with different philosophies? How would  
4 you expect to standardize a contracted-out search  
5 between different offices? Obviously, the U.S.  
6 Has its own view. Do you think that you will  
7 reach a level of commonality with other offices?

8                   MR. PEARSON: Well, of course, that is a  
9 very difficult question. I think right now,  
10 there's at least perceived differences in the  
11 qualities between the various authorities and when  
12 you add another layer of contracting out, that  
13 could be another issue. There are quality  
14 guidelines in the PCT administrative instructions,  
15 the Search and Examination Guidelines, and at  
16 WIPO, there's a quality subgroup of the meeting of  
17 international authorities that is getting together  
18 trying to look at the quality issues and hopefully  
19 harmonize a bit what's going to happen around the  
20 world, but yes.

21                   MS. KEPPLINGER: Okay, thank you.  
22 Robert?

1                   MR. BUDENS: Yes, Charlie, on slide  
2 five, I have a serious question here about your  
3 slide says uses a national first action of the  
4 merits from PCT search report. If I heard you  
5 correctly, I thought I heard you say that that  
6 could go either direction, use a PCT search  
7 report/written opinion as a first office action in  
8 the case, too. Is that being contemplated?

9                   MR. PEARSON: Okay, I think we're at a  
10 very early stage here, Robert, and, I mean, it's  
11 an idea we put forward and exactly what mechanism  
12 would be used to accomplish it just simply hasn't  
13 been decided yet. And if it even will.

14                   MR. BUDENS: It's one thing in my mind  
15 if an examiner at the USPTO is doing the national  
16 first action and then a contractor copies my  
17 action into the PTC search report. It's a whole  
18 other thing in my mind if a contractor is doing  
19 the search report first and the written opinion  
20 and then that's being translated as a first action  
21 on a U.S. national case. That, to me, is  
22 outsourcing the national stage and that's very

1       problematic in my mind.

2                   MR. BORSON: Thank you.

3                   MR. KISLIUK: Okay, thank you. To  
4 follow-up on what Steve said, it has been very  
5 active in the international arena and one of those  
6 looking-forward, very fast projects is the CPC.  
7 So, I'm going to go over a quick overview of the  
8 CPC. My understanding is [that] there had been a  
9 briefing to PPAC maybe last year one time, but I'm  
10 going to kind of go over the basics again and  
11 mostly focus on the timeline of where we are  
12 because we are getting pretty close.

13                   Also, Steve mentioned to me this morning  
14 a couple other topics he'd like me to touch on.  
15 If time remains, I'd like to touch a little bit on  
16 the Flash Pilot, which is an interesting pilot to  
17 talk a little bit about and also the latest on  
18 PPH. There are some revisions upcoming on  
19 improvements in the PPH Program.

20                   Okay, so, the CPC is the Cooperative  
21 Patent Classification Project. It's a joint  
22 venture between the EPO and the USPTO, which is a

1 bilateral classification system. The memo was  
2 signed by Director Kappos and Benoit Battistelli  
3 back in October of 2010. So, the formulation of  
4 this was a while ago, but as you can tell, quite a  
5 complex endeavor for these two countries  
6 bilaterally to work together on this. So, we've  
7 been working hard and a lot has been accomplished  
8 and still a lot to do.

9 So, what I'd like to cover quickly today  
10 is, number one, kind of an overview of why we're  
11 pursuing the initiative. The next thing I'll  
12 cover is some of the general features of CPC, and  
13 then the time I spend most of the time going over,  
14 the timeline.

15 So, the key reasons for pursuing it from  
16 USPTO is, number one, it aligns with one of our  
17 key strategic goals, which is number one, we want  
18 to accelerate harmonization. You heard Director  
19 Kappos mention this morning the importance in all  
20 the things we're doing. So, this aligns very well  
21 with harmonization. Definitely promotes resource  
22 sharing, especially in a work-sharing environment.

1                   And one of the key features, like the  
2                   AIA moves us forward in the filing arena to get  
3                   closer to harmonization, this moves us forward in  
4                   the classification arena in that we are currently  
5                   the only country that does not have an IPC-based  
6                   classification system. So, this moves us into  
7                   that direction and aligns us on a very good  
8                   strategic front. And it also provides practically  
9                   a single classification search yielding multiple  
10                  results as opposed to searching multiple systems.  
11                  So, for the U.S. examiners and others, it's a much  
12                  improved kind of collaborative corresponding group  
13                  search.

14                  This slide is a visual of the IPC-based  
15                  classification systems on the left and the USPTO  
16                  standing alone as we see on the right.

17                  Moving on to some of the features and  
18                  benefits of the program as we see it for the  
19                  USPTO, one is the ability, again, to search a  
20                  unified classification system. This will reduce  
21                  a bit of redundancy, number one. It will be  
22                  merging our publications and grants and also our

1 PG pub and U.S. patent documents merge. Plus,  
2 they're classified by patent family. So, there is  
3 some elimination of duplication by having the  
4 family data grouped.

5 For us to convert, another big advantage  
6 was that the EPO has been placing U.S. Patent  
7 documents into ECLA and the CPC system is based on  
8 ECLA, so, we'll be converting the ECLA  
9 classification nomenclature to the CPC, so, all  
10 the prior U.S. documents U.S. will have already  
11 been classified. So, we don't have to go back and  
12 re-classify the back file, we only have to go  
13 forward.

14 Another advantage is that it will  
15 provide more breakouts and not only does it  
16 provide more breakouts in the early phases of the  
17 transition, but with both the EPO and the USPTO  
18 working jointly on revision projects, we expect  
19 there to be more improvements more rapidly,  
20 particularly compared to the current status of the  
21 USPC.

22 Again, to touch on harmonization and the

1 improvements, the single search, in terms of  
2 managing the program, the sharing of resources is  
3 going to hugely beneficial to both countries. One  
4 of the big advantages to EPO, like I said, they  
5 have been placing symbols on U.S. documents in  
6 ECLA. We will take that over at some point in  
7 time, so, that saves them those resources. And,  
8 again, we say adaptively more actively maintained.  
9 Again, this is relative to the current USPC. And,  
10 again, the single classification symbol set for  
11 all these documents is hugely beneficial.

12 This next one is a little bit of a busy  
13 slide and I'm not going to go over the details  
14 today, but what it does show are the major  
15 classification systems and then how CPC on the far  
16 right compares.

17 So, what we show is the USPC, which,  
18 again, currently is not IPC-based. The IPC, which  
19 is the high-level international classification,  
20 ECLA from the EPO, and FI from the JPO. So, as we  
21 move forward in today's environment, USPTO is not  
22 IPC-based. Then you have the IPC, which is the

1 WIPO high-level classification, and then the two  
2 further breakouts of IPC that are available today  
3 are ECLA and FI. When we merge, CPC becomes the  
4 merging of USPTO and ECLA, so, we will only have  
5 two fully developed or deeply developed IPC-based  
6 systems. It would be CPC, which would be shared  
7 by the USPTO and EPO and then the JPO FI, and we  
8 are working closely with the JPO in terms of the  
9 timing in both the IP5 arena and other  
10 classification aspects globally to ensure that we  
11 hopefully can move to a true universal IPC-based  
12 classification system, and that is a point that we  
13 are focused on and for sure the JPO is focused on,  
14 as well.

15 So, now let me get on to the timeline.  
16 So, the first point starts on the top left. So,  
17 again, October --

18 MR. BORSON: Excuse me. I'm sorry.

19 MR. KISLIUK: Yes.

20 MR. BORSON: I'm sorry, but you said  
21 something very interesting about the FI and the  
22 new CPC systems maybe not being identical. What

1 do you think the implications of that are in the  
2 PPH and what are the implications in that in the  
3 short-term prior to their being a single deep dive  
4 into the searching?

5 MR. KISLIUK: Well, I think right now, I  
6 don't see a big implication on PPH. PPH is a  
7 program, which stands alone independently and is  
8 currently country-by-country series of bilateral  
9 agreements. I don't see that being an issue in  
10 terms of search. But I do see the IP5  
11 classification, the working group one  
12 classification issues and the IPC WIPO is where  
13 the discussion of the relationship between all of  
14 these now IPC-based system will evolve and I don't  
15 think it's a one-size-fits-all; I think it's going  
16 to be some combination and then we are in  
17 discussions with many of the other countries,  
18 Korea, China, others that use IPC but also have  
19 within their own countries certain unique  
20 technology specificity that they have their own  
21 internal breakouts created, for example, on some  
22 wireless technology. They have some of their own

1 internal system breakouts under the IPC that they  
2 don't share.

3           So, I think in our discussions, we're  
4 looking to use some of the better breakouts from  
5 other countries, looking for ways to incorporate  
6 that into what will soon be the CPC. But, again,  
7 timing wise, bilaterally, we need to get the CPC  
8 up and running and establish the mechanisms to  
9 operate it jointly between two countries and to  
10 maintain it before we attempt to introduce a third  
11 or more countries.

12           MR. BORSON: That's fine, thank you. I  
13 didn't mean to take too much of your time.

14           MR. KISLIUK: Okay.

15           MR. BORSON: So, please continue.

16           MR. KISLIUK: Okay, so, on the timeline  
17 on the top left, the joint statement was signed on  
18 October of 2010. In November of 2010, it says,  
19 "Freeze the USPC." Bottom line, we're doing no  
20 more revision projects. So, we froze the revision  
21 projects last year.

22           There is a CPC launch site. On my later

1 slide, I will show the website link. It's not on  
2 the USPTO site. It's a shared EPO website.

3 Just recently, this June, the EPO froze  
4 their ECLA scheme. Now, they freeze their ECLA  
5 scheme and they have an algorithm to convert the  
6 ECLA nomenclature to the CPC nomenclature.

7 On July of this year, in fact, July 10,  
8 we're going to have a USPTO user's day for CPC.  
9 I'm expecting that notice to come out any day now.  
10 So, hopefully, it'll be posted very shortly. It's  
11 a half day session. We'll be giving some  
12 high-level overview of the program, the conversion  
13 methodology, and we sent it to a lot of advisory  
14 users. So, we'll share that with you when it  
15 comes out.

16 Up until October, we are in the early  
17 parts of June, so, up until October, we are in  
18 continually and very robustly working with our EPO  
19 colleagues. One is in developing training.  
20 Again, since it's based on ECLA, they are the ones  
21 that kind of are the teachers and we're the  
22 students. So, they're providing a lot of the

1 training. For our examiners, how to use it. The  
2 documenting classification practices, how we're  
3 going to manage this thing together, and when we  
4 mentioned the collaborative environment, what we  
5 mean is the electronic tools and interaction that  
6 we're going to need in order to work together on  
7 both revision projects, as well as examiners  
8 exchanging information in terms of a knowledge  
9 exchange.

10 On October 1 of this year, we expect to  
11 what we're going to say freeze the CPC launch  
12 scheme. So, that'll be what we call version one.  
13 We know it's going to be iterative, but that's  
14 version one and we need to lock it in so that they  
15 can develop the materials and get ready for the  
16 January launch.

17 On January of 2013 is the launch. Now,  
18 for the USPTO, it's important to realize that  
19 while we will be adding CPC symbols, we will not  
20 be removing USPC symbols. We'll continue to have  
21 both sets of symbols on documents for about a  
22 two-year period of time. That's what we envision

1       our transition period, and I'll mention in my next  
2       slide how closely we're working with the union and  
3       have been and continue to be in terms of  
4       developing materials and training for the  
5       examiners to ensure that we have a smooth,  
6       seamless transition to the extent that we can.

7                On that January 1, our contractor that  
8       does our initial classification will start  
9       applying CPC symbols. Again, we will be just  
10       learning that. We'll be trained and our  
11       contractor will be trained, but we'll be  
12       relatively new to doing that and we will continue  
13       our training of the Patent Corps and trying to get  
14       our examiners to adopt as early as possible in the  
15       two-year window and not wait until the end of the  
16       two-year window.

17               So, after January 2013, while we are  
18       learning and placing symbols, we're going to have  
19       a quality assurance process in place and that's a  
20       process in which the EPO will be monitoring our  
21       placement and giving us feedback. So, that's a  
22       period of time that will go on until we are

1       proficient at placing CPC symbols.

2               Both countries will be using CPC. We'll  
3       have it available. Examiners won't have to use  
4       it, but it'll be there. So, we'll be learning it.  
5       For the EPO, they will have converted. So, they  
6       will have CPC.

7               We are going to begin a series of joint  
8       revision projects. We started three projects as  
9       pilots. I believe two of them are complete and  
10      one is in the final phases, but we practiced and  
11      piloted how it's going to be when we do a joint  
12      revision project. So, we did three. It worked  
13      fairly well. We actually had one that we didn't  
14      resolve. So, we formed what we called an  
15      Escalation Board to come up with a resolution and  
16      that's working well, too. So, we're piloting  
17      these things to learn how to work together in the  
18      future. All those are working very well.

19              Up until January of 2014, we'll continue  
20      our Patent Corps training and a lot of the IT  
21      systems hopefully will be in place in terms of the  
22      collaborative environment and how we work

1 together. Then our projected end of our what I  
2 would say the transition window, although we  
3 understand that at least from a user point of  
4 view, the transition will probably take longer  
5 than two years, but we will stop placing USPC  
6 symbols at the end of those two years and then  
7 rely on the CPC.

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

9 MR. KISLIUK: Okay.

10 MR. BORSON: Good going. That's great  
11 news.

12 MR. KISLIUK: A couple just few quick  
13 slides after that.

14 MR. BORSON: Okay.

15 MR. KISLIUK: Like I mentioned, we are  
16 collaborating with POPA very closely. We meet  
17 every week. They're reviewing our scheme and  
18 definitions of CPC. Examiners are providing us  
19 feedback. Hopefully, we finalize our IT  
20 requirements. It's important the exchange and  
21 sharing of this system. We plan to have what we  
22 call a common golden copy of the CPC and that's a

1 very elaborate IT mechanism to keep us both  
2 enjoined in that.

3           And here are a couple of resource sites.  
4 One is there's that CPC general website that has  
5 some general information. Until the CPC is  
6 available, there is the ECLA searches. So, you  
7 can learn a lot about CPC by just understanding  
8 ECLA and that's available, of course, on the  
9 EPOQUENET site, and then I just made a note again  
10 of our User's Day on July 10.

11           Okay, and if time remains, if you like,  
12 a couple minute --

13           MR. BORSON: There's time, and Steve.

14           MR. MILLER: Yes, well, we're going to  
15 have Bruce update us on a couple real quick issues  
16 so that people can understand some other things  
17 going on.

18           MR. KISLIUK: Yes, we do have a lot  
19 going on, but there are just two that Steve asked  
20 us specifically. One is a pilot we call the FLASH  
21 Pilot. FLASH stands for First Look Application  
22 Sharing, and the concept behind FLASH is that for

1 a U.S. applicant if you file first in the U.S.,  
2 then you file into another country, if you use the  
3 PDX to get your priority document, that's a point  
4 in time when the USPTO knows that we are the  
5 office of first filing. That's a kind of  
6 electronic flag that we know that you filed in  
7 another country and now you're requesting a U.S.  
8 priority document.

9           What we did is we have an agreement and  
10 we're running a pilot for two years. It was a  
11 one-year pilot and we extended it with POPA and  
12 it'll run until November of 2012, and the way the  
13 pilot works is out of the cases that were  
14 cross-filed, based on the PDX information, we're  
15 taking up to 100 cases from the JPO and 100 cases  
16 from the EPO. Those are our two trilateral  
17 partners and we're accelerating those U.S. cases  
18 at the time we know there's PDX, and what we're  
19 trying to do is determine whether the timing works  
20 so that they could use our USPTO office actions  
21 and how that goes because we know kind of from PPH  
22 experience when we're the second office of

1 examination, we kind of know what it is to receive  
2 work.

3 This is a flipside, this is a specific  
4 pilot, and so far, the feedback from them is it's  
5 going fairly well. They're receiving them timely,  
6 taking advantage and we expect to get an update  
7 report at the end of this year. Timing-wise, it  
8 seems to be working as well also. It's taking,  
9 from the time we know and give the examiner a  
10 notice that there it's a PDX case to please  
11 accelerate; it's taking about 80 days. So, less  
12 than three months, an examiner's picking up the  
13 application to do the first action. And, on  
14 average, the first actions are getting done within  
15 18 months, which is about 4+ months quicker than  
16 the typical first action.

17 So, the process is working. They are  
18 being accelerated, and, so, that's an interesting  
19 program and we'll be happy to share with you guys  
20 the results.

21 The other thing that Steve asked me  
22 about was the PPH, particularly PPH 2.0. So, I

1 think we've talked about PPH a lot. Everyone  
2 knows the benefits of PPH, but like most things,  
3 it can be improved. And so, some of the things  
4 that PPH 2.0 Program -- and I'll explain a little  
5 bit about the evolution.

6 So, one of the recent suggestions and we  
7 actually implemented this in 2011 was something  
8 brought up by the Japanese, they call it the  
9 Mottainai. Now, PPH started out with an Office of  
10 First Filing Requirement and then you could only  
11 use it on the Office of Second Filing. What the  
12 Mottainai proposal is is you still have to have  
13 the priority relationship, but it doesn't have to  
14 be first filing, it could be a second filing.  
15 It's whatever work is available and there are  
16 certain situations when the Office of Second  
17 Filing does the work before the Office of First  
18 Filing. So, you still need the same priority  
19 relationship, but which one goes first, it doesn't  
20 matter. Okay, so, that opens up the program to  
21 more situations. And there are, I believe, eight  
22 offices joined with us in July to do this and then

1 the EPO recently joined, so, now we have nine that  
2 are doing Mottainai.

3 Now, Phase Two, and now we call that PPH  
4 2.0, is building upon the Mottainai and the  
5 continuation of improvements to the system to  
6 lower the barriers of usage. Right now, it's only  
7 the U.S. and the EPO that is piloting these. We  
8 expect Germany to join very quickly, but the  
9 second round of 2.0 further simplifies  
10 requirements in a number of ways.

11 Number one is it allows the applicants  
12 to self- certify the claims correspondence. Right  
13 now, we have GS-15 employees that compare claims  
14 to see that the claims correspond. We allow  
15 applicants under this program to self- certify.

16 Another one is that it allows machine  
17 translation of office actions. So, applicants  
18 that are coming from a foreign language could use  
19 a machine translation cheaper and easier. And  
20 another one is that if the examiner can access  
21 that office action from the other country through  
22 electronic dossier means, then they don't have to

1 submit it. So, these things are trying to lower  
2 the barriers to use. Again, it's early phases,  
3 we're only doing it with the EPO and now we're  
4 trying to get some more of the Mottainai countries  
5 to join us. So, we don't really have results  
6 statistically yet.

7 MR. MILLER: Thanks. I also want to  
8 give acknowledgement to Mark Powell, who's  
9 overseas today, but he does a lot of this stuff  
10 and does great work, but I hope the public  
11 understands there's a lot going on on the  
12 international front that they can take advantage  
13 of to hopefully speed up their cases and to get  
14 quicker allowances here and on their foreign  
15 cases.

16 MR. BORSON: Why thank you. That's very  
17 informative. So, thank you so much, Bruce and  
18 Charlie and Steve.

19 Well, at this point, we can move on to  
20 our last agenda item of today, which is Chief  
21 Judge Smith of the Board of Patent Appeals and  
22 Interferences, soon to be renamed. And I don't

1 mean the judge will be renamed, but the board will  
2 be renamed.

3 So, thank you very much for joining us  
4 and it's a pleasure and, James, please feel free.

5 JUDGE SMITH: Good afternoon. Time is  
6 short and I want to make sure that rather than  
7 speak about the several things I would speak about  
8 and address them in the wrong order, that I make  
9 sure I direct my comments to the things you wish  
10 to hear about.

11 Let me first of all, however, address  
12 two items that were homework assignments that you  
13 left me with at our last meeting. One of those  
14 had to do with some further discussion of the  
15 meetings that board judges have with  
16 representatives of the technology centers to  
17 advance the discussion between the board and the  
18 technology centers regarding cases that might come  
19 up on appeal, not speaking about specific cases,  
20 but just overall procedures that might better  
21 refine the set of cases that come to us. The  
22 second homework item had to do with specific

1 correlations between things we are undertaking to  
2 do at the board and the results those initiatives  
3 are intended to achieve.

4 First, with respect to the meetings with  
5 the technology centers, let me start by just  
6 reviewing briefly the structure of the board which  
7 is broken into a few sections. "Broken" is maybe  
8 not a good word to use. It's divided into several  
9 sections. We have three electrical sections, one  
10 mechanical section, a chemical section,  
11 biotechnology, business methods, and contested  
12 cases. All of those sections other than the  
13 contested cases section have a natural links to  
14 various of the technology centers and have ongoing  
15 meetings with technology center representatives in  
16 the case of nearly all the technology centers, and  
17 those meetings are no less than quarterly and  
18 sometimes as much as happening monthly or more  
19 than monthly.

20 And the participation both on the  
21 examining corps side and the board side has been  
22 very good. We have had in recent times, for

1 example, as many as 12 of the judges from the  
2 chemical section present at the meetings with the  
3 technology centers. We emphasize in all these  
4 meetings that specific cases are not the subject  
5 of discussion, but general policy matters having  
6 to do with the cases. We review the board  
7 perspective on recent federal circular Supreme  
8 Court decisions and how we think those will play  
9 into our decisions and should play into the work  
10 being done by the examiners.

11 One thing that we've done increasingly  
12 in those meetings is to identify in advance of the  
13 meetings good examples of examiner answers and to  
14 share those with the attendees at the meetings and  
15 to point out the features in those answers that  
16 have caused us to select them as examples. This  
17 is particularly useful right now because it links  
18 up with the effort we have ongoing to streamline  
19 our decisions, make them as concise as possible,  
20 including where we can, citing to examiners'  
21 answers for the entire rationale for our  
22 decisions. So, we think the time spent on that

1 activity not only works for our purposes, but also  
2 for the technology centers and the examiners.

3 With regard to technology center  
4 participation, again, in recent times, looking to  
5 that, we have had as many as 150 examiners at some  
6 of these meetings, including, for example, 50  
7 examiners live in 1 session and 100 or more  
8 joining by webcast during the session. So, for  
9 now, our plan is to push forward with these  
10 meetings and to continue to use them as  
11 effectively as we can. And we have some  
12 discussion ongoing with the commissioner and other  
13 representatives of the patent corps to how we  
14 might be a bit more public within the agency  
15 pointing to good examiner answers.

16 We've had a couple of instances in the  
17 last couple months where the Federal Circuit  
18 actually has affirmed decisions of the board in  
19 which the board relied on examiners' answers for  
20 the principle points of the rationale. So,  
21 clearly, we have instances of good examiners'  
22 answers which have gone the full course and where

1 we can be entirely confident in pointing to those  
2 types of answers as the kind which can withstand  
3 judicial scrutiny. So, that's homework item  
4 number one.

5           Homework item number two I can address  
6 by going to certain of the slides that are  
7 presentation for today. I've gone to what I think  
8 what's slide 13 in the slide set and it's maybe  
9 not the most rigorous of attempts to show a  
10 correlation between certain of our initiatives and  
11 the results, but it's a fairly good one, we think.  
12 What we have isolated on the slide are two  
13 different quarters. Each of the three-bar sets  
14 represents a month in a quarter and we have three  
15 months in each of those quarters. The quarters  
16 are separated by not quite a year. What we have  
17 there is the third quarter of 2011 and the second  
18 quarter of 2012. Let me explain the selection of  
19 the quarters and then go to what the data  
20 indicate.

21           The first quarter shown there is a  
22 quarter that in which we did not have in place two

1 of our current initiatives, the use of a special  
2 incentive plan that we call the Backlog Buster  
3 Bonus Program or BBB. It's also a quarter in  
4 which we were not yet focused on compact decisions  
5 quite as much, not shooting to see how many per  
6 curium decisions we could have, including  
7 decisions relying primarily on the examiners'  
8 answers to basis of the decision. That is  
9 contrasted with another quarter, the second  
10 quarter of 2012 in which both of those activities  
11 were ongoing. We had in place the Backlog Buster  
12 Bonus Program and we also had discussed at great  
13 length our per curium decision initiative and had  
14 been discussing it for a while and already as a  
15 group we were very much engaged in trying to have  
16 as many decisions fall into that category as  
17 possible. And what this shows is the difference  
18 between the output of the board in those two  
19 differently-positioned quarters. Since the slide,  
20 the numbers are somewhat small. We have broken  
21 those quarters out into separate slides so we can  
22 look at the numbers more specifically.

1                   What you'll see in the first of those  
2                   quarters, in the first bar is a representation of  
3                   the number of cases which came to the board for a  
4                   decision and the second bar, the red bar, shows  
5                   the number of decisions by the board and then the  
6                   third bar is the difference between the two. You  
7                   will see that in that quarter, the output of the  
8                   judges, and here we measured only the output of  
9                   what we're calling the incumbent judges so that  
10                  the same number of judges were responsible for the  
11                  output in the first quarter that we're focusing on  
12                  and the second quarter that we're focusing on.

13                  As we talked about at the last meeting,  
14                  one thing that's important in order to get to a  
15                  correlation is to sort of strip out the variables.  
16                  So, here we stripped out the variable of new  
17                  judges by showing no output of any of the judges  
18                  who came in the time between the first quarter  
19                  we're showing here and the second quarter. So,  
20                  the numbers are drawn against the same backdrop.

21                  The output of the judges on average was  
22                  582 cases per month as compared with or contrasted

1 with the first quarter in which we had the bonus  
2 program and also the pro curium surge, where the  
3 average output per month by the judges was 836  
4 cases, a difference of roughly 250 cases per  
5 quarter, which I think is fairly substantial. And  
6 the number of cases that comprised the output is,  
7 of course, growing because the number of new  
8 judges also is growing.

9           Generally, and I think I mentioned this  
10 at our last gathering, we are looking regularly,  
11 in fact, every seven days, at the difference  
12 between the receipts and the dispositions in the  
13 previous 30 days, and what you'll see is that,  
14 generally, we are trending toward the end of the  
15 growth in the backlog. In fact, this is not the  
16 most recent data. The report from last week  
17 showed that were, in fact, only five more cases  
18 received than the number of cases decided by the  
19 board, which is very different than a delta early  
20 in 2011 where the difference between cases  
21 received and cases decided was as much as 800  
22 cases. So, we're definitely trending the right

1 way here.

2 With regard to correlations, another  
3 thing that we have measured in order to try to see  
4 whether the positive results are, in fact, coming  
5 about from things we have done. We are regularly  
6 measuring in a specific way the output from our  
7 newest judges. And I'm trying to locate that  
8 slide. We actually were there only a second ago.  
9 And I don't see where that slide is.

10 Let me go instead to the other part of  
11 what we're discussing right now, the pro curium  
12 decisions. You will see here that we actually are  
13 charting very deliberately now the number of pro  
14 curium or short decisions, including those where  
15 we rely on examiners' answers. Already this year,  
16 and we're not quite halfway through the year, we  
17 have 102 decisions which fall into that category,  
18 which exceeds 2010 by nearly 5 times, again, only  
19 halfway through the year. And we're likely before  
20 the end of the year to have 10 times as many pro  
21 curium decisions in 2012 as we had in 2010. So  
22 far, we have not had any reaction indicating that

1 that seems to be giving short shrift to the cases,  
2 and, in fact, as I've mentioned, we have recent  
3 indicators from the Federal Circuit that, in fact,  
4 those decisions can be sufficiently robust to  
5 withstand scrutiny and even to result in affirms.

6 With those things covered, I think what  
7 I'd like to do is step quickly through the other  
8 slides. Not very much in the substance of them,  
9 but to indicate what they cover and then allow  
10 those to trigger for you whatever questions you  
11 have in your minds about things that we should be  
12 reporting to you. And I'll work backwards from  
13 her.

14 This slide shows you essentially how we  
15 hope to regularly cause it to be that the board  
16 decides more cases that it receives. Looking at  
17 input or the receipted cases over the course of  
18 the last several years and looking in a very  
19 focused way on the number of cases received in  
20 recent times, we roughly have in mind that the  
21 board will receive about 1,200 cases per month.  
22 So, what we need to do in order to be eating into

1 the backlog is, in fact, decide more than 1,200  
2 cases per month.

3 We think that the incumbent judges,  
4 those judges who were already on the board as of  
5 the end of the calendar year 2011 roughly can  
6 account for about 900 decisions in our total  
7 output. We think the new judges that will be here  
8 through the end of this fiscal year and the  
9 beginning of the next fiscal year will be able to  
10 account for 200 or more decisions per month. That  
11 number, of course, will grow over time, one,  
12 because we have more new judges and also the new  
13 judges will become more accustomed to their duties  
14 and able to have greater output. But if we can  
15 have them hit the 200 number relatively soon,  
16 they'll provide the red portion of the bar shown  
17 in the slide.

18 We also are trying to make as much use  
19 of our contested cases judges to help us not only  
20 with the contested cases, but with ex parte  
21 appeals, they should be able to add something to  
22 our ex parte effort, as well, and we have regular

1        detailee programs where we get additional judge  
2        decisions that are assisted by drafts from our  
3        detailees. Altogether, we think that the  
4        combination of those efforts will get us routinely  
5        at the 1,200 cases or decisions per month level,  
6        which then should allow us to be in a good race  
7        with the receipts and eventually to outdo the  
8        receipts.

9                    As we discussed before, while the  
10       backlog was growing and to the extent it continues  
11       to grow, the pendency time for cases also grows.  
12       You will see that is has been slowing in the last  
13       two quarters, and, again, if we're able to catch  
14       up with the receipts as we think we will do before  
15       the end of the summer, that next bar on that chart  
16       will be no higher than the highest bar there and  
17       may be slightly smaller. So, applicants will be  
18       able to get decisions somewhat sooner than they're  
19       getting them now. That, of course, flows directly  
20       from the size of the backlog itself.

21                    As of today, it's about 26,600/700  
22       cases. Our nightmare scenario involved it already

1 being at 30,000 cases and approaching something  
2 like 35,000 by the end of the year. Because of  
3 the efforts that we have undertaken as seen by the  
4 fairly dramatic output from the incumbent judges,  
5 we have not yet hit the 30,000 mark, and, again,  
6 we think by the end of the summer, that highest  
7 bar and the next bar on the chart will not be  
8 higher, but will begin to come down.

9 That's the larger representation of the  
10 numbers I referred to earlier comparing the  
11 receipts with the dispositions and showing the  
12 difference. You'll see the trend, which is the  
13 black bar, that essentially gives the growth in  
14 the backlog.

15 For example, where you see the number  
16 245 minus 245 in the middle of the chart, that  
17 basically represents that in the 30 days prior to  
18 the date shown, the receipts were at 1,071 cases  
19 and the board decided the number shown there, the  
20 difference of which is 245. So, the backlog, in  
21 fact, grew in that 30-day period by 245 cases.

22 You'll note in the very last bar where

1       there were 924 cases received, 919 disposed of,  
2       that the backlog grew by only 5 cases which is the  
3       smallest growth in the backlog in recent moment.  
4       And, again, the goal is to get rid of the minus  
5       sign and show more cases disposed of than  
6       received. But, again, the bottom line is the  
7       trend is definitely in the right direction.

8                 There are the numbers for that  
9       particular time segment, that 30-day period in  
10      detail, and as you'll see, we measured not only in  
11      terms of the total, but we do breakdown by  
12      section. Our judge number continues to grow.  
13      We've had 66 candidates approved by the secretary  
14      of Commerce. By the end of July, we will have 55  
15      or 57, 58 of those new judges onboard. We  
16      continue to be overjoyed at the caliber of these  
17      judges. You will see from time to time in various  
18      press communications the names of the individuals  
19      selected. We think they represent some of the  
20      best patent attorneys to be found anywhere in the  
21      country and we hope we can continue to have  
22      appointed to the board judges of that caliber.

1                   We're probably at a time where I should  
2                   stop talking and respond to your questions.

3                   MR. BORSON:   Why thank you very much,  
4                   Judge Smith.   I would like to focus on a couple of  
5                   issues that we touched upon before in prior  
6                   meetings and those, I think, can be exemplified by  
7                   looking at the pie chart that you have and I'm not  
8                   sure which slide number it is.   Oh, there it is.  
9                   It's slide number nine.   And, in particular, I  
10                  wanted to ask your views on how the decisions of  
11                  the board get translated to the examining corps  
12                  and what use the examining corps might make of  
13                  decisions by the board, not only the affirmatives  
14                  and the partial affirmatives, but also the  
15                  reversals.   So, that's part one of the question.

16                  And part two which relates to that is in  
17                  addition to your pro curium project, which I think  
18                  is very admirable, do you have any plans for  
19                  having more decisions made precedential?   The  
20                  reason for that question is that precedential  
21                  opinions of the board are often very useful to  
22                  applicants in advising clients and developing

1 strategies.

2 JUDGE SMITH: In response to the second  
3 question, first, yes, definitely plans to look at  
4 designating a greater number of decisions as  
5 precedential. We have a few that are under  
6 consideration for that designation now. It's  
7 something we want to be very careful about.

8 We've had several instances in recent  
9 times where there are decisions that have some  
10 fundamentally useful point that we would like to  
11 make precedential, but where we have been  
12 concerned about other matters that have come for  
13 decision in those cases and we think it behooves  
14 us to be very careful to make sure that in  
15 designating cases precedential that we not only  
16 get the uplift of the instruction in the part  
17 we're focused on, but we don't suffer any loss in  
18 the part of the case that maybe is not the thing  
19 that caused us to view it as a candidate for being  
20 designated precedential.

21 With regard to the discussions with or  
22 the use by the examiners of our decisions, I

1 would, of course, defer to Commissioner Focarino  
2 as to how the examiners would use the things we  
3 put by way of instruction in decisions. Going  
4 back to homework assignment number one, we  
5 certainly are taking the time through the meetings  
6 with the TCs to point out those decisions which we  
7 think have broad implication for approaches to  
8 examination and we make those fairly specific with  
9 regard to the technological section, for example,  
10 the things that have come up in the discussions  
11 with the chemical TCs tend to be quite different  
12 than the things which have come up with the  
13 electrical TCs. We look very carefully at the  
14 cases and the trends in those sections and that,  
15 of course, is easy for the judges to do because  
16 that's what they're looking at in making the  
17 decisions and they readily amongst themselves have  
18 discussions about what they would prefer to see in  
19 examination and they're certainly sharing those in  
20 the TC meetings.

21 I would also say this, and we think of  
22 it as sort of a fundamental part of what we do at

1 the board, we view every case really as a dialogue  
2 with the examiners, whether those cases involve  
3 reversals or affirmances or anything in between  
4 that fundamentally, our mission in each and every  
5 decision is to say here is some instruction with  
6 regard to how we think this case should have been  
7 handled.

8 MR. BORSON: Thank you very much.  
9 Unless, Peggy, do you have something you'd like to  
10 add to this or -- okay, then please, Steve.

11 MR. MILLER: Well, and maybe this may  
12 tie to your question, Ben, but as I look at the  
13 rates of the Federal Circuit looking at board  
14 decisions versus board decisions of examiners, you  
15 have a very high affirmance rate at the Federal  
16 Circuit, but yet there's 33 percent reversal rate  
17 of examiners at the board. And maybe it is to  
18 Peggy, but I think it's a fundamental issue that  
19 if 33 percent of cases are being reversed that  
20 there are lessons to be learned here that could be  
21 passed along because there are errors being made  
22 and it's costing the user community the time and

1 the effort to have to take up those cases where  
2 there's one-third of reversal rate. And so, I  
3 would ask if the board could look at perhaps where  
4 are the key areas that are the reasons for those  
5 reversals so that they're not repeated over and  
6 over again and that trend has to continue. I  
7 mean, I would think that the reversal rate at some  
8 point would be much lower than that if we could  
9 correct some of these issues.

10 JUDGE SMITH: Well, just a couple of  
11 quick comments. One, in the large context, I  
12 think it is useful to have in mind that that's 33  
13 percent of the only 2 to 3 or 2 to 4 percent of  
14 cases that actually come to the board. So, 33  
15 percent of 3 percent is 1 percent of total  
16 examination, which, of course, doesn't make it any  
17 less appropriate to focus on that as an area for  
18 raising the level of examination.

19 And the other thought, and I want to be  
20 careful in speaking to this because it's certainly  
21 not a uniformed characterization of the issues  
22 that require focus, but a good amount of what the

1 board see has to do with rejections under Section  
2 103 and it is a challenge, I think, we would all  
3 be respective of, particularly in the post-KSR  
4 era, to articulate the rationale for decisions  
5 involving combinations of prior art. And that's  
6 possibly one area where our joint efforts between  
7 the board and the examining corps could be focused  
8 and to some degree has been the subject of the  
9 meetings with the technology centers.

10 MR. BORSON: Esther?

11 MS. KEPPLINGER: Yes, if I could comment  
12 on that, Steve, and, actually, Wayne and I had a  
13 sort of sidebar to this very point, at least for  
14 me when I was in the patent office looking at  
15 this, I would never want this number to be really  
16 low unless they're truly errors. So, I think you  
17 have a legitimate point and it's something that I  
18 think what needs to be looked at is what are the  
19 nature of the errors? Now, if some of these  
20 errors are slam-dunk reversals, absolutely, those  
21 need to be weighed, gotten out of there, and that  
22 feedback to the examiners is very important.

1                   However, there are a significant number  
2 of grey areas. We know the Fed Circuit doesn't  
3 always come. So, you wouldn't want this to be so  
4 low. If it were, then the examining corps isn't  
5 sending enough cases up. There are genuine issues  
6 in a number of cases that can go either way.  
7 Grey, particularly as Chief Judge indicates, one  
8 of three is a grey area in some cases.

9                   But to your point, I think an evaluation  
10 of exactly the kinds of things that are being seen  
11 and the types of errors, how easily is it to  
12 overrule the examiner? Those kinds of cases we  
13 should be definitely getting some kind of  
14 feedback.

15                   MR. BORSON: Well, very good. Thank you  
16 very much, Esther, and thank you very much, Judge  
17 Smith and thank you to the committee.

18                   Are there any final comments or final  
19 thoughts that you have for any of the people who  
20 presented today?

21                   If not, are there any final comments  
22 from the audience? We've had a very quiet

1 audience today. Sometimes, they have something to  
2 say, but apparently not today.

3           Anyway, I would like to thank you very  
4 much. I think we are now at the end of our formal  
5 agenda. What I would like to do is to invite the  
6 members of the committee to have a brief meeting  
7 after we adjourn. There is one matter that I'd  
8 like to get some timely input on.

9           And, other than that, we'd like to thank  
10 all of you who have joined via the Internet or via  
11 the telephone. Thank you very much for your  
12 participation and we look forward to working with  
13 you in the future. Thank you.

14                           (Whereupon, at 2:15 p.m., the  
15                           PROCEEDINGS were adjourned.)

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