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PROCEEDINGS

(9:03 a.m.)

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

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

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

So, with that said, I'd like to go around the table and have everyone introduce themselves. Please.
MS. FOCARINO: Good morning, Peggy Focarino, commissioner for patents.

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

MS. LEE: Michelle Lee, PPAC.

MR. MILLER: Steve Miller, PPAC.

MS. MCDEVITT: Valerie McDevitt, PPAC.

MS. FAINT: Catherine Faint, PPAC.

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

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

MR. BUDENS: Robert Budens, PPAC.

MS. KEPPLINGER: Esther Kepplinger, PPAC.

MR. SOBON: Wayne Sobon, PPAC.

MR. FOREMAN: Louis Foreman, PPAC.

MR. BORSON: Okay, thank you. First item on our agenda is a report from Dave Kappos, the Director of the PTO, and he is not here at the time. So, perhaps, we could rearrange the agenda and have some opening comments from Peggy.
MS. FOCARINO: Okay, sure. Good morning, everyone. It's a pleasure to be here today with you and give you a very high level of what's going on in the patents organization before we get into the more detailed agenda items.

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

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

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

We've successfully implemented prioritized examination or track one that allows applications to be processed and completed within 12 months and since the program began, we have
received almost 4,000 applications and that has
generated 450 allowances and more than 160 issued
patents. So, definitely a good option for those
who want a quick disposition of their
applications.

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

Other things that we would like to
discuss with you this morning are updates on the
budget from our CFO. You'll also get a
legislative update from Dana Colarulli. Janet
Gongola will be joining us for updates, what's
happening in the AIA, what's the latest. You will
hear a bit about our reengineering efforts in the
patent side of the house. Also, from OCIO, an
update on IT infrastructure. We would like to
talk a little bit about the international
initiatives that are currently going on and Bruce Kisliuk will give you an update on that. And then Chief Judge James Smith will be joining us to talk about the current state of operations at the Board of Patent Appeals and interferences. So, we look forward to your thoughts. We welcome your comments and questions as we move through the healthy agenda that we have here today.

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

We'll continue to work on implementing the AIA. We have a cooperative patent classification effort that started and we'll be working on that for the next few years and we'd
like to hear more about these efforts. We will 
hear more from Bruce later today on that, later 
this morning.

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

I think most of you know we'll be having 
our first satellite office in Detroit open in 
July. July 16 is to be specific. And so, it's 
critical that we focus on being effective managers 
in a virtual work environment. We will also be 
working to develop more RCE initiatives. 
Currently, we have two that are in place, two 
pilot programs, and we are continuing to focus on 
that effort in particular.

The "Best Places to Work" is one thing 
that I'd like to talk about just as something that
we're focused on as far as organizational excellence. Every year, the Partnership for Public Service comes out with the rankings of "Best Places to Work" in the federal government. In 2007, we were ranked 172nd out of about 260 federal agencies, and last year in 2011, we were ranked 19th. So, I think that really speaks to some of the progress that you see that we are making.

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

So, with that, I am going to turn the discussion over to the Deputy CFO, Frank Murphy.
MR. BORSON: Actually, if we could have Director Kappos make a few remarks before we get into your discussion, Frank.

MR. KAPPOS: Sure. Thanks, Ben.

Thanks, Peggy. I'm sorry to interrupt, Frank. We'll turn over to you our critical financial issues in just a minute.

Peggy's done an excellent job of summarizing sort of in a very quick nutshell what we've got going on. Thanks, Peggy, and I think I truly couldn't say it better that we've got a lot of balls in the air from implementing this ambitious legislation to just getting the backlog and quality where you all need them to be, where our country needs them to be. And you can tell we're running those plays, we've gotten tremendous value from the PPAC, from this team in terms of guidance, in terms of input, ideas, and you see those reflected in the initiatives that we're putting together. So, I think of this group as of board of directors in a sense and consider these meetings to be incredibly important in having the
kind of interchange that enables you to guide us
so we can go off and continue implementing things
that are going to be valuable to the USIP
community.

So, rather than repeat anything that
Peggy's already gone over, what I thought I would
mention in just a few minutes is a couple of
really big-picture themes that we all need to be
thinking about. Before I get to that though, I
will mention fees and the fee proposals that we're
working on and we truly value the hard work that
PPAC is doing and we know because we're right in
the middle of the all the issues with trying to
set fees appropriately how hard it is to get the
right balance. Very much looking forward to input
from the PPAC and we will be using it and
following it in order to come to what we hope will
be a fair, balanced, reasonable, productive Notice
of Proposed Rulemaking as we enter the rulemaking
process in the run-up to our first set of fees.
So, thank you in advance for that and we're
looking forward to your recommendations.
In terms of the bigger picture issues that I wanted to mention, one of them is the, I'll say it now, increasing, continuing, building anti-IP narrative and rhetoric that you hear playing out in otherwise responsible media, major U.S., and global news media. In Europe, it's even been described as an existential debate about the need for intellectual property protection per se. I mean, asking the question at its very core, and the way it plays out in the U.S. is the smartphone patent wars and isn't this all the fault of the patent system? And it's something that as a IP community and particularly the leaders of the community in this room and on the PPAC, I think we all need to be paying very careful attention in thinking through what parts of those criticisms are valid and what we need to do in order to build a better IP system in light of those criticisms. And then also thinking about what parts of those criticisms are not valid and what we need to do as an IP community to correct, respond to those inappropriate criticisms, and what we need
to do to set a more balanced and positive framework in which non-lawyers, non-technical people, even non-business people, our country in general can think about intellectual property, not only importantly members of Congress, members of government in general, helping them to think about intellectual property in a balanced way and a complete way that, as I put it in recent testimony in Congress, number one, does not make the patent system the victim for the behaviors of those who might use patents in various ways, but, number two, also recognizes that these kinds of flare-ups of competitive marketplace issues happen from time to time. They've been happening for hundreds of years, and they're actually a part of the natural marketplace development when breakthrough innovation meets follow-on innovation and marketplace exploitation. Perfectly normal.

So, I think there's a bigger picture issue involving the role, place, and perceptions about intellectual property in general and patents in particular in the global ethos that we as
leaders in the IP community need to be thinking
about and helping to get right, get fact-based,
get on an appropriate footing.

The other thing that I'll mention also
on a big picture level is the globalization
opportunities presented on the back of the AIA for
making some dramatic improvements in the IP
landscape outside of the U.S. and between the U.S.
And other countries. And so, in that regard, I
just got back from an overseas trip that included
visits in both Asia and Europe, and I think it's
fair to say that the atmosphere relative to
cooperation between patent systems and patent
offices on laws and processes and information
technology has never really been more positive,
more fruitful, more fertile, whether it's the
concept of global patent law harmonization,
getting our patent systems to be more similar so
that when people file patent applications, they
can prosecute them inexpensively all around the
world and get efficient protection. Whether it's
that topic, which boils down to the subtopics like
the grace period and secret prior art and those
kinds of issues or whether it is coordinating
operations of our agencies better through vehicles
like the PPH and through better procedural
handling of patent applications. Tremendous
traction on that, also.
Or whether it is lastly information
technology infrastructure, and in that regard, we
presented just over the last month a brand-new
proposal that's known as Global Dossier that was
created here at USPTO and then some work done to
refine with the JPO, and I hope that you'll get a
chance to take a look at that. The Global Dossier
is the name of it and it's a vision for how
information technology and new processes can
enable patent applicants in the U.S., but also
anywhere in the world, to make a single electronic
filing and have then the patent offices just share
everything they need to share, no filing of formal
documents and copies of things and ribbon copies
and affidavits and signatures and all of that
stuff that you currently have to do to move
applications around the world. We'd eliminate all of that, everything on a single global IT infrastructure that enables applicants to just tick the appropriate boxes and have your applications and papers moved where they need to. So, obviously, a lot that needs to be done to build that vision, but I, frankly, have been so pleased, just thrilled with the fast uptake that that concept has gotten. It went from initial presentation just over a month ago to being accepted by the IP Five, people from the industry, IP Five, who were in the room when we presented it in Europe last week from a number of the reputable U.S. IP associations, as well as Asian and European associations were just thrilled, picked it up quickly, and tasked us, the offices, and themselves with building this vision starting immediately in a very step-by-step methodical approach and some of the other patent offices have picked this up very, very quickly, too.

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

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

MR. BORSON: Why thank you very much,
David. It's very promising news. And I'd just
like to offer the services of the committee in
this Global Dossier Project. If there's anything
you can identify that we can do to contribute to
that effort, I don't know, I don't speak for other
members of the committee right now, but I think it's a fabulous idea and I really look forward to seeing it come to fruition.

MS. LEE: Ben, if I could.

MR. BORSON: Yes. Yes, Michelle.

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

MR. KAPPOS: Well, yes, thanks, Michelle. It's significantly about communications, and, so, we certainly can have some cooperation going on with our communications function here, but it's also a lot about the role
that you all play as leaders and that the PPAC plays in the IP community.

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

The second thing though I think is that we need to be providing another context, we need to change the discussion, change the debate and do a much better job of pointing out all the positives about intellectual property and some of the associations, I think, are doing a good job of trying to move in this direction, but I think that the USPTO and in cooperation with the PPAC can play a much larger role in championing the positives about intellectual property on a
national, but also on a regional basis.

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

So, the people in central California, as an example, should understand that it's the Sylmar, California, company that created the 8 millionth patent that addresses macular degeneration that is enabling Americans who are blind to see. That's actually pretty important
and that company wouldn't exist if it weren't for
the patent system. That's the kind of story that
needs to be told.

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

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

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

MR. MILLER: I have one. Director
Kappos, your group has been very busy with the
implementation of the AIA and very responsive, I
think, to public comments. We’ve seen that with
the oath and declaration rules. You stated
publicly in the past that the office would
continue to do that and look for ways to improve
the rules after they’re implemented. Could you
just comment briefly on your position on that?

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

So, it clearly works and I can’t
pre-disclose the final rules, right, but we
certainly have taken onboard all of the great
comments that we've gotten and I think it's fair
to say that.

Now, there will inevitably be a lot more
that needs to happen and what's coming into my
mind right now are the post-grant processes where
inner parties review, write post-grant
opposition, cover business method review, the
changes to derivation proceedings, supplemental
examination, all of that stuff is really
complicated, as you know. We're taking a lot of
input onboard, and, again, I think it's fair for
me to say I think people will like the final rules
in that they're moving substantially or taking a
lot of good commentary onboard.

That said, there is absolutely no way
we're going to get this perfect the first time
through. No way. We're going to learn a lot the
first few months of operating under these things,
and I think we're all going to say ooh, that
didn't work or ooh, we should be doing that a
little differently.

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

So, help us out with this. Do you think we should go into a comment period on each individual rule or do a general comment period on all the rules, wait three months or six months, whatever period of time to get a little bit of experience with post-grant opposition and those heavy post-grant procedures and then do a specific roundtable and input and revise and iterate the rules on those? So, there's some tactical decisions we need to make about how we do this, but I strongly believe we can make these rules better with some iteration, that we will learn over time there's no way we're going to get them all perfect, and, so, we have to accept this view and champion, in fact, revel in the continuous improvement kind of approach. It's worked so well to date that, I mean, I just
couldn't see doing it any other way.

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

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

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

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

So, you got to find what the right sweet spot is in between and the way I think about that is, obviously, we've taken a lot of input and you guys and PPAC will see new approaches and you'll give us guidance that will help us get to the right level, but in that area, in my view, the real action is in doing those post-grant processes fast and precise with high accuracy and putting all the resources into them with our ALJs and our board that we need to because if we do that and you're a patentee who's got a great patent, you
get that patent then reconfirmed quickly and
inexpensively. Now you've got a really, really
solid asset and if you're a patentee that doesn't
have such a great patent, you get to find out
about it without having spent a lot of money in
frustration over a period of time.

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

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

Well, Dave, thank you very much. We
appreciate your thoughts and your time.

MR. KAPPOS: Move on to Frank.

MR. BORSON: Frank, please. Yes.

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

I want to thank the PPAC for allowing me to come give an update on the budget. Taking a look through the 2012, 2013, 2014 outlook.

Starting on that first slide, you'll see our fiscal conditions are currently stable. Our budget spending is in line with our plan. We spent about 46 percent of the budget by mid-year. We do anticipate an acceleration later in the year, particularly, as Peggy had alluded to, as we've already hired 800 examiners. We have another 300 that have accepted and we fully expect to hit the 1,500 mark for fiscal year 2012. So, we will have acceleration of our spending, and our operating reserve estimates are targeted to be in the vicinity of $120 million at the end of the year. We've largely recovered from the start of
the year dip that was due to the large number of filings that came in in advance of the 15 percent fee surcharge. Currently, our revenue is about 7 percent below our planning levels compared to where it was in the first quarter, where it was 18 percent below. And we've collected about $1.5 billion so far through May, which is about 60 percent of the planning that we've had for the year.

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

For Fiscal Year 2013, our outlook is
good, assuming that our Section 10 fee rule is
implemented in a timely manner. The fee proposals
that we outlined in our February PPAC session have
been improved based on the feedback from the PPAC
members and the public. We heard you, especially
in the area where you were concerned about the
pace of growth of the operating reserve, and
you'll see that the Notice of Proposed Rulemaking
that will come out will have lower fees that will
extend that time for growing that operating
reserve.

The NPRM has been developed and vetted
internally, and the draft was provided to PPAC at
the end of May. For that next to last bullet, I
have a good update: Where we say "very soon,"
"very soon" is now past tense. It was sent
internally this morning for comments and we're
still assuming a March 13 implementation date for
the updated fees, but when the proposed rulemaking
comes out, we'll have the 60-day comment period,
so, obviously, the fees could further change,
based upon the comments that you all have.
Looking at where we're at with the current environment, the initiatives that we have planned, we'll continue to move forward into the new fiscal year. We've already mentioned the 1,500 patent examiners for fiscal year 2012. We have another 1,500 patent examiners that we plan to hire in Fiscal Year 2013. Our Patents-End-to-End and other information technology initiatives are continuing, and our current patents production levels are going to be maintained.

We do have some caveats because in the world of budget and finance, there are always some unknowns. Obviously, we would have to change any of our forecasts depending upon what happens with our revenue trends, especially any transitional changes that may be impacted by the changes to the Section 10 rulemaking. There's the large unknown that could always happen if there's any changes that would be tied to the current or potentially new administration, and we do have the effects of the government-wide budgetary policies. We do
expect that USPTO would be exempt from any budget
sequestration if there's no budget agreement in
December. But we can't give assurance of that
because, obviously, we operate within the purview
of the Congress and it is possible that they could
do something in that area, but we're not expecting
that.

In terms of our fiscal year 2014
planning, we're in the beginning of that process
right now. There are no significant shifts in our
resource priorities or performance targets at this
point; and while this is an election year and we
know that that means that there will be a
likelihood of a continuing resolution, we're
proceeding on pace with the schedule that is
published annually and we'll have our budget
proposals in to the administration in September,
and we're currently working with the offices
internal to USPTO to make sure that we've
validated and revalidated our funding needs going
forward.

And, finally, the 2014 planning will in
fact incorporate the final decisions on the form
and structure of the updated fees, then the
associated revenue levels that we have, and we
anticipate that at next PPAC meeting we should be
able to discuss our updated budget projections
with you.

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

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

MR. MURPHY: Absolutely, Steve, and
thank you. That's one that I certainly will
clarify. The intent there, that last bullet, the performance levels as projected based on those additional hires. So, we have, in fact, adjusted the pendency goals, the backlog goals based upon the additional hires who are coming in, and that last bullet could be clarified to say based on that projection, we're not changing that because we've already built into the model the additional hires coming onboard.

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

MS. KEPPLINGER: Yes, I just wanted to give the public an update of PPAC activities in the AIA Section 10 fee-setting arena, and to dovetail with what Frank indicated, as you know, the USPTO had put up proposed fees and in February, the PPAC held public hearings in both Washington, D.C., and Sunnyvale, and the public provided comments based on those proposed fees. The PPAC then reviewed what we heard from the fee-setting hearings. Actually, most of the PPAC attended those hearings, and we provided feedback
to the USPTO based on what we heard from the public and as you heard Frank say, the PTO has taken those comments into consideration, and, so, the NPRM that comes out will reflect some changes as a result of the initial proposals that were put out and the comments that they received from both the public and from the PPAC.

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

Anybody else have comments about that?

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

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

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

   MR. BORSON: Yes, I would add,
dovetailing on that comment, that as the new fees
do go into effect and the public has an
opportunity to see them and work with them, we,
I'm sure, are going to be getting comments and feedback. And so, to take off on Dave's point about we may not have it right the first time, I'd like to invite the public and members of the committee and you, Frank, and everyone else on that side to keep an open mind about how things are going. I think finding the right balance here is always the challenge, especially given the fact that the fees are probably going to go up in ways that -- unprecedented, that is ways that have not happened before, and I think we should expect a lot of comments, some of which would be over the top and overstated, some of which may not be overstated, and we need to take them all seriously. So, I would expect that we would probably have a further opportunity to provide comments and maybe tweak and adjust those fees as time goes by.

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

I would like to make one other
annoucement. We've had an addition to our
agenda. At 12:10, that's during the lunch hour,
Terri Raines will come and present an update on
the text to patent scheme. This is part of the IT
infrastructure rebuild, and, so, I just wanted to
let you all know that from 12:10 to 12:30, we will
have that lunchtime demonstration.

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

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

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

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

I'll start with I have a few what I'll
call pithy slides. Short, but full of meaning.
And then happy to answer any other questions that folks have.

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

We've been continuing to update a lot of interested Hill staff on AIA, where we are in the details, and as you can imagine, a number of Hill staff have their own provisions that they're very interested in knowing where we are and updating. That includes the provision on satellite offices. So, again, a lot of our time has been spent on fielding questions where we are
in that process and how soon we both open our
Detroit office and how soon are we to announce the
next few. So, not much to report there,
unfortunately, but there's a lot of interest on
the Hill and we're trying to facilitate that
discussion.

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

I think in the public discussion, what
I've seen, come across, not provisions that PTO
has put on the table, but things that the public
have been concerned about, that is how is the
grace period going to be specifically read in the
bill? Is it going to be read the way that it was
intended to work in the new AIA scheme?
Some discussion, in fact, there was a hearing earlier this year, as well, in a report that this office authored on prior user rights, did the legislation hit the right balance or is there more that it should have done? And then, frankly, the discussion about when is it appropriate to make those changes? So, that's another conversation that I hear going on in the Hill. There is some debate over whether it's a technical or not, the estoppel provision for appeals and post-grant opposition proceedings here at the PTO. So, that's certainly one of the things that are on the next.

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

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

I will say one of the things that we also identified early on was a goal of the legislation was to coordinate the new proceedings with the PTO with litigation, and there were a few that we're calling dead zones, which we believe were unintentional places where, for example, a pre-AIA patent was filed, but was unable to file a post-grant opposition and unable to file an inter partes reexamination. It certainly wasn't the intent of the legislation. Certainly, legislation there to address those types of situations may be appropriate and I know the Senate staff have been thinking about that.
Needless to say, that discussion is very fluid and I can't tell you that I'm certain on whether there will be an opportunity to move forward, but I can tell you the Hill is engaging the PTO and as they're looking at proposals and asking for our technical assistance, and we're happy to provide it.

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

The last thing I'll mention which is something that my office has been engaging the Hill on, is moving forward on two pieces of implementation legislation for international
treaties that have been fairly static for a number of years. In 2007 and in 2010, the administration sent up to the Hill two proposals, one to implement the Patent Law Treat, the PLT, a second piece of implementing legislation to implement the Hague Treaty on Designs, the Geneva Act of the Hague. Both good treaties for us to be a member of, provide real and tangible benefits to U.S. Filers. Certainly also moves us further in the direction of harmonization with the rest of the world and in particular I think there's a really good argument to say on the design side we should be actively thinking about harmonizing our system with the rest of the world and are there other changes? And that could be an additional component of some of our discussions internationally. Our step, clearly, is to become a member of the International Treaty.

So, I think both of those -- I'll give you -- this is somewhat of a preview of I think the director's testimony next week will be again saying these are important things for the U.S. to
become a member of and really have tangible benefits.

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

  And then there are a number of additional reports that have come up in our appropriations discussions. I'll highlight two. One, the discussion about economic and national security. This is one that our appropriations chairman has been very interested
in. There are a couple issues here. One, should the criteria for national security applications be updated? And he's asked us to facilitate a discussion about that. Two, whether there it makes sense to implement a similar structure for economic security, and that's an interesting dialogue. And, third, this chairman has been very concerned about 18-month publication.

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

I'll mention a second that came up specifically in the draft language for the FY13 appropriations language, and that's interest in trademark squatting. This is an issue that PTO has been very focused on internationally, in particular hosting trainings for U.S. companies in China, hosting a dialogue about how to address situations where a trademark owner is maybe pulled
into a situation where their mark is being infringed upon in a foreign country. So, I think we'll have a big story to say in our report to the appropriators on that one.

Congressional hearings. This is actually an incomplete slide. In fact, for the website, we may want to update this one. Recent and upcoming, and I mentioned some of these already. Prior user rights, defense. There was a House Judiciary Subcommittee hearing on that issue based on the report that PTO delivered to the Hill in February. There was then our annual testimony to our House appropriators on March 1. We had then an additional hearing in front of the full House Judiciary Committee on March 16 that the director testified at. That was an update on where we are on AIA, and frankly, it was the first time we were in front of that chairman since the bill had been enacted. So, we took the opportunity not to just update where we are in the process and talk about a few of the challenges, but frankly also talk about a lot of the other
things that this group talks about a lot. All of
the other things not in the legislation to improve
operations to get down the backlog and to hire the
workforce that we need. We took that opportunity
to have a broad testimony, so, I encourage you to
take a look at that.

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

You heard from the director this morning
his focus on the international forums and talking
about the AIA. We've seen tremendous interest
from the international community on the impact of
the AIA and where we are in implementing. We'll
talk about not only where we are in front of the
Senate Judiciary Committee, but the impact on the
international discussion, restarting some of those
substantive harmonization discussions. We're
going to take that opportunity to go a little
further and talk about the activities that we've
been engaged in really full force since the
enactment of the bill not just implementing it,
but also internationally. As I mentioned, we'll
also discuss the role of the PLT in the Hague in
that discussion. So, that should be a good
opportunity, I think, for the office to talk about
what we're doing.

A second opportunity, we've been invited
to return back in front of the House to the
International Property Subcommittee on the 27th,
and this is the second in a series of hearings
that the subcommittee is holding focused on IP
issues, in particular focused on patent issues,
trade secret issues, and market accessibility
issues, some of which are teed off of the recent
special 301 Report issued by USDR identifying
where countries are in their IP protection. So,
that will be an all government panel. The
previous hearing was all industry and we'll be
Last slide for me, I wanted to touch on our outreach to stakeholders and Congress. This is something that a number of us from PTO today and in many other forums talk about -- in fact, you'll hear more from Janet Gongola when she gives a more detailed update on the AIA implementation, but certainly from the legislative side, reaching out to the Hill, actually not only responding to their questions, but proactively trying to pull our Hill staff into a discussion about why the work that we do here at PTO is so important, and, frankly, give them a better perspective of what a patent examiner does, what a trademark examiner does, and what our international experts are doing on a daily basis. They're frequently hit by questions about the impact of IP.

We have, and I pull the PPAC into that role, a responsibility and a duty to help facilitate those questions, put all of the media attention on IP in more context. We're taking that role seriously of certainly bringing staff in
for a congressional day in the life has been a key part of that. We're planning one of those here in the next few months as we looks towards August recess when Hill staff have more time to get off the Hill. It's sometimes challenging to get them to cross the river, but we've been able to do it and we'll continue to do that. Certainly, and I mentioned some of the issues already, that congressional staff have asked us to come up and brief on. We're also trying to as we find downtime really strengthen those relationships with our Judiciary Committee folks who have interest and others.

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

I'll mention one last thing because it's just an issue of interest. This week, Politico, which is a news publication, widely read by folks in D.C., published a survey about advocates that frequently walk the halls of Capitol Hill and
their Hill staff and the wide disconnect sometimes there is between communications. Again, that's something that I think my office is trying to take on as a challenge not just, again, responding, but educating folks about the importance of IP and all the things that we do. I recommend the article because it was a very interesting dynamic between potentially lobbyists and the technology they use and Hill staff and how that's changing and frankly providing some challenges to the work that folks outside the office, but certainly advocates here, my staff at the PTO also face. So, we'll continue to try to keep up, educate, respond, and to try to serve, communicate the way the rest of the agency is doing so effectively.

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

MR. COLARULLI: You would hope. Thank
you.

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

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

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

So, I want to begin this morning by talking about the various rulemaking that we have ongoing. Presently, we are working very hard to deliver final rules on both the patent-related provisions of supplemental examination, inventor's oath and declaration, pre-issuance submission, and citation of patent owner statements in a patent file. We, likewise, are working hard to deliver our final administrative trial rules for inter
partes review, post-grant review, and covered business method review.

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

Now, the final rules were created with the benefit of more than 350 public comments. One-third of those comments were directed to the patent-related provisions and two-thirds went to the board provisions, and as Director Kappos has indicated, we have made modifications from our proposed rules to our final rules based upon the feedback we received from the public. In fact, I think that you'll see with our inventor's oath declaration cited as an example by Director Kappos that the movement has been significant. Our
proposed rules will not look too much like our
final rules because of the feedback we received
from all of you.

Now, one comment I want to make on the
proposed to the final has to do with fees. Across
select packages, such as supplemental examination
and the administrative trial rules, we received
public feedback that the fees were too high. Now,
we have to set fees for these particular
provisions at this point in time under our Section
41(d) fee-setting authority. That authority
requires the agency to set fees to recover the
costs of the service. This means the agency
doesn't have a great amount of flexibility then in
setting the fees. So, what you'll see from
proposed to final is not likely to be great
changes, however, when the agency exercises our
Section 10 fee-setting authority, that's when we
will have greater flexibility to modify the fee
amounts. So, stay tuned for about five months
from when our final rules come out for
supplemental and the administrative trials to when
the Section 10 rules come out and you will see
greater modifications, but I want to be sure you
all understand how the fee process is working so
there's no surprises in the final rules that come
out towards the end of the summer.

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

Now, as Dana mentioned earlier, we are
intending to do a series of cross-country
roadshows to teach you about our final rules and
you are hearing it first today the locations of
those roadshows. We'll be running from September
10 through September 28 three straight weeks from
east coast to west coast. During week one, we
will be in Minneapolis, Alexandria, and Los
Angeles. During week two, we will hit Denver and
Detroit, and then the last week of the Month of
September, we will be in Atlanta, Houston, and New
York City. The intent for the first week, which
is before the September 16 effective date, is to
webcast all three roadshows as well as record
those roadshows and make them available on our
website so that anyone in the public can access
them, view what our teachings involve, before the
final rules become effective. Now, we will be
hosting these events at our Patent and Trademark
Resource Centers and detailed agenda will be
posted on our microsite tomorrow, breaking down
for you exactly what we'll do at what points in
time so you can join us throughout the day.

Now, next is our micro entity
rulemaking. We are presently sitting in the
public comment period. We released a Notice of
Proposed Rulemaking on May 20. This rulemaking
elaborates the process by which an applicant must
claim micro entity status, how to pay fees as a
micro entity, the process for notifying the office
of loss of micro entity status, as well as the
process for making an adjustment to a fee payment
made in the wrong amount. We are hopeful that the
public will comment on our proposals and comments
must come in by July 30 of this year.
Oh, one last thing I should mention on the micro entity provision, the 75 percent discount that's associated with micro entity status will not become effective until the agency exercises its Section 10 fee-setting authority and new fees produced under that authority are put into place which won't happen until March of 2013.

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

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

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

Now, I want to take this opportunity as we close on talking about the rulemakings to thank PPAC for their extensive involvement. You have been tremendous in giving us support through the process, guidance, feedback. We have delivered to
you enumerable documents for you to comment on and
you have timely reviewed everything and we are
ever grateful to you for that input. The same
goes to our stakeholder community for the input
they've given us on our proposed rules and we hope
that continues as we go forward.

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

Now, we'll move from our rulemakings --

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

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

MS. GONGOLA: Any other comments at this point? Okay, so, I will move from our rulemaking process into the various studies. This slide lists for you the three studies that the agency is required to complete within the first year from enactment. Two of the studies are complete; the international patent protection and the prior user rights study, and as Dana indicated, we are ongoing right now with the genetic testing study.
Because he covered the status of that study in detail, I won't go into it any further. So, just be watching for our report on that study to come out very, very soon.

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

I want to mention the Pro Bono Program was running on September 16, the effective date, as it was required to be. Our first Pro Bono Program was in Minneapolis, Minnesota. We have since expanded that program to include Denver, and this summer, we will be working with a taskforce to create clearinghouse where pro bono potential candidates can provide their patent ideas and
their patent application drafts for clearing and sort of a screening process to identify what applications should be connected with an attorney to help that pro se pursue a patent filing and then prosecution before the office. Now, the goal, also, is by the end of the calendar year, we will have programs operational in additional locations; northern, southern California, Texas, Washington, D.C., Virginia, Maryland area, and then beyond this calendar year, there's plans for 11 additional locations to be running by the end of 2014 calendar year.

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

And then lastly, I thought you might be interested in the scope of our AIA-specific outreach. To date, we have given almost 200 AIA-specific presentations across the country. On
the pie graph, you can see, as well as the table, the locations. It is our goal to reach all corners of the United States and eventually the globe with our AIA implementation activities, information about our proposed as well as our final rules. And then to do that, we've created our specific microsite.

The top graph shows for you from September 16 through the present, the utility of the microsite among the community. Basically, you'll see a rhythmic pattern across the weeks. Every Monday when we release new information, we see a spike in usage of the microsite. And then the table below lists for you the total number of usages. We've had almost 400,000 in separate accesses onto the microsite in the past 9+ months and then the table gives you a listing of the top 10 pages that the public are accessing; 200,000 usages are on the landing site and then from there, we roll down across patents, frequently asked questions, the legislative history page, and so forth.
So, at this point, I'm pleased to receive any questions or other comments that you might have about our implementation activities.

MR. BORSON: Thank you very much, Janet.

Michelle? Esther?

MS. LEE: One question for --

MR. BORSON: Oh, please, go ahead.

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

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

MS. LEE: Okay, got it.

MS. GONGOLA: Four hundred thousand views.

MS. LEE: Right, and then one other point just to reiterate is for the various provisions that are publishing their final rules, that's another opportunity for the public to provide comments for the revised rules, right? So, that's another opportunity?
MS. GONGOLA: So, once the final rules come out, sometime thereafter, we will be opening comment periods for the public to give us additional feedback on those final rules. But we have an e-mail address, aia_implementation@uspto.gov. At any point in time, we are continuing to monitor that e-mail and receive public input.

MS. LEE: Thank you.

MR. BORSON: Wayne, please.

MR. SOBON: Yes, Janet. Obviously, the final rules, a lot of complicated material, and from what we've seen you do in the finished pieces of the new final rules at least sketch what has changed from the NPRMs to the final rule. I've had comments and requests and I think it'd be helpful if it's at all possible for the office, perhaps in separate materials, when you do publish the final rules to provide a redline version of the actual rule itself from what was in the NPRM to the final rule if you can to show what exactly was changed. And maybe a lot of red in some of
them, but to the extent that's possible, I think
that'd be very helpful for the public to
understand exactly what you did change from
proposed to final.

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

MR. SOBON: Yes.

MS. GONGOLA: Yes, thank you.

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

MS. GONGOLA: Thank you.

MR. BORSON: Thank you very much, Janet.

I'd like to move ahead then onto our next topic
and our last one before our break for lunch and
this is on patent operations update from Andy
Faile, Deputy Commissioner for Patent Operations.

So, Andy, please.

MR. FAILE: Thank you, Ben. Did you
want to start or do you want me to go ahead?
MR. BORSON: Oh, please go. Yes, go ahead.

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

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

A couple of quick notes on this. We're projecting a 5.2 percent growth over 11. We're tracking about at that level. You can notice on the blue kind of the RCE filing behaviors. It's 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
office and you can see the combination of the kind
of purple and blue bars centered on a particular
day and the height of those bars corresponding to
the applications on that particular month. What
our COPA initiative does is we go through and we
kind of rearrange these cases and get them to
examiners based on the resources we have, doing
some kind of preplanned shifts to very light
technology areas using the resources that we have
in those areas to work on those cases.

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

The RCE backlog on the other hand is
rising. It's currently at about 89,000, just
short of 90,000. As you can see, the trend line there was a bit of a dip in the last month or so and it's kind of leveled off to a certain extent, but still, the overall growth of the RCEs, tracking back from September 2009 to present is on the increase.

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

What we did with this is kind of took a look at the data of RCEs and the relationship between those and IDSs. Basically, this tracks through the fiscal year on the year column all the way to the left with the total number of RCEs filed in that particular year. Then if you move
over three columns, you'll see that there's a column titled "IDSs Filed with RCE." It's about 14,419. And of those, when we did the RCE, we sent a non-final out on only a small portion of those, about 7.8 percent or about 1,100 or so. So, we looked at that and it seemed to us that most of the RCEs filed after allowance, the art would turn up in an IDS and we'd turn around re-allowing the case. We thought this would be a good instance that we could look at that particular population, come up with a program that would allow us to stay in the issue stream without having the applicant to file an RCE. Just a little bit of the data that we were looking at behind that particular issue. That turned into what we called our Quick Path IDS Pilot. We mentioned this last time that we were looking at this particular pilot. We got together with Robert and his folks in POPA, worked on a pilot. It's a little bit less than a month old now. It's just started. We've got probably about 100 or so different submissions so
far on that program that's just starting. The feedback, we're generally getting kind of anecdotal feedback on the frontend is that people do seem to like it. This is a place where they can stay in the issue steam without having to file that RCE, reduces our RCE filings, as well. Some more data to come on this.

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

So, in this particular program, again, in working with Robert and the POPA folks, we put a little bit of other time for the examiners at this particular pressure point here so they would have some compensation to look at cases that were close to allowance in hopes of getting those into the issue stream. We ran this for a good bit of
last quarter and we just agreed on an extension
with POPA to run this for another quarter to get
some extra data on this to kind of see how this
was working out.

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

Kind of a third component is a very new
idea, the RCE Outreach Proposal, and this is kind
of taking a holistic look at the RCE issue in
general and kind of getting at a root cause
analysis of why RCEs are filed. We think there
would be a pretty big input for us to understand
from the outside's perspective filing behavior and
RCEs and kind of marry that with the data that we
have internally of what we're seeing in RCE
filings. The outcome of this, we hope to gather
data through focus sessions in partnering with the
outside, PPAC helping us in this effort, getting
that data, bringing it in, analyzing it, analyzing
it with our data, and looking for things such as
best practice documents in ways RCEs can be
avoided, things that already exist out there today
that we can just highlight. Also, looking at
tweaks to our examining prosecution pipeline that
we find where cases are getting stuck that we can
make some improvements there.

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

Okay, here's our graph on first action
pendency and total pendency, tracking from FY09
through FY12. As you can see, on total pendency
on the first line, we're just a little bit under
our target average pendency of 34.7 months and
we're right on target on our first action pendency
in kind of the green arrows as we track through
there. It looks like we're in pretty good shape
for both of those traditional measures at the end
of the fiscal year.

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

This chart shows our first action
pendency and total pendency and these are
projections running from FY10 to FY16. As you can
see, we project a trend line down on both of these
based on our patent model, and our big goal of 10
months first action by 2015 and 20 months first
action by 2016 is shown kind of as the triangle at
the very bottom. We're looking at just about 10
months, maybe a little bit under, and then at the
top, our first action pendency, the traditional
measure hitting our 20-month mark in FY16.

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

As we looked more at this measure, we've
come up with a new slide and I'll spend a little
time on this to go through kind of a new way we're
looking at the actions per disposal type of issue.
And the green line you see there, that's our
actions per disposals, some which were last graph,
but it's not a rolling average, it's a monthly
snapshot, therefore, you see all the different
movement per month. We're looking at two
different new measures now which we may think will
give us some insight as far as efficiencies. One
is rejections and terminal disposal by month. That's the blue trend line you see there and that's basically looking at what rejections we put out divided by the terminal disposals in a month. The terminal disposals are allowances are allowances and abandonments, and that would be the final abandonment of the case. So, when the case is finally allowed or finally abandoned, we'd have a data point, we look at the rejections to that point and we plot that particular trend line. So, that's going to give us an interesting different way of looking at the actions per disposal type of issue.

On the bottom, we're looking at the miscellaneous actions. So, you have rejections in cases and you have miscellaneous actions and we're tracking that in a similar fashion on the red line to see what type of miscellaneous actions we have in a particular case once it has reached terminal disposal. So, a couple of different cuts looking at kind of the actions per disposal on a higher level.
This graph shows our 12-month rolling average allowance rate. As you can see, the trend line continues to creep up. We're currently just a little bit over 50 percent as of the beginning of the month.

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

A number of the presenters today have mentioned our hiring effort. This gives you a little bit more of a look at our progress towards our 1,500 hires for this year. This has been a very interesting effort and a very good effort partnering with our OHR folks and our patent folks in hiring. We began the year off a little slow
and there was concern that we needed to kind of
get the hiring machine ramped up. So, we did a
number of internal tweaks between our OHR
department and patents in trying to get a more
streamlined process and get a healthy applicant
pool for which to meet our 1,500 hiring goal.

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

We're still looking for double Es,
computer engineers, given the backlog and the
growth, that's our greatest area of need now. So,
we're trying to target those, as well. Those are
largely in the TCs 21, 24, 26, and 28, although,
we certainly do need double Es in other technology centers. For example, the medical device area of 3,700.

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

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

There are seven different components to it. It includes sampling of cases in our traditional error rate or our compliance rate measures and marries that kind of with some perception data from both internal and external
surveys. Again, a great collaboration with the PPAC on this. You can see the different parts of the pie there. Each one has different weights. We crank that through a matrix. I have a slide to show on that, as well. And this gives us kind of a quality indicator. It's kind of a health indicator of the quality that we have at any given moment or any given measurement time.

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

We started out kind of 11 with our
baseline. We were a little bit over 30 percent of our way up to the FY15 goal. We're doing pretty well this year. We're trending a little bit above our range at 63.8 percent largely due to the results we've received on both our external and internal perception surveys, which we'll get into in a minute.

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

This is another look at the different
levels. This gives you kind of the percentage of
where we are in that particular level with the
quality component score at the end there. Again,
it's 68.

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

You can see kind of the trend line of
the external surveys, they kind of bumped up there
in the fourth quarter of 2010, dipped down a
little bit, and then we've had a pretty dramatic
increase from FY11 fourth quarter through the
second quarter of FY12. These are semiannual
surveys. It basically goes out to applicants and
it gets a perception of the level of quality we do
and we've gone up from a ratio of three negative responses all the way up to five.

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

Track One, prioritize examination, or Track One. O-n-e, not one. So, here's some data on that. As Peggy mentioned earlier in her opening remarks, we're just a little shy of 4,000 filings; 855 of those filings were the very last month of last fiscal year and as both Frank and I believe Dana mentioned, that we have the 10,000
cap on Track One filings per year. So, of our
total to date of 3,904, 855 came from the last
month of last year. We just implemented
September. And then you can kind of see the
filings by month leading up to our current level,
about 3,000 or so this year. The total for the
program itself over the life is at 3,904.

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

Going back to on the bottom, the second
box from the right, the average days from petition grant to first office action, basically, once the petition is granted, it gets to the examiner, it gets cued up for action. We're doing that at an average of 43 days, a little under 44 days, which is really a good achievement so far.

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

One is the actual going through the case for the formalities review, people that go through to make sure everything is correct with the application, the petition is submitted, et cetera, and then there's kind of a loop back for the
petition itself to the tech centers. So, we were
kind of doing that sequentially where we would
spend some time in our Patent Application
Processing Division, then we'd go to the TCs and
sequentially look at the petition decision. That
was adding into our 47 days. So, we've kind of
looked at that and we were going to do that
process in parallel from this point on where we're
going to be able to decide the petition and have
the formalities part done together and we think
that looks like about a 14-day or about two weeks
savings off of that 47 days. We just started
doing that very recently, so, hopefully by the
next PPAC, we'll have an update where we're able
to shorten that average days to petition decision.

Just some other ongoing efforts, just a
few quick sketches of these. We continue to do
training. We have another round of interview
training coming up. The number of interviews
we're doing is on the rise and we certainly hear
from the community at least anecdotaly that
examiners reaching out and being accessible for
interviews. So, we're going to do another round
of training following on our initial round to kind
of shore that up. We have a number of new
examiners in the office and we want to make sure
we capture them, as well.

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

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

We have a new workflow element of the
Examiners Performance Appraisal Plan, our Docket
Management System, which is basically the rate at
which work moves through in the various categories
that the examiners work on. This was kind of a product of our Performance Appraisal Plan Taskforce with Robert and the POPA folks. The Document Management System is a very data-intensive, data-driven system where we're basically looking at clocks on each piece of work, measuring those clocks against standards and examiners are coming up with a score much like their productivity element that they have in their actual moving of work through the office.

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

MR. BORSON: Andy, thank you very much.

MR. FAILE: Thank you.

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

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

MR. FAILE: Okay. So, obviously,
compact prosecution is a big focus of what we want
to do to hit both our first action and overall
pendency goal. We've had a number of different
trainings on that and the subcomponents of that
are particular trainings such as interviews,
looking at interviews to move cases along.
Looking at different programs that not just from an examiner's point of view, but from the outside point of view, such as the After Final Program, where we can go in and look at different parts of the prosecution pipeline, put a program into place to get things quicker to final disposition to kind of shorten up there. So, we're kind of looking at a number of different initiatives, kind of adding the aggregate of that together to kind of make our 10 and 20.

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

We also want to focus on in our Patent Training Academy, as new examiners come in, get
the ideas of compact prosecution embedded there,
get the ideas of working with the outside through
interviews and other mechanisms to move cases
along. So, it's a pretty big opportunity with
3,000 different examiners coming in now to kind of
get everyone started on the same place towards
working towards compact prosecution, ultimately
hitting our 10 and 20 goals.

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

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

This was a good effort with PPAC when we
constructed the Quality Index matrix, the seven
components we discussed earlier. One of the
components of that is the Quality Index Reporting.
There's a number of metrics under there that we're
looking at that we have put in there an additional
ones that each TC, depending on the makeup, nature
of the TC, technology and trends, and that
particular TC, they may look at any one of the
other different 80 metrics, and to the extent
there are outliers there, try to identify those
and bring those back into more of a statistical
norm.

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

MR. BORSON: Okay, you did mention one
thing that sort of intrigued me and that was that
you have ways of tracking how much time an
examiner might spend on a particular project. You
used the term "clocking." Did I understand that
correctly or could you explain that a little bit more to us?

MR. FAILE: Sure, and I'll certainly invite Robert to join in, who's been a part of our talks on this. Ben's referring basically to our Document Management System. This is a new element in the Examiner's Performance Appraisal Plan, again, replaced our old workflow element. The basic general idea of the system is that we have cases in different categories; we have an amendment category, a special new category, returns, returns back from publications after finals, et cetera. Each one of these categories have a date, an expected average day, and we put a clock on each piece of work for an examiner, an examiner works that particular case off within those timeframes. If they meet it by the middle point of the timeframe or the beginning part of the timeframe, then their score enhances. If they wait a little bit longer, their score diminishes. So, on kind of a macroscopic level, it's a way to assign a time value or a clock and we're tracking
the work through all the different categories and
then in the nature, kind of the QIR composite that
we talked about, we take all those particular
scores and we form a composite of their actual
document management score and at the end, that's a
number very like our production scale that
indicates an examiner's progress.

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

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

MR. FAILE: And sorry, Esther, this is a
classic case of what Director Kappos mentioned
earlier where we started out with the solution.
It took us far the way down the pipe and we're
continuing to iterate. In fact, we just literally
within the last couple of days finished our next
iteration of this. As we put it into play, there
are a number of different areas we're looking at
that we want to make some improvement on. We just
finished kind of our third look or third iteration
or tweak on the system.

MR. BORSON: Okay, Esther, please.

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

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

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

MS. FOCARINO: Yes, just one thing I
wanted to add with the new Docket Management
System, unlike the old workflow element, the
timeframes in the new system, in other words, the
"clock," as Andy referred to, the number of days
that we would like the examiner to work on the
particular case, is related closely to patent term
adjustment. Which the old system existed before
that legislation was implemented. So, one of the
goals in our crafting the new docket management
element was to more closely match the timeframes
that are discussed in patent term.

MR. BORSON: Okay, thank you. Steve?

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

And do you have that statistic that you could
share?

MR. FAILE: Not in front of me, but we
certainly can get that. Are there particular
things that you guys would want to see in addition
to the data on here, if you could send those to
me, we certainly can work those in.

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

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

MS. KEPPLINGER: So, dovetailing on what
Steve has said, one of the things I think is, for
example, actions per disposal, which in the PPH
cases show that fewer touches of the case both by
the office and by the applicant. So, that's
cheaper prosecution. So, if you can get that kind
of information, I think it might motivate more
people to use it. And, similarly, if it shows
that there's a slightly greater chance of getting
an allowance out of it, again, that encourages
people to use it.

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

MR. FAILE: Those are good suggestions.

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

MR. FAILE: Yes, I took a quick look at
that based on the conversation before. It looks
like we had a little bit of a bump, as one would
expect, right before the surcharge kicked in and
we had pretty much a leveling of that afterwards,
maybe a slight increase, but pretty much a leveling. No drastic behavior either before or after. If I have that right, Greg, as far as the data. What we can do, Ben, is get you a chart; get PPAC a chart on that.

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

MR. FAILE: I understand.

MS. LEE: I'm sorry --

MR. BORSON: Yes?

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

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

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

MR. BORSON: Yes.

MS. LEE: -- the application's never
dropped below the original or the earlier pre-fee
increase filing rates from what you could tell?

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

MS. LEE: Okay, great. Thanks.

MR. BORSON: Esther, please.

MS. KEPPLINGER: Oh, sorry, Andy, I had
a question on the slide that you had, page 12,
slide 12, which it shows actions per disposal by
months and rejections in terminal disposals by
month. One of the questions I had, I think as you
defined terminal disposals, you characterized
those as allowances and abandonments, and my
concern with that is that, of course, every RCE
has an abandonment and no applicant would consider
that to be a terminal disposal because they're
filing an RCE. The first case gets abandoned and
it's a continuing prosecution. So, that case is
really not abandoned, it's really kind of an
artifice that the office has used, but it's the
same file wrapper and that's really not a terminal
disposal.
So, while I think it's good that you're looking at these things, I do have a concern that that's quite misleading when we still have a significant number of RCEs being filed.

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

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

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

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

MR. BORSON: Well, make it quick,

Robert.

MR. BUDENS: I want to look back at slide and slide 14, Andy, because this is giving me some serious heartburn. Looking at our projections for months to first action, 10-month goal, but I see when I look down at going out to 2015, 2016, we're getting pretty close to hitting the ground here at eight months and when I look at an attrition rate that's pretty much stable right now and a workforce of roughly 9,000 examiners
plus or minus by 2013, I'm highly concerned that if we have any kind of economic switches again that could result in lower filings or anything else and we're going to smack the ground hard in the workforce. We've already seen what happened once before with our colleagues in trademarks.

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

MR. FAILE: I'll leave it to the larger discussion on the goals for you guys to talk about. One point I would make, Robert, understand the concern and, obviously, we're all keen on that particular concern. What we've built into the model is the projected number of hires this year and that year to give us kind of a soft landing
where we're not crashing hard, but we're kind of coming down on that slope and bottoming out and getting into a steady state where we have a working inventory of cases at this 10-month level. So, that's a key component of this is looking at the model and constructing that kind of soft landing so we don't crash and burn post 2015 and 2016. So, a very big concern on our particular part, as well.

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

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

Andy, do you think you might be around for that, 2:00 at the end of the meeting? I just wanted to make sure that you're all satisfied that we've touched on these issues, but we do have a clock, it's our own clock that we need to be aware
Okay, so, at this point, I'd like to take a break for lunch. It'll be short, maybe 10 minutes, 15 minutes, after which we'll all come back here and during the lunch hour, we'll have a demonstration of the text to PTO Program. So, thank you very much, and for those of you that are viewing us online, please, can either stay on the line or reconnect with us in 10 minutes.

(Recess)

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

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

So, Terri Raines, thank you for joining us.
MS. RAINES: Thank you very much for having me. We'll get started. USPTO is committed to modernizing their system, software, and architecture through the organization and one of the things that we're currently looking at with my team is looking at how patent applications are filed. So, we want to talk about the opportunities and the partnership that we wanted to develop with our external stakeholders, including this group. So, thank you very much for sharing your lunch hour and I will try to be as brief as possible.

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

The main goal of the Text 2 PTO System is to receive texts within the Patent System when you're filing your patent application specification and we'll talk today about how we envision this may be accomplished. The process,
however, involves a lot of outreach to external stakeholders, and, again, we're at the beginning of this journey, we're not at the end, and we want to hear from our users as to how they would like to see this accomplished.

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

The text that is submitted will be used in software systems for our examiners. These systems are being automated, as well, and the stovepipe systems are being consolidated into a single user interface where this powerful text will be used for the same type of analytics throughout the examination process all the way
through grant and publication. Our focus when
we're looking at Text to PTO and the discussions
that we want to have with our external
stakeholders really talks about the ease of use
for applicants.

Right now, 96 percent of all the patent
applications that are filed are coming in through
EFS Web electronically. Most of them are coming
in as image-based PDFs. About 40 percent of them
are coming in as text-based PDFs. So, we're
already getting some texts from our external
stakeholders. We're very thankful for that, but
we want to have another venue to accept text
within the USPTO. So, there would be no more
scanning of the PDF. You can upload a single file
instead of the four different files that you're
currently requested to upload. A really exciting
part and something that I want show you downstream
is how you can make amendments on a copy of your
original file and using track changes, we would
put the amendment into the USPTO required markup
language and this is a browser-based tool, so,
there is nothing to download or install.

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

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

I'm going to skip through this. The
applicants' concerns. That was a flowchart. You all can look at that later. But the applicants' concerns are what if we left track changes on our document and some of that information wasn't information that we wanted considered in our patent application. This validation wizard will alert you that these track changes have been left on and show you how to remove them. Meta data, proprietary information left into your document as far as property files, you'll also be alerted about that.

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

Okay, so, this is a video and I will
talk through this. Jeff, if you can start the
video, that would be great.

(Video is shown)

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

The next part of the video shows you how
you can check to make sure that the sections of
your document are properly identified, and this,
again, is how we envision doing it. This is a prototype. So, as we talk and do outreach, we'll make sure that this works within the confines of your office environment, as well.

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

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

The next part that we're going to talk to, and, again, I'm sorry, this is a very long presentation, is that we're going to talk to the
amendments because when we talk to the Legal
Secretaries and Administrator's Conference, this
is the part that really got their attention. So,
I wanted to make sure you all were aware of it, as
well.

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

We did hear that there were some cases
when a new attorney came to a law firm that they
weren't able to bring soft copies of all their
files, and, so, this feature, being able to
download the text back from PTO seemed to be a big
benefit. You would then edit your file with track
changes left on and then run it through an
amendment validator. You saw where the first
validator was looking for text and track changes
and it didn't want to see that. So, this
amendment validator will take your track changes
and put it into the appropriate USPTO markup
language. Optionally, you will also create a
cover page for you if that's something that you
desire.

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

(Video is shown)

MS. RAINES: Okay. So, they're just
showing you the original file here and using track
changes, they're going to modifications. I think
they're going to cancel one, change one, and then
add an additional claim at the bottom of this
page.
Once they make these changes, you'll save your document. And so, we go through this, close. Then you can see at the top where it says "amendment validation," this browser page is a little bit different, so, you browse for that changed copy of your document and you run it through the amendment validation portion. It checks for all of the same things, embedded proprietary information, et cetera. This portion of the video shows you saving this document and generating the hash code that we talked about. And then the next portion of the video is going to be a side-by-side comparison showing you the marked up document and then the appropriate mark-up language when it's ready to go to USPTO. Again, this validation wizard and this functionality, although it doesn't show optional, this is optional. You can continue to do your own markup if this is what you choose to do, but this was very well received during the demonstration that we provided. And although this is difficult to view here, I think in your handout, you'll be
able to see the markup language a little bit better.

All right. So, the next portion of the video is we'll talk about using this text. And so, this is talking about the formalities checks and the analytical reporting. The abstract summary information, because of the text on the backend, all of this information could be made available to electronic filers once they file or once they provide that text back to us. So, it would count the number of words in the abstract.

It would also show the claims summary and dependencies and I'll show you the claims tree next.

So, this is the family patent map showing continuity. So, this would allow you to check the continuity. This information would come from the application data sheet. When submitting a PDF, that has XML behind it. We can also use that information at USPTO and provide this information back to you in a meaningful form.

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

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

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

MS. RAINES: Thank you.

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

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

MR. CHASE: Good afternoon, everyone. The Patent Process Reengineering Team was challenged to streamline the patent application process to meet the challenges of adapting to rapidly evolving technologies and stakeholder priorities while ensuring success in meeting the goals of timeliness, quality, and efficiency. The team was organized in June 2010 to focus on aspects of pre-examination, examination, and post-examination processes to supply, redesign, and streamline processes and improvements to agency senior leadership and the patents and to M Team. These improved processes would be incorporated into the patents and to M Project to
support development of the new system architecture. The PPR effort, as we affectionately call it, also serves to meet the United States Patent Office 2010 to 2015 strategic goal to optimize patent quality and timeliness to facilitate achieving organizational excellence.

An executive sponsor, project director, and project coordinator were selected to lead the team. Subject matter experts representing all aspects of patent processing were identified and selected as members of the overall team and the team organized internal stakeholder outreach focus groups by leveraging affinity groups and open space technology facilitation. The outreach initiatives continued throughout the summer of 2010 and continue to date. External outreach initiatives continue to date, as well.

Based on that stakeholder input, the team identified several areas within patents to analyze in Phase One. Working groups were formed for each area consisting of subject matter experts and core patent process reengineering team
members. Working groups were tasked with analyzing the current process in their area and developing a streamlined to-be process. They worked in 6- to 10-week timeframes, staggered over the fall of 2010 and winter and spring of 2011. Phase One Working Groups included restriction practice, double patenting process, color drawings, elimination of forms, classification transfers, CRU reissue, pre-exam streamline, enhancing technical knowledge between examiners, management operations, applicant office interface, post-exam streamline, IDS practice, and PCT processes.

Each working group followed a formal process improvement methodology based on Lean 6 Sigma. That included documenting current processes, identifying issues at both the process and step levels, assessing the impact of those issues, identifying the root cause of each issue, identifying solutions to address the root cause, prioritizing the solutions, and reporting and validating their results.
The team also identified ongoing projects within patents and other business units with overlaps and interfaces with the reengineering projects. As these parallel efforts were identified, cross-functional teams were formed and regular communication was established with the lead organizational teams to eliminate duplication of efforts and to maximize results. External customers and stakeholders were engaged throughout Phase One via support from the Office of Patent Information Management's outreach staff and contractors. Stakeholder input and feedback was gathered at local meetings through focus group facilitation and we provided periodic status reports to Patent's Public Advisory Committee and gathered feedback from PPAC members and we thank you very much for taking the time to do that over the last two years and continuing to.

Stakeholder input and feedback was used as a factor in determining what processes to review. International communication was involved, as well. The United Kingdom Intellectual Property
Office and the European Patent Office are both undertaking similar efforts to the patent process reengineering and to end initiatives. We have communicated best practices with both organizations and vice versa.

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

Phase one, most important part, results. Phase One ended about June 30 of 2011, so, last June. The working groups produced more than 200 individual process improvement recommendations. All of the relevant recommendations have, indeed, been included in the patents and to end IT Improvement Project for inclusion in the new system requirements. Some recommendations have
already been implemented using our Legacy System or the systems we currently operate with.

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

Long-term recommendations to be incorporated into IT System development include, for example, an applicant's ability to manage their applications online, for example, updating assignment data, application and amendment submission, requesting an interview with the
examiner via an interview button in PAIR or its replacement system, inventor name changes.

Applicant controls their own data. Applicant would have the ability to review, change, and validate all data prior to publication. Also, electronic self-managed IDS submission was something that we recommended.

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

COPA, of course, I'm sure we all know, working with the oldest applications in our backlog. The "stuck case" cleanup where we identified cases that have fallen through the cracks and gotten them moving again, lost papers, suspended cases, things of that nature.
We also had a Petitions Working Group. It was tasked with identifying and mapping all the petitions and who has the responsibility to answer them. The group investigated root causes on the receipt of petitions and petitions flow and whether there are better or more efficient alternative to some of the current petitions processes. Gaining consistency across the enterprises was a goal of this group. Further developing requirements for the End to End System to track and route the to-be processes that arise from this work was part of the scope of this project.

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

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

Moving on to Phase Three, the following teams are working throughout Fiscal Year 2010 in a staged fashion similar to Phase One. Appeals and Pre-Appeals, there's an internal processing analysis and recommendations for standardization and streamlining, which is ongoing. Commercial database usage, documenting advantages and best practices for examiner usage of commercial databases for searching for prior art, that's also ongoing. 371 or National Stage Case Processing, this is a traditional process improvement effort addressing these case. Draft work is completed.
Technical support staff implementation and phasing, this working group is tasked with analyzing the effective reengineering recommendations on the technical support staff and making recommendations as to how to address any such issues if necessary. That is also ongoing.

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

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

Management operations, employee relations. This working group is documenting
current processes and identifying process or
procedure improvements in standardization
opportunities and that work is ongoing.

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

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

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

I would like to invite the committee
members to comment. I know that we had
conversations yesterday in our subcommittee
meeting. But if there's anything else someone
would like to raise, please.

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

MR. BORSON: Very good, thank you.

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

SPEAKER: Yes. Yes.

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

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

We have a brief summary for the OCIO
activities, specifically with the universal
laptop. Just to review, we began doing the
production deployment last year starting on March 20. We have total deployments through June 1 of this year of 10,337, and all of the patent organizations have been 100 percent deployed.

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

We provided significant automation to the XML data intake process. This is the process whereby we extract data from the USPTO systems to provide it to the vendor and from the vendor when they provide converted data back so that we intake
it into Patents End to End, which is key for our
continued ability to ramp that up as we prepare to
deploy to the corps. For the Patents End to End
office action, we are leveraging user centered
design for the user interface. So, we've
completed the user interface prototype for office
actions and for workflow management. We'll be
seeing some screenshots of that in a few minutes.

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

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

So, PATI 1.1 is the infrastructure
follow on to PATI 1.0. That is to scale the PATI
infrastructure so it can serve us the full
examination corps and that has been successfully completed. The back file migration is the data portion of PATI which is the conversion of claims spec and abstract for the entire active back file through January 24 of this year. We are 96 percent completed with the conversion and we have 50 percent of that loaded as of last week. We're on a schedule to deliver 1.2 million patent applications totaling more than 56 million pages.

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

MR. LANDRITH: Right now, we haven't looked at what our strategy is going to be for going back historically beyond the active back file. Our next priority is to begin continuously converting the active back file so that we're up-to-date in near real-time rather than doing batches of fixed timeframes. Once we've locked and loaded that process, we're going to begin looking at where we capture the most value for doing the historical groups of patents.
MR. BORSON: Yes, okay. The main reason
for that question is there's a lot of information
that applicants have to submit in the form of IDSs
and not only foreign patent documents, foreign
office actions, but also prosecution histories for
U.S. cases under McKesson, and what I was hoping
for is that at some point we may be able to
capture all of that old information automatically
through some kind of a checkbox in PE2E that would
identify the cases and have the search tool
automatically retrieve all that information.

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

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

                    MR. LANDRITH: Sure, thank you.

                    MR. BORSON: Yes, Robert.

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

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

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

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

Initiating the authoring phase of an office action takes us to this screen. What we see on the far left is the office action file management, which allows the examiner to manage current drafts of office actions. Next to that, there is an interactive template tool that allows the examiner to create preconfigured office actions. Then in frame number six up there, we
have an inline word processor for office action creation editing. Then to the far right is a form paragraph manager that allows user to drag and drop either canned content from the MPEP, the form paragraphs there or items that they've stored in their personal library.

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

This is our mostly our Fiscal Year 2012 timeline. We're nailing down our Fiscal Year 2013 timeline. Some of the areas where we're seeing a lot of activity right now are the Patents End to End office action, which is second to last project in architecture and infrastructure. We have patent examination tools to infrastructure. Both of those are scheduled to release a major update at the end of this fiscal year. Patent examination tools and infrastructure is scheduled
to release to an art unit in November and then to
the corps in March. With PE2E office actions
getting a little bit ahead here, going to Fiscal
Year 2013, we have scheduled to release that to
CRU in September and then we're looking to release
that to an art unit in April and then to the corps
next October.

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

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

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

Are there any questions from the group?
Wayne?

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

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

Does that answer your question, Wayne?

MR. SOBON: Yes, and, of course, I'm
sure efforts are underway on this, but an education/cajoling of the applicant cohort to the benefits of this and to get them to be encouraged to do that I think would be very important. So, as you think it through the next year or two, I think that's going to be an important change management issue, global change management issue for your applicant pool. So, we're happy to help assist on that and to provide feedback to the extent you think is appropriate for that.

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

MR. BORSON: David, I know that Terri Raines has left. I believe she has gone, but I wanted to ask you about the kinds of validation, not the tools themselves, but rather how you would approach getting user, specifically external stakeholder input into the validation tools. I know that we've had conversations in the past about the sensitivity of metadata in XML file and
I was just wondering if you had any plans to reach out to the user community to get input as to how effective that is likely to be or if there are problems how to change them.

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

MR. BORSON: Yes, I was wondering whether or not you plan any active roadshows, roundtables, something of that nature. Maybe this is premature because this system isn't really up and fully operational at this point, but I think that might not be a bad idea because you're asking for a lot of people to make a major change in the way that they behave. I mean, currently, we write
a document in Word and strip out the metadata by
scanning it in the PDF. So, we feel very
comfortable about that process and many of us have
this anxiety about metadata or other proprietary
data being sent off to someplace, maybe stored in
a cloud somewhere where who knows who will have
access to it.

Marti, please.

MR. HEARST: Let me jump in. Thanks for
your question, Ben. Yes, we just didn't have time
in the 20 minutes allotted to address that very
particular issue, but actually, the issue about
metadata being left in the document is one of the
number one concerns that are brought up by the
stakeholders that we've been interviewing over the
course of a year and we have a solution for that
built right into the software for the tool. We
have engaged in expert in open XML, which is the
XML that Word produces and we can automatically
strip that right out of the document for you if
you like or we can give you instructions for how
to remove it yourself from Word if you use it.
Also want to emphasize that we are not restricting this to Microsoft Word. It will work with Open Office version of Word and we will be supporting many other word processing tools, as well. So, I want everyone to be clear that it's not just Word.

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

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

MR. BORSON: Well, very good, thank you, and I presume that all that metadata that you strip out will be stored in some easily accessible
file so that hackers can get into it easily. Is that right?

MR. HEARST: I guess I --

MR. BORSON: Yes, thank you, no answers.

No comment, no comment.

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

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

MR. LANDRITH: At this point, the work that we're doing on automated prior art is exploratory. The solution that we currently have is several years old basic on semantic analysis tools that have been surpassed in functionality by quite a bit. We'd be very interested in information or assistance that could be provided by the intellectual property community in that
MR. HEARST: But I would say image search is still not there technologically. I'm leading the search effort and we are going to be looking systemically at evaluating different tools for automatically suggesting documents based on a patent. We're going to do a systematic effort for that. We just started that up this summer. There are many, many competing vendors working in that space. So, the hard part there is selecting among the many options. But image search is still not a solved problem, so, I'm not claiming that we're going to have that to be perfectly honest, yes.

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

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

Well, we do have a few minutes prior to our next topic, unless you just want to move straight ahead. Why don't we do that? Steve, you're here. Bruce, you're here. Oh, very good.

Yes, Bruce, this is great. Okay, let's move ahead
and we'll capture a few minutes here. This will be international initiative update, please.

MR. MILLER: Yes, let me just kick it off a little bit if I could, Ben, and I think the office this year and as Director Kappos talked about this morning, they've continued to expand their international cooperation with foreign IP offices in the hopes of not duplicating effort, increasing or decreasing the backlog and decreasing processing time, and they're looking at a number of work sharing opportunities and we don't talk a lot about the great international work that the office is doing to try to cooperate with other offices. We have the IP5 Group, we have the Trilateral Group, but the larger patent offices, and we have PPH, the Patent Prosecution Highway, we have other opportunities that applicants can take advantage of to expedite prosecution and to get more uniformity across the globe. And we thought today we'd take the opportunity and highlight a couple of programs that are happening in the international arena and
then maybe have some follow-up about some other projects that are going on so the public can be aware of what's going on.

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

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

So, given that, Director Kappos requested that we take a look at the system and see if we could come up with ideas for various improvements. Therefore, a team was put together and we looked at the PCT. I guess the number one item we looked at was how we improve the quality.
We also wanted to keep transparency in mind and make sure the work product could be used downstream and also to see what we could do simplify and streamline the system.

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

Okay, just we identified a dozen different items. The first was that of concept of making self-service changes somewhat similar to what we do with our e-petitions here in the USPTO. And under this proposal, applicants could make corrections to the bibliographic data under PC2 Rule 92bis or priority claims, to add or correct a
priority claim, and this would be an automated system that would provide instant feedback as to whether or not the change was accepted.

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

The third idea was to simplify withdrawal of the international application. Sometimes, applicants like to or find it necessary to withdraw an application prior to publication,
and, currently, you need to obtain the signatures of all the applicants. Would like to just explore the idea of maybe relaxing that requirement to make it easier for applicants.

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

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

Okay, the next idea would be to
integrate the national and international phases.

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

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

The next item would be making it mandatory to record the search strategy and I was a little surprised to learn that all offices don't necessarily do that. And, of course, as a result of this would be made available to downstream offices so that the original search could be evaluated. Was a proper search done? Could it be
relied upon? It might facilitate reuse.

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

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

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

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

And the last item is to make the written opinion of the international searching authority
available to the public at publication and under
the current system, a search report is prepared
along with a little more detailed written opinion
and it seems silly the search report itself is
made available upon publication, but the written
opinion remains confidential until 30 months have
expired.

Okay, so, to date, we have submitted
this plan to a number of international bodies.
It's been considered in the trilateral, the IP5,
and the week before last, we presented it WIPO to
the PCT Working Group and the U.K. joined with us
in this proposal. And, generally, the reaction
has been quite positive to it. You might know at
WIPO, there have been a number of contentious
meetings in the recent past and it really received
a positive response. And so, the idea is now that
we would revise the document which is currently
general concepts, provide a little more meat to
it, draft amended regulations where we can, and
then put it out there for further review and
comment.
Certainly, the last item here moved forward with Director Kappos in place. If you're not moving forward rapidly, you're losing ground. So, he's been a big proponent of this proposal. And so, we're hoping it can improve the worldwide patent system.

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

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

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

MR. BORSON: Yes.

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

MR. BORSON: Yes, very good. Thank you. Charlie, I did want to ask you a relatively kind of short-term question. Many of these proposals or ideas you've talked about are long range,
big-ticket, big items that will solve problems in
the long run, but there are those of us that are
actually engaged in forum shopping for searching
authorities, and I wondered if you had any
thoughts or comments about how that issue might be
resolved. I mean, some people, in fact, are going
to the Russian IP Office. Korea, of course, has
been used widely. EPO has been used widely, U.S.
has been used. So, that's sort of one question
about forum shopping.

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

MR. PEARSON: Certainly, yes. As far as
the U.S. is concerned, we recently went to a
program of contracting out the PTC searches, and
since that has occurred, the timeliness has
improved greatly, and as I recall last year, with
over 90 percent of the search reports were
prepared within 18 months from the priority date,
which was a big improvement over past practice.
So, I think as far as that is concerned,
timeliness in the U.S. has been greatly improved.

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

Now, as far as other searching
authorities, you mentioned Russia has come onboard
as a competent searching authority for the U.S.
Their views are quite inexpensive. It's going to
be interesting. I think they've only received
about 400 requests since they became competent,
but it's been ramping up. So, and we had a
meeting with a group from Korea yesterday and they
are very interested in our contracting out their
thinking about contracting out their PCT searches.
So, we spent a fair amount of time explaining how
we go about it there.
MR. BORSON: Well, do you think there might be an issue with contracting to different entities with different philosophies? How would you expect to standardize a contracted-out search between different offices? Obviously, the U.S. has its own view. Do you think that you will reach a level of commonality with other offices?

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

MS. KEPPLINGER: Okay, thank you.

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

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

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

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

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

Okay, so, the CPC is the Cooperative Patent Classification Project. It's a joint venture between the EPO and the USPTO, which is a
bilateral classification system. The memo was
signed by Director Kappos and Benoit Battistelli
back in October of 2010. So, the formulation of
this was a while ago, but as you can tell, quite a
complex endeavor for these two countries
bilaterally to work together on this. So, we've
been working hard and a lot has been accomplished
and still a lot to do.

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

So, the key reasons for pursuing it from
USPTO is, number one, it aligns with one of our
key strategic goals, which is number one, we want
to accelerate harmonization. You heard Director
Kappos mention this morning the importance in all
the things we're doing. So, this aligns very well
with harmonization. Definitely promotes resource
sharing, especially in a work-sharing environment.
And one of the key features, like the AIA moves us forward in the filing arena to get closer to harmonization, this moves us forward in the classification arena in that we are currently the only country that does not have an IPC-based classification system. So, this moves us into that direction and aligns us on a very good strategic front. And it also provides practically a single classification search yielding multiple results as opposed to searching multiple systems. So, for the U.S. examiners and others, it's a much improved kind of collaborative corresponding group search.

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

Moving on to some of the features and benefits of the program as we see it for the USPTO, one is the ability, again, to search a unified classification system. This will reduces a bit of redundancy, number one. It will be merging our publications and grants and also our
PG pub and U.S. patent documents merge. Plus, they're classified by patent family. So, there is some elimination of duplication by having the family data grouped.

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

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

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

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

So, what we show is the USPC, which, again, currently is not IPC-based. The IPC, which is the high-level international classification, ECLA from the EPO, and FI from the JPO. So, as we move forward in today's environment, USPTO is not IPC-based. Then you have the IPC, which is the
WIPO high-level classification, and then the two further breakouts of IPC that are available today are ECLA and FI. When we merge, CPC becomes the merging of USPTO and ECLA, so, we will only have two fully developed or deeply developed IPC-based systems. It would be CPC, which would be shared by the USPTO and EPO and then the JPO FI, and we are working closely with the JPO in terms of the timing in both the IP5 arena and other classification aspects globally to ensure that we hopefully can move to a true universal IPC-based classification system, and that is a point that we are focused on and for sure the JPO is focused on, as well.

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

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

MR. KISLIUK: Yes.

MR. BORSON: I'm sorry, but you said something very interesting about the FI and the new CPC systems maybe not being identical. What
do you think the implications of that are in the PPH and what are the implications in that in the short-term prior to their being a single deep dive into the searching?

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

  don't share.

  So, I think in our discussions, we're

looking to use some of the better breakouts from

other countries, looking for ways to incorporate

that into what will soon be the CPC. But, again,
timing wise, bilaterally, we need to get the CPC

up and running and establish the mechanisms to

operate it jointly between two countries and to

maintain it before we attempt to introduce a third

or more countries.

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

  MR. KISLIUK: Okay.

  MR. BORSON: So, please continue.

  MR. KISLIUK: Okay, so, on the timeline

on the top left, the joint statement was signed on

October of 2010. In November of 2010, it says,

"Freeze the USPC." Bottom line, we're doing no

more revision projects. So, we froze the revision

projects last year.

  There is a CPC launch site. On my later
slide, I will show the website link. It's not on the USPTO site. It's a shared EPO website.

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

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

Up until October, we are in the early parts of June, so, up until October, we are in continually and very robustly working with our EPO colleagues. One is in developing training. Again, since it's based on ECLA, they are the ones that kind of are the teachers and we're the students. So, they're providing a lot of the
training. For our examiners, how to use it. The documenting classification practices, how we're going to manage this thing together, and when we mentioned the collaborative environment, what we mean is the electronic tools and interaction that we're going to need in order to work together on both revision projects, as well as examiners exchanging information in terms of a knowledge exchange.

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

On January of 2013 is the launch. Now, for the USPTO, it's important to realize that while we will be adding CPC symbols, we will not be removing USPC symbols. We'll continue to have both sets of symbols on documents for about a two-year period of time. That's what we envision
our transition period, and I'll mention in my next slide how closely we're working with the union and have been and continue to be in terms of developing materials and training for the examiners to ensure that we have a smooth, seamless transition to the extent that we can.

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

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

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

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

Up until January of 2014, we'll continue our Patent Corps training and a lot of the IT systems hopefully will be in place in terms of the collaborative environment and how we work.
together. Then our projected end of our what I
would say the transition window, although we
understand that at least from a user point of
view, the transition will probably take longer
than two years, but we will stop placing USPC
symbols at the end of those two years and then
rely on the CPC.

MR. BORSON: Okay, thank you very much.
MR. KISLIUK: Okay.
MR. BORSON: Good going. That's great
news.
MR. KISLIUK: A couple just few quick
slides after that.
MR. BORSON: Okay.
MR. KISLIUK: Like I mentioned, we are
collaborating with POPA very closely. We meet
every week. They're reviewing our scheme and
definitions of CPC. Examiners are providing us
feedback. Hopefully, we finalize our IT
requirements. It's important the exchange and
sharing of this system. We plan to have what we
call a common golden copy of the CPC and that's a
very elaborate IT mechanism to keep us both
enjoined in that.

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

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

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

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

MR. KISLIUK: Yes, we do have a lot
going on, but there are just two that Steve asked
us specifically. One is a pilot we call the FLASH
Pilot. FLASH stands for First Look Application
Sharing, and the concept behind FLASH is that for
a U.S. applicant if you file first in the U.S.,
then you file into another country, if you use the
PDX to get your priority document, that's a point
in time when the USPTO knows that we are the
office of first filing. That's a kind of
electronic flag that we know that you filed in
another country and now you're requesting a U.S.
priority document.

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

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

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

The other thing that Steve asked me about was the PPH, particularly PPH 2.0. So, I
think we've talked about PPH a lot. Everyone

knows the benefits of PPH, but like most things,
it can be improved. And so, some of the things
that PPH 2.0 Program -- and I'll explain a little
bit about the evolution.

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

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

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

Another one is that it allows machine
translation of office actions. So, applicants
that are coming from a foreign language could use
a machine translation cheaper and easier. And
another one is that if the examiner can access
that office action from the other country through
electronic dossier means, then they don't have to
submit it. So, these things are trying to lower the barriers to use. Again, it's early phases, we're only doing it with the EPO and now we're trying to get some more of the Mottainai countries to join us. So, we don't really have results statistically yet.

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

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

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

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

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

Let me first of all, however, address two items that were homework assignments that you left me with at our last meeting. One of those had to do with some further discussion of the meetings that board judges have with representatives of the technology centers to advance the discussion between the board and the technology centers regarding cases that might come up on appeal, not speaking about specific cases, but just overall procedures that might better refine the set of cases that come to us. The second homework item had to do with specific
correlations between things we are undertaking to
do at the board and the results those initiatives
are intended to achieve.

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

And the participation both on the
examining corps side and the board side has been
very good. We have had in recent times, for
example, as many as 12 of the judges from the chemical section present at the meetings with the technology centers. We emphasize in all these meetings that specific cases are not the subject of discussion, but general policy matters having to do with the cases. We review the board perspective on recent federal circular Supreme Court decisions and how we think those will play into our decisions and should play into the work being done by the examiners.

One thing that we've done increasingly in those meetings is to identify in advance of the meetings good examples of examiner answers and to share those with the attendees at the meetings and to point out the features in those answers that have caused us to select them as examples. This is particularly useful right now because it links up with the effort we have ongoing to streamline our decisions, make them as concise as possible, including where we can, citing to examiners' answers for the entire rationale for our decisions. So, we think the time spent on that
activity not only works for our purposes, but also for the technology centers and the examiners. With regard to technology center participation, again, in recent times, looking to that, we have had as many as 150 examiners at some of these meetings, including, for example, 50 examiners live in 1 session and 100 or more joining by webcast during the session. So, for now, our plan is to push forward with these meetings and to continue to use them as effectively as we can. And we have some discussion ongoing with the commissioner and other representatives of the patent corps to how we might be a bit more public within the agency pointing to good examiner answers.

We've had a couple of instances in the last couple months where the Federal Circuit actually has affirmed decisions of the board in which the board relied on examiners' answers for the principle points of the rationale. So, clearly, we have instances of good examiners' answers which have gone the full course and where
we can be entirely confident in pointing to those
types of answers as the kind which can withstand
judicial scrutiny. So, that's homework item
number one.

Homework item number two I can address
by going to certain of the slides that are
presentation for today. I've gone to what I think
what's slide 13 in the slide set and it's maybe
not the most rigorous of attempts to show a
correlation between certain of our initiatives and
the results, but it's a fairly good one, we think.

What we have isolated on the slide are two
different quarters. Each of the three-bar sets
represents a month in a quarter and we have three
months in each of those quarters. The quarters
are separated by not quite a year. What we have
there is the third quarter of 2011 and the second
quarter of 2012. Let me explain the selection of
the quarters and then go to what the data
indicate.

The first quarter shown there is a
quarter that in which we did not have in place two
of our current initiatives, the use of a special incentive plan that we call the Backlog Buster Bonus Program or BBB. It's also a quarter in which we were not yet focused on compact decisions quite as much, not shooting to see how many per curium decisions we could have, including decisions relying primarily on the examiners' answers to basis of the decision. That is contrasted with another quarter, the second quarter of 2012 in which both of those activities were ongoing. We had in place the Backlog Buster Bonus Program and we also had discussed at great length our per curium decision initiative and had been discussing it for a while and already as a group we were very much engaged in trying to have as many decisions fall into that category as possible. And what this shows is the difference between the output of the board in those two differently-positioned quarters. Since the slide, the numbers are somewhat small. We have broken those quarters out into separate slides so we can look at the numbers more specifically.
What you'll see in the first of those quarters, in the first bar is a representation of the number of cases which came to the board for a decision and the second bar, the red bar, shows the number of decisions by the board and then the third bar is the difference between the two. You will see that in that quarter, the output of the judges, and here we measured only the output of what we're calling the incumbent judges so that the same number of judges were responsible for the output in the first quarter that we're focusing on and the second quarter that we're focusing on.

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

The output of the judges on average was 582 cases per month as compared with or contrasted
with the first quarter in which we had the bonus
program and also the pro curium surge, where the
average output per month by the judges was 836
cases, a difference of roughly 250 cases per
quarter, which I think is fairly substantial. And
the number of cases that comprised the output is,
of course, growing because the number of new
directors also is growing.

Generally, and I think I mentioned this
at our last gathering, we are looking regularly,
in fact, every seven days, at the difference
between the receipts and the dispositions in the
previous 30 days, and what you'll see is that,
generally, we are trending toward the end of the
growth in the backlog. In fact, this is not the
most recent data. The report from last week
showed that were, in fact, only five more cases
received than the number of cases decided by the
board, which is very different than a delta early
in 2011 where the difference between cases
received and cases decided was as much as 800
cases. So, we're definitely trending the right
With regard to correlations, another thing that we have measured in order to try to see whether the positive results are, in fact, coming about from things we have done. We are regularly measuring in a specific way the output from our newest judges. And I'm trying to locate that slide. We actually were there only a second ago. And I don't see where that slide is.

Let me go instead to the other part of what we're discussing right now, the pro curium decisions. You will see here that we actually are charting very deliberately now the number of pro curium or short decisions, including those where we rely on examiners' answers. Already this year, and we're not quite halfway through the year, we have 102 decisions which fall into that category, which exceeds 2010 by nearly 5 times, again, only halfway through the year. And we're likely before the end of the year to have 10 times as many pro curium decisions in 2012 as we had in 2010. So far, we have not had any reaction indicating that
that seems to be giving short shrift to the cases, and, in fact, as I've mentioned, we have recent indicators from the Federal Circuit that, in fact, those decisions can be sufficiently robust to withstand scrutiny and even to result in affirms.

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

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

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

We also are trying to make as much use of our contested cases judges to help us not only with the contested cases, but with ex parte appeals, they should be able to add something to our ex parte effort, as well, and we have regular
detailee programs where we get additional judge
decisions that are assisted by drafts from our
detailees. Altogether, we think that the
combination of those efforts will get us routinely
at the 1,200 cases or decisions per month level,
which then should allow us to be in a good race
with the receipts and eventually to outdo the
receipts.

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

As of today, it's about 26,600/700
cases. Our nightmare scenario involved it already
being at 30,000 cases and approaching something like 35,000 by the end of the year. Because of the efforts that we have undertaken as seen by the fairly dramatic output from the incumbent judges, we have not yet hit the 30,000 mark, and, again, we think by the end of the summer, that highest bar and the next bar on the chart will not be higher, but will begin to come down.

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

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

You'll note in the very last bar where
there were 924 cases received, 919 disposed of, that the backlog grew by only 5 cases which is the smallest growth in the backlog in recent moment. And, again, the goal is to get rid of the minus sign and show more cases disposed of than received. But, again, the bottom line is the trend is definitely in the right direction. There are the numbers for that particular time segment, that 30-day period in detail, and as you'll see, we measured not only in terms of the total, but we do breakdown by section. Our judge number continues to grow. We've had 66 candidates approved by the secretary of Commerce. By the end of July, we will have 55 or 57, 58 of those new judges onboard. We continue to be overjoyed at the caliber of these judges. You will see from time to time in various press communications the names of the individuals selected. We think they represent some of the best patent attorneys to be found anywhere in the country and we hope we can continue to have appointed to the board judges of that caliber.
We're probably at a time where I should stop talking and respond to your questions.

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

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

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

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

   With regard to the discussions with or
the use by the examiners of our decisions, I
would, of course, defer to Commissioner Focarino as to how the examiners would use the things we put by way of instruction in decisions. Going back to homework assignment number one, we certainly are taking the time through the meetings with the TCs to point out those decisions which we think have broad implication for approaches to examination and we make those fairly specific with regard to the technological section, for example, the things that have come up in the discussions with the chemical TCs tend to be quite different than the things which have come up with the electrical TCs. We look very carefully at the cases and the trends in those sections and that, of course, is easy for the judges to do because that's what they're looking at in making the decisions and they readily amongst themselves have discussions about what they would prefer to see in examination and they're certainly sharing those in the TC meetings.

I would also say this, and we think of it as sort of a fundamental part of what we do at
the board, we view every case really as a dialogue
with the examiners, whether those cases involve
reversals or affirmances or anything in between
that fundamentally, our mission in each and every
decision is to say here is some instruction with
regard to how we think this case should have been
handled.

MR. BORSON: Thank you very much.

Unless, Peggy, do you have something you'd like to
add to this or -- okay, then please, Steve.

MR. MILLER: Well, and maybe this may
tie to your question, Ben, but as I look at the
rates of the Federal Circuit looking at board
decisions versus board decisions of examiners, you
have a very high affirmation rate at the Federal
Circuit, but yet there's 33 percent reversal rate
of examiners at the board. And maybe it is to
Peggy, but I think it's a fundamental issue that
if 33 percent of cases are being reversed that
there are lessons to be learned here that could be
passed along because there are errors being made
and it's costing the user community the time and
the effort to have to take up those cases where there's one-third of reversal rate. And so, I would ask if the board could look at perhaps where are the key areas that are the reasons for those reversals so that they're not repeated over and over again and that trend has to continue. I mean, I would think that the reversal rate at some point would be much lower than that if we could correct some of these issues.

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

And the other thought, and I want to be careful in speaking to this because it's certainly not a uniformed characterization of the issues that require focus, but a good amount of what the
board see has to do with rejections under Section 103 and it is a challenge, I think, we would all be respective of, particularly in the post-KSR era, to articulate the rationale for decisions involving combinations of prior art. And that's possibly one area where our joint efforts between the board and the examining corps could be focused and to some degree has been the subject of the meetings with the technology centers.

MR. BORSON: Esther?

MS. KEPPLINGER: Yes, if I could comment on that, Steve, and, actually, Wayne and I had a sort of sidebar to this very point, at least for me when I was in the patent office looking at this, I would never want this number to be really low unless they're truly errors. So, I think you have a legitimate point and it's something that I think what needs to be looked at is what are the nature of the errors? Now, if some of these errors are slam-dunk reversals, absolutely, those need to be weighed, gotten out of there, and that feedback to the examiners is very important.
However, there are a significant number of grey areas. We know the Fed Circuit doesn't always come. So, you wouldn't want this to be so low. If it were, then the examining corps isn't sending enough cases up. There are genuine issues in a number of cases that can go either way. Grey, particularly as Chief Judge indicates, one of three is a grey area in some cases.

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

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

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

If not, are there any final comments from the audience? We've had a very quiet
audience today. Sometimes, they have something to say, but apparently not today.

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

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

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

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CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

I, Stephen K. Garland, notary public in
and for the Commonwealth of Virginia, do hereby
 certify that the forgoing PROCEEDING was duly
 recorded and thereafter reduced to print under my
direction; that the witnesses were sworn to tell
the truth under penalty of perjury; that said

transcript is a true record of the testimony given
by witnesses; that I am neither counsel for,
related to, nor employed by any of the parties to
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and, furthermore, that I am not a relative or
employee of any attorney or counsel employed by
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Virginia

My Commission Expires: July 31, 2015

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