

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE
QUARTERLY MEETING

Alexandria, Virginia
Thursday, September 27, 2012

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

2 (9:49 a.m.)

3 MR. BORSON: Well, good morning,
4 everyone. My name is Ben Borson. I'm the acting
5 chair of Patent Public Advisory Committee and I'd
6 like to welcome members of the USPTO, members of
7 the PPAC, and members of the public to this public
8 session of the Patent Public Advisory Committee.

9 Before we get started, I'd just like to
10 go around the table and have everyone introduce
11 themselves, and before we do that, I'd just like
12 to say that one of our members, Michelle Lee, is
13 with us by telephone.

14 So, again, Ben Borson, member of the
15 PPAC.

16 MR. FAILE: Good morning, Andrew Faile,
17 deputy commissioner, Patent Operations.

18 MS. KEPPLINGER: Esther Kepplinger,
19 PPAC.

20 MR. SOBON: Wayne Sobon, PPAC.

21 MR. HIRSHFELD: Drew Hirshfeld, deputy
22 commissioner for Patent Examination Policy.

1 MS. FAINT: Catherine Faint, PPAC.

2 MR. BUDENS: Robert Budens, PPAC.

3 MR. FOREMAN: Louis Foreman, PPAC.

4 MS. McDEVITT: Valerie McDevitt, PPAC.

5 MR. MILLER: Steve Miller, PPAC.

6 MS. FOCARINO: Peggy Focarino,

7 Commissioner for Patents.

8 MR. BORSON: Okay, good, thank you. I'd
9 like to first of all encourage any member of the
10 public that's either in the room to step up to the
11 microphone if there's a question. We'll have a
12 lot of opportunity for discussion and would like
13 to get feedback from anybody that has anything to
14 say. So, there are two microphones, one on either
15 side of the room and please feel free to step up
16 and use them. I don't know whether we have selected
17 any member of the audience to be the first person
18 to make a comment, but if one of you is willing to
19 step up and be the first, then maybe that will
20 break the ice a bit and we can get a more public
21 conversation going.

22 Again, before we jump into the substance

1 of today's meeting, I'd like to make an
2 announcement about a scheduling change. We will
3 go into executive session at around 10:30. This
4 is during a break time and that executive session
5 may last longer than the 15 minutes allocated for
6 the break, in which case we'll move those agenda
7 items before lunch, down perhaps as long as 20
8 minutes. We'll make that announcement as the
9 situation evolves. We're waiting for one other
10 individual from the office to appear to have some
11 conversation with us in executive session.

12 Now, just as an overview, the Patent
13 Public Advisory Committee is a creature of
14 statute. Congress enacted the America Invents Act
15 and American Patent AIPA -- I think I've got that
16 right -- in 1999, authorizing the USPTO to form
17 this committee which is a committee from people
18 from the outside plus three union members, people
19 from the inside, in order to provide advice and
20 comment on patent office procedures, patent
21 policy, and submit a report to Congress. The PPAC
22 is now in the final stages of preparing the annual

1 report for 2012. We're preparing a draft and
2 we'll be submitting that shortly to the patent
3 office for their comments and then a final version
4 will be submitted November 1 for publication in
5 December.

6 The members of the committee here all
7 have expertise in particular subject areas.
8 They're members of the public, the inventor
9 community; they are members of academia, members
10 of corporate practice, and members of private
11 practice. So, the idea is that the committee was
12 constituted to provide a variety of input from
13 different perspectives to the patent operations.

14 So, without any further ado, I'd like to
15 get started with our first agenda item, which will
16 be Commissioner Focarino.

17 MS. FOCARINO: Thank you, Ben, and good
18 morning, everyone. It's a pleasure to be here
19 with you this morning to discuss some of the
20 progress that is occurring within the patents
21 organization.

22 Since we last met in June, we've been

1 extremely busy working on operational issues, such
2 as lowering the backlog along with implementation
3 details of the various provisions of the America
4 Invents Act.

5 So, with respect to operational issues,
6 in fiscal year 2012, we've had a very busy and
7 successful year and I'm happy to report that as of
8 this morning, as a matter of fact, our unexamined
9 application backlog is at 617,457 applications.
10 Through various initiatives, we've been making
11 steady progress of reducing the backlog from over
12 760,000 in 2009 down to the current number that I
13 just mentioned. So, I'd particularly like to
14 thank all the patents team for their efforts this
15 year. Also, in our COPA 2.0 initiative, the
16 initiative to reduce the unexamined older
17 application backlog. We've been able to remove
18 due to this particular initiative over 265,000 of
19 the oldest applications from our backlog. So,
20 that's really, really great progress.

21 As for our current patent examining
22 staff levels, we currently have over 7,800 patent

1 examiners, including over 1,500 new hires this
2 fiscal year in 2012. So, great hiring effort this
3 year, great success, and, as a matter of fact,
4 it's a unprecedented hiring effort and it's
5 allowed us to make a really great strides of
6 reducing the backlog by providing more resources
7 to those technology areas where they are really
8 most needed in the high-growth areas.

9 I should mention also with respect to
10 our staffing levels, I'm pleased to report that
11 we're experiencing some of our lowest attrition
12 rates ever and the current rate is just running a
13 little over 3 percent, and I think it's 3.02 to be
14 exact. So, very low attrition levels, which means
15 we are retaining examiners that are gaining more
16 and more experience which is really helping us
17 reduce that backlog of unexamined applications.

18 As our unexamined backlog has been
19 declining steadily, our RCE backlog has been
20 increasing gradually over the last
21 year-and-a-half, and that backlog as of this
22 morning is currently at 97,865 RCE applications

1 awaiting action and we recognize that the RCE
2 backlog is an area that our applicants and
3 stakeholders are concerned about and we're taking
4 steps to reduce this backlog and to lessen the
5 need to file an RCE through a few of our newest
6 program initiatives.

7 Getting to the AIA and implementation of
8 the AIA, as you are aware, our implementation
9 efforts this fiscal year have been proceeding in a
10 very timely basis and I'd like to thank all of you
11 and the PPAC for your help and guidance,
12 suggestions, and our implementation efforts,
13 particularly with respect to the fee-setting
14 public hearings and also the fee-setting report
15 that issued just this past Monday on September 24
16 and that will really help us move forward with a
17 final rule that's a very balanced set of fee
18 structures.

19 So, we've recently implemented --
20 September 16, 2012 was the date -- many patent AIA
21 provisions, and in particular, those would be the
22 inventor's oath and declaration, pre-issuance

1 submissions, supplemental examination, and all of
2 these were implemented within timeframes
3 prescribed by the legislation.

4 And just to give you an idea of what
5 we're experiencing in those particular areas,
6 pre-issuance or third party submissions, to date,
7 we have 40 submissions in that category and the
8 supplemental examination request currently stand
9 at zero. So, we're pleased that most stakeholders
10 have commented favorably on our transparent
11 implementation process and the extent of our
12 outreach during the implementation process, and I
13 think many of you know we had roadshows all over
14 the country, the last one takes place tomorrow in
15 New York City, and we've gotten some really great
16 feedback and are really hearing some consistent
17 themes from our stakeholders. So, recognizing the
18 importance of continuous improvement in this
19 complex rulemaking and implementation process,
20 we've made clear and I want to reiterate that we
21 are taking input. Even once the final rules are
22 in place, we will continue to take input as we

1 gain experience with these new rules with an eye
2 towards further refinement and improvement.

3 Section 32 of the AIA directs the USPTO
4 to work with and support intellectual property law
5 associations across the country to establish pro
6 bono programs designed to assist financially
7 under-resourced, independent inventors and small
8 businesses. So, we've been actively moving ahead
9 with this directive this fiscal year, and in 2011,
10 the first program in Minnesota was established,
11 and this year, Denver and California have joined
12 in and we also have plans for programs in Texas,
13 the District of Columbia region, and New York City
14 by the end of this year. So, a lot of activity in
15 the pro bono program arena.

16 For satellite offices, we have been
17 moving forward with our efforts to open various
18 satellite offices within three years of the AIA's
19 enactment date. We opened our first office
20 outside of the Washington, D.C. area when we
21 opened the Elijah McCoy satellite office on July
22 13 in Detroit and that office is up and running

1 with several examiners there, already examining
2 applications and a small contingent of board
3 judges are also there. And we are now moving
4 forward to establish three additional offices in
5 Denver, Dallas, and the Silicon Valley area. So,
6 needless to say, there's a lot going on at the
7 USPTO.

8 So, today, you'll be hearing from Andy
9 Faile, who's going to provide a more detailed
10 discussion of our patent operations statistics and
11 data. Some of the initiatives going on and the
12 results as we move into fiscal year 2013 here in
13 just several days, and, also, in addition to an
14 update on patent operations, we'll also share with
15 you updates on the AIA finances from our CFO
16 legislative update, we'll talk a bit about our IT
17 infrastructure and where we are on those
18 initiatives. You'll get an international update
19 on what's going on in that arena with some of our
20 updates to harmonize and also an update from Chief
21 Judge James Smith on the new patent trial and
22 appeal board.

1 So, we've got a lot of things to cover,
2 but we do look forward to your thoughts and we
3 welcome your comments and any questions as we move
4 through the agenda today. So, thank you for your
5 time, look forward to a discussion today and if
6 there's any questions?

7 MR. BORSON: Yes, Steve?

8 MR. MILLER: Yes, Commissioner, you
9 mentioned that the new IPR and PGR for business
10 methods came into effect September 16, and what
11 I've also heard is that a lot of people had filed
12 for the old inter parte re-exam procedures.

13 Do you have any statistics on filings of
14 those and then how the office is going to handle
15 those?

16 MS. FOCARINO: Okay, that's a great
17 question, Steve. So, I think it's pretty safe to
18 say that within the three weeks preceding
19 September 16, we had around 650 filings about
20 equally divided between ex parte and inter parte
21 re-exam requests, with inter parte outpacing the
22 ex parte by around 50 cases. So, this level of

1 filing represents over half of last year's entire
2 workload in the CRU. So, and more striking is for
3 the inter partes, we've received the equivalent of
4 about 100 percent, exactly 96 percent of all the
5 IP filings last year in 3 week's timeframe. So,
6 the good news there is supplemental exam, which is
7 also the Central Re-exam Unit, we've gotten zero
8 requests. So, the CRU will be focused on handling
9 this bubble of work. They have a large staff now
10 and an experienced staff, so, I'm confident that
11 they'll be able to handle the bubble of work and
12 maintain the timeliness and pendency that they've
13 had in the past. So, I think we're well poised to
14 handle that workload.

15 MR. MILLER: And IPRs and PGRs, do you
16 have any statistics on that?

17 MS. FOCARINO: My understanding is the
18 number of submissions there is about 19 to date.

19 MR. MILLER: Great, thank you.

20 MR. HIRSHFELD: I can actually add the
21 statistics for IPR and covered business methods.
22 The inter parte's review as of this morning was 17

1 and the covered business methods review as of this
2 morning was 6.

3 MR. BORSON: Okay, yes, please? Member
4 of the public, could you please announce your
5 name, if you would be so kind, and then address
6 your comment.

7 MR. IYER: I'm Chid Iyer from the law
8 firm of Sughrue Mion.

9 You had mentioned about RCEs, and, of
10 late, RCEs are put in a separate queue, as I
11 understand. And it causes a lot of difficulty
12 because you'll always in an advanced stage of
13 prosecution when you're filing an RCE. Typically,
14 you already had an interview or a chat with the
15 examiner and the cases are very close to being
16 disposed of. And, all of a sudden, examiners are
17 saying I got to put it in a separate queue and
18 it'll take about two years to get you. So, it is
19 causing a lot of hardship compared to what it was
20 before. I just wanted to --

21 MS. FOCARINO: And thank you for that
22 comment. We understand that, so, we will be

1 reordering the RCEs in that special new case
2 docket and they will be reordered to conform to
3 the oldest effective filing date. So, and there's
4 other initiatives that are also going on to
5 address this growing backlog. So, we're aware of
6 some of the difficulties that you're experiencing.

7 MR. BORSON: Thank you very much for
8 that question. I wanted to just thank the
9 Commissioner and the other members of the patent
10 office for the very courteous and productive
11 conversations that members of the committee have
12 had over the last year. We greatly appreciate
13 having the ability to make contact with you
14 quickly and to discuss issues of importance. So,
15 I just wanted to thank you all.

16 Any other comments for the Commissioner?
17 And, if not, thank you very much. I'd like to
18 thank Andy Faile to talk about patent operations.

19 MR. FAILE: Okay, good morning. So, we
20 have a number of different slides to go over in
21 the 15 minutes. So, I'll go through the data, and
22 to the extent we can hold questions to the end,

1 that would probably be a more expeditious way to
2 get through all this material.

3 Okay, so, the first slide here shows our
4 filings, kind of a historical view of filings.
5 Starting in 2001, all the way to the left, as you
6 can see, obviously, increasingly. This is a
7 breakdown between our RCE filings and our
8 serialized filings. The bar on the very, very
9 right is kind of the status as of September 24,
10 and then our projection is kind of the bar
11 immediately to the left there with the dots.

12 Summation of this slide basically is we
13 had a little bit over 5 percent projected growth
14 over last year's filings. We're currently running
15 around six. The RCE filings are up a little bit,
16 about 4 percent up. Our relatively flat of the
17 previous few years kind of bumping up a little bit
18 now.

19 As the Commissioner mentioned, our
20 current application backlog is around 617. As of
21 this slide, the 25th, 619. You can see the
22 general trend line coming down pretty dramatically

1 over the last few quarters to our current position
2 at 619. It looks like we're pretty much hitting
3 our target of the 621, 800 down or a little bit
4 below that. Got a few days to go. We'll see if
5 any other filings come in last minute to add into
6 that equation.

7 This is a new slide here. We were
8 taking a look at the backlog and looking at
9 different ways to kind of look at it, and one is
10 kind of looking at it from the point of view of
11 excess and optimal inventory.

12 So, what you see kind of in the blue
13 there is the optimal inventory for the particular
14 staff and the firepower that we have at any given
15 moment. And as you can see, the blue line
16 generally increases to the right as we add more
17 staff. Obviously, we need more inventory for that
18 staff. The red represents the excess inventory,
19 counting the backlog. So, as you can see, the two
20 colors are, as you move from left to right, kind
21 of converging as we kind of chip down the backlog
22 and add the staff, at some point in time, we want

1 these to converge where we have the appropriate
2 staff for the optimal inventory and we have little
3 or no excess inventory. So, kind of just a
4 different picture of the backlog.

5 MR. SOBON: Andy?

6 MR. FAILE: Yes, Wayne?

7 MR. SOBON: On that slide, does this
8 inventory include RCE inventory?

9 MR. FAILE: No, good question. This
10 does not. This is the unexamined application
11 inventory.

12 MR. SOBON: Okay.

13 MR. FAILE: All right. Okay, speaking
14 of RCEs, the RCE backlog, as the Commissioner
15 mentioned, currently at 97,000; at this snapshot,
16 a little bit over 98,000 as of September 25. A
17 little bit of a dip down, and you'll see that's
18 kind of a consistent pattern in September, as we
19 approach the end of the year. We do get a little
20 bit of a dip down in the RCE inventory. But,
21 clearly, the trend line here is the opposite of
22 the unexamined application backlog inventory in

1 that it's going up to the right.

2 A further breakdown, we thought we would
3 present a different slide here, and this kind of
4 shows what work we had in front of us here. We're
5 breaking down the RCE backlog into age. So, we
6 have a volume of 97, 98,000, and then within that
7 volume, we have a range of ages of that inventory.

8 As you can see, it's broken down by
9 number of applications on kind of the second line
10 and then the percentage of that total backlog. As
11 you move to the right, the 13.7 percent greater
12 than 18 months is certainly an area of focus.
13 Pretty much anything to the right there is an area
14 of focus, and as the number on the right there is
15 increasing here to 13.7, that's certainly a
16 caution point for all of us to take a look at.

17 It breaks down kind of along the lines,
18 you see at the bottom here move up a little bit,
19 relatively steady, takes a dip at about the
20 12-month point and then spikes back up at the
21 18-month point.

22 So, one thing that the Commissioner

1 mentioned that we're doing currently is we're
2 looking at our workflow process and we're
3 reordering the RCEs and the special case docket.
4 We actually call it the special continuing case
5 docket, and we're reordering the cases in that
6 docket to be done by effective filing date, which
7 will effectively bring a lot of these old RCEs to
8 the right up to the top of that list and examiners
9 will be working on them in many cases before they
10 get to their cons and their divisionals,
11 continuations and divisionals. So, that
12 reordering to the gentleman's question before,
13 will begin to start working and looking at the age
14 of the RCEs, not necessarily a volume solution,
15 but a first step towards looking at the age of the
16 RCEs and giving a priority to those to move those
17 out quicker.

18 MR. BORSON: Okay, Andy, I understand
19 this is corps-wide RCE filings. Do you have any
20 sense of whether they're particular TCs or areas
21 that seem to be more problematic than others or at
22 least more delayed?

1 MR. FAILE: Probably in the electrical
2 areas, you're going to see a little bit more of a
3 delay. If you look at the breakdown on the
4 discipline level, it's relatively even. As you
5 move from the mechanical, electrical, chemical
6 giant discipline levels into the TCs and into the
7 art units and into the individual examiners,
8 obviously, things spread out quite a bit, you get
9 a bunch of asymmetrical activity there.

10 MR. BORSON: Okay, thank you.

11 MR. FAILE: Yes. Okay, speaking of
12 RCEs, picking up on the Commissioner's point,
13 there's a few things that we are doing and are
14 planning to do in RCEs. The one I just mentioned
15 that we've already done is the reordering of the
16 RCEs and the continuing new docket to make sure
17 that we're getting some of those older ones up at
18 the top of the stacks, so to speak, to be worked
19 on quicker.

20 There are a couple of pilot programs
21 we've been running for a quarter or two now.
22 We're still pooling data on those and those are

1 you see in kind of the yellow circle up top, the
2 AFCP, After Final Consideration Program, in QPIDS,
3 Quick Path IDS Program.

4 Some of you may be familiar. The quick
5 sketch of these is in the After Final Program.
6 We're basically looking at the window after final,
7 opening that window up a little, so to speak, by
8 providing some time for examiners to consider
9 After Final Amendments. The hope would be in
10 cases that are very close to becoming allowances,
11 we spend a little time there and move that case in
12 the allowance stream and not actually have to have
13 an RCE filing to get that same level of
14 consideration.

15 We have some very preliminary data.
16 We're looking at basically about a 4 percent bump
17 for examiners that are using the pilot and moving
18 those cases towards RCEs over the After Finals
19 that get converted without using the program. So,
20 we've got a little bit of a bump there. I'm still
21 looking at the time usage and doing kind of a
22 return on investment. I'll look at that.

1 For the QPIDS pilot, this is basically a
2 pilot where practitioners can come in, if they
3 have an IDS that they get that is after the issue
4 fee is paid, normally, an RCE is needed to get
5 that IDS considered. In the Quick Path IDS
6 Program, we've allowed those particular IDSs to
7 come in and we're taking a look there. If there's
8 no change in the claims, a case could still stay
9 in the allowance stream. Then we keep it in the
10 allowance stream and move it on, compensate the
11 examiner with some time for looking at those
12 particular references, move it on to the allowance
13 stream and not have to file the RCE. And if the
14 patentability of the claims is affected by the
15 references, obviously, then the RCE is kicked in
16 and we reopen via a conditional RCE in that.

17 That's been a good program for us so
18 far. Again, with the little data that we have,
19 we've converted -- the vast number of cases stay
20 in the allowance stream and move on to become
21 patents versus a very small number that actually
22 turn into RCEs to get that consideration.

1 The bubble you see on the bottom or the
2 circle you see on the bottom left, the RCE
3 leveling plan, that is an effort focused at the
4 backlog of RCEs to continuing upturn of RCE
5 filings. A little piece of that is the reordering
6 of the RCEs that we just discussed. The next
7 level of that is our sit down with the union with
8 Robert and his folks in October, looking at
9 different ways that we can look at the age and
10 volume of those RCEs per the two previous graphs
11 and figure different ways we can put incentives or
12 reorganize cases to where we can get that backlog
13 moved down to a lower number. So, we'll be
14 sitting down the October timeframe and starting to
15 work on that piece.

16 The bubble you see on the right, the RCE
17 outreach, is a new program that I'd like to kind
18 of give an announcement for here and you'll be
19 much more about this. This is one where we need
20 everyone involved. We're actually going to take a
21 systematic look at the reasons RCEs are filed.
22 This is kind of a root cause analysis for RCEs.

1 It has basically three components to it where you
2 have an internal component; they are things that
3 we are doing in the office, both process-wise and
4 examiner-wise that contribute to RCEs and then
5 there's the corollary to that, the applicant's
6 point of view, the part they play in filing RCEs.

7 So, we're kind of doing a systematic
8 deep dive into both of these areas and pooling up
9 some data on our internal processes and our
10 internal focus on RCEs and then going to the
11 external folks, you guys, and the public, and
12 through focus sessions and different interviews
13 and data-gathering techniques, both physical and
14 virtual. We want to get at the reasons why RCEs
15 are used from the external perspective, pool all
16 this data together, and look at are there
17 different programs, such as AFCP or QPIDS, new
18 programs that can be added that are pressure
19 points in the RCE prosecution, is there any
20 particular knowledge that we can share, maybe
21 dispel some myths about RCEs as we move forward
22 and kind of roll this up into a series of

1 potentially internally processing tweaks on our
2 end as we look at RCEs.

3 So, I kind of look at the bottom on the
4 bottom right as kind of our R and D into the RCE
5 issue. And, again, would like to ask everyone --
6 we'll have a subpart of our Web site dedicated to
7 this and we'll have a series of questions and
8 data-gathering there and if everyone could focus
9 on that and provide us with data from
10 practitioners and applicants and external
11 perspective, that would be very helpful in us kind
12 of getting our whole arms around this entire
13 issue.

14 Okay, first action, this is our
15 traditional first action pendency and total
16 pendency, total pendency up at the top in the blue
17 boxes. We're a little bit under our target there.
18 Things are looking pretty good for the first
19 action pendency and total pendency. Again, this
20 is traditional. RCEs are included as endpoint
21 here, don't count as the total pendency from first
22 action to abandonment. We'll have a slide on that

1 in a minute.

2 And then at the bottom is four first
3 action pendency taking a dive and basically kind
4 of flattening out right around our target level on
5 the very bottom, about 22.3 months, a little bit
6 over 22 months.

7 Forward-looking pendencies is a measure
8 we've talked about a little bit in the past PPACs,
9 basically projecting pendency in a forward-looking
10 manner. Currently at about 16.7 months. This is
11 for cases filed on a given day and at the bottom,
12 what's the time to first action from a
13 forward-looking point of view? You'll see a
14 little uptake on there between kind of July and
15 August at the very end. We have a little bit of a
16 spike upwards. That comes through some model
17 adjustments that we're doing on our end in looking
18 at number of hires from a projected number of
19 hires down to a number of hires we think we're
20 going to do since the forward-looking pendency
21 takes into account firepower in the future, that's
22 why you see that little kind of blip up there.

1 Okay, this is a new slide, percent of
2 terminal disposals having at least one interview,
3 and by "terminal disposals," we mean the
4 abandonment or allowance, so, this would include
5 any RCE particular activity.

6 So, for this one, we've kind of taken a
7 little bit of a different look at interviews,
8 maybe looking at it from a perspective a little
9 bit different than just the summation of
10 interviews that we've had over a given fiscal year
11 compared to other fiscal years.

12 If you look at the far left, starting
13 about 2007, basically 15 percent of the time we
14 had an interview, once we looked back at a case,
15 once it's been finally disposed of, abandoned, or
16 an allowance, we go back and count the interviews
17 in that case. And this is the percentage of
18 having at least one interview. So, we're at 15
19 percent, and as you can see, the trend line is
20 kind of somewhat of a jagged fashion, moving up
21 with kind of a sharp upturn around the end of
22 2011, beginning of 2012, mid of 2012, which kind

1 of corresponds to a lot of the compact prosecution
2 activity and interview training that we've been
3 doing and just the general awareness on interview
4 practice and moving cases forward.

5 So, again, this shows the percent of
6 final of abandonments in allowed cases that have
7 at least one interview, with the general trend
8 line moving up. So, we're getting interviews in
9 more cases; we're kind of running at a two to one
10 over what we did back in October of 2007.

11 Okay, and this is our rolling average of
12 the allowance rate, starting in about FY 2009
13 through 2012. As you can see, kind of a general
14 trend line upward to the current status of a
15 little bit over 51 percent allowance rate.

16 Actions per disposal, this is our
17 traditional measure of the actions per disposal
18 from about 2009 through September 8. Generally,
19 as you look to the right of the graph from about
20 February 10 onward, generally somewhat flat,
21 little bumps here and there, closing in on kind of
22 a current rate of a little bit over 2.5 actions

1 per disposal as of the beginning of September.

2 This is a measure we introduced in the
3 last PPAC. I'll just take a second and talk about
4 this slide. These are the number of rejections
5 and terminal disposals by month and we're
6 basically charting this out from 2007 to current
7 date or it looks to be about June of this year.
8 So, what this is, this includes any RCE type of
9 filings, as well. So, what you have in the
10 numerator are the non-final actions, final
11 rejections, and any of the FAI, First Action to
12 Interview Pilot activity and then we're looking at
13 those number of rejections it takes to get to a
14 terminal disposal, again, identified as an
15 allowance or abandonment, including any RCE
16 activity, given the definitions that you see about
17 what constitutes a rejection.

18 So, if you're looking at that trend line
19 moving up generally somewhere between 2.1 and 2.5,
20 a little bit south of 2.5, currently at about
21 2.03. So, we're looking at about two of these
22 defined rejections in allowance or an abandonment.

1 The bottom trend line is the miscellaneous actions
2 for those same allowances or abandonments, and
3 it's hard to see the verbiage on the screen, but
4 it basically captures all the "non-rejection" type
5 of correspondence that would go back and forth
6 between examiners and applicants.

7 And, currently, we're running just about
8 a little bit over a quarter or almost one-third on
9 that line. So, this one kind of separates out
10 both the rejections in the case, the substantive
11 actions that move cases forward apart from more of
12 the "administrative activity" that goes on back
13 and forth between cases. Again, including in this
14 is any RCE activity. So, this is an interesting
15 graph that we want to keep updated and we'll
16 probably include this as a regular part of our
17 stat pack for you guys at PPAC.

18 Going to the attrition data, the
19 Commissioner mentioned attrition at a little bit
20 over 3 percent. You can see kind of the circled
21 area, we kind of changed the scale at the bottom
22 to kind of bullet it out per month. As you can

1 see, we've been holding steady just a little bit
2 over 3 percent for a good bit now. So, very happy
3 so far with the attrition data.

4 Our COPA effort is also as mentioned.
5 We had a huge cleanup effort looking at backlog
6 reduction in terms of our clearing oldest patent
7 applications. This is our version 2.0. For those
8 of you using software nomenclature, on 2.0, and we
9 had a 1.0 cleanup as part of this, as well, and
10 I'll discuss it in a minute.

11 So, we had a goal of 260,000 cases to be
12 completed by the end of the fiscal year.
13 Obviously, for us, that's September 30. We made
14 that goal. We're at 263,000, so, a little bit
15 over that goal now in moving the oldest of the
16 applications in our backlog distribution.

17 We also did a cleanup of kind of to the
18 right of the red line and we had a goal of 98
19 percent of those 44 or so thousand cases from the
20 previous COPA 1.0 effort to be cleaned up so we
21 don't have the tale that you kind of see to the
22 right there, would be the blue part of that tale,

1 the blue part of that bar would be the tail that
2 we're looking at. We want to clean that tail up
3 to the point where we kind of have a brick wall in
4 pendency and we've caged it all in to the left.

5 Currently, we made that goal of 98
6 percent. We're a little bit over. I think we're
7 at 98.4 or so percent now of that actual cleanup
8 goal.

9 Okay, track one. On the top, you can
10 see we've had kind of two years of track one. I
11 say "two years," we had actually one month in FY
12 2011 of track one. We started in September. You
13 see the filings there, 855 filings for that.
14 Starting in October, starting in fiscal year 2012,
15 you see the filings broken out by month there.
16 For this year, at the end of September, we'll be
17 ended up, but we're close to about 4,774 filings
18 this year. The total filings for the program were
19 somewhere in the 5,600 range for track one
20 filings.

21 So, a few interesting statistics on the
22 next line for track one. The percentage of small

1 entity participation here is 41.9 percent. So, to
2 us, that's a huge takeaway, the 41.9 percent of
3 small entity filers are taking advantage of the
4 track one program.

5 The second box we talked a little bit
6 about last time. We had an effort to reduce the
7 average days to petition decisions. We shaved
8 close to a couple of weeks off of that, 14 days
9 off from our previous high of somewhere in the
10 high 40s. By looking at the process and doing
11 kind of a parallel processing of both assigning
12 the application and going through the formalities
13 review of that particular case. Did that in
14 parallel, able to reduce that time.

15 Moving on to the right, we had stats on
16 the oldest track one still in prosecution at 237
17 days and the oldest track one without a first
18 action, 166 days. Again, just to make sure
19 everyone's on the same page, the program looks at
20 a 12-month goal at the aggregate level. We're
21 actually so far able to keep all of our data
22 points within the 12 months. So, even though our

1 goal was to get an aggregate level, we're trying
2 to beat that and trying to see if we can keep all
3 or at least the vast majority from hitting the
4 actual 12-month point.

5 On the bottom line of this, track one
6 cases filed, we've done a little bit over 3,500
7 first actions. The average days from the grant of
8 the petition in the office to the first action, a
9 little bit over 48 days. So, that's a good number
10 there.

11 Looking a little bit further to the
12 right, 935 allowances, and the last 2 are kind of,
13 to me, a big selling point of the program. The
14 average days from petition grant to allowance.
15 This is at the final termination point of
16 allowance, 125 days and days from petition grant
17 to final disposition, which would be either the
18 allowance or the final rejection, 154 days. So,
19 in a nutshell is track one.

20 Moving along to the quality area, as
21 we've discussed before, we have our seven internal
22 components for quality that we kind of use and

1 weigh them according to certain weights and crank
2 out what you see on the right, which is our
3 quality composite score. That is actually a
4 percentage. That is a percentage towards meeting
5 all of our quality targets in FY 2015. So, the
6 way to read that is currently, we're 72.9 percent
7 on our way to hitting all of our FY 2015 targets.

8 The different parts of the quality,
9 metrics that make up the component here, you can
10 see on the top, the final disposition compliance
11 rate, in process compliance rate, those are
12 basically our traditional measures, final
13 disposition compliance rate obviously is our
14 looking at final rejection and allowances and
15 processes, cases that are in prosecution, et
16 cetera, to the right.

17 I'll get to this slide a little bit
18 later, but just to look at the external and
19 internal quality surveys, we had a pretty
20 significant jump on our internal quality survey
21 from the previous measuring period from 5.1 to
22 9.4, and that's the second to the end of the

1 right, the internal quality survey line. The
2 internal quality survey asks examiners questions
3 such as gauging incoming application quality,
4 gauging our training, our search tools, any of the
5 rollouts that we have internally. We've seen a
6 pretty big bump here. That's mainly due to the

7 number of negative responses turning into positive
8 responses. This is a ratio of 9.4 of positive
9 responses to negative responses.

10 Okay, a further kind of granular
11 breakdown of the quality composite, you can see
12 here. Looking to the right, as you see, the
13 stretch goal, that is the goal at 15. Again, from
14 the previous slide, the 72.9 percent is our march
15 towards those 15 goals. These are the actual
16 goals here to the left of the green. So, for
17 instance, for the final disposition compliance, we
18 want to be at 97 percent, et cetera. In the
19 green, you can see our current levels towards
20 those ultimate 15 targets. The waiting, go over
21 two columns to the left, each one of these parts
22 to the composite has a different waiting. So,

1 you're basically looking at a waiting in a current
2 level and you're generating a component score
3 adding that up, giving our overall component score
4 here of 72.9 percent.

5 So, again, thanks to PPAC. This was
6 kind of a joint project we had with PPAC in the

7 past where we developed a different look at this
8 quality composite. It gives us kind of a richer
9 look at our overall quality. It's a mix of
10 obvious survey or perception data with empirical
11 data and sampling data all put together into a
12 composite that gives us kind of a health indicator
13 of where we are and also kind of a march, where we
14 are in our march towards hitting our goals that
15 were identified for 2015. So far, about 72.9
16 percent of the way there.

17 The next slide kind of breaks down --
18 again, another look -- each component of the
19 metric, the quality composite in kind of this
20 thermometer, kind of a different way to visualize
21 our progress. The very bottom of that is the
22 baseline, which we started. You'll notice some of

1 these have different baselines; some have an FY
2 2009 baseline, some have an FY 2011 baseline,
3 depending on when that part of the composite came
4 online. And the thermometer kind of gives our
5 progress up towards the FY 2015 goal for each of
6 the individual components.

7 As you'll note on the complete FAOM
8 review, the one with the least amount of red,
9 we're just a little bit barely over our baseline
10 that was set at the end of 2011. So, we've got
11 some work to do on our complete FAOM, First Action
12 on the Merits Review, to move that thermometer up.

13 Ben, I know I'm out of time. I've got
14 one more slide. This kind of shows our movement
15 towards the FY 2015 goal and our progress per
16 year. So, what we've done is we've started an FY
17 2015 -- again, that 72.9 percent that we
18 discussed. Obviously, we want that at the end of
19 the process when the strategic plan is going to be
20 updated. We want that to be 100 percent of the
21 goals we've established.

22 So, that's the 100 percent in 2015 and

1 then we've kind of cascaded down there to give us
2 a range of a goal for each fiscal year that we
3 want the composite to land in. So, as you go from
4 right to left, from 100 percent, our FY goal for
5 2014 is going to be somewhere in the 83 to 91
6 percent range, 2013, 65 to 73, et cetera. So, as
7 you look on our current FY 2012, we had a 48 to 56
8 percent range that we wanted to land in. We're
9 actually doing a little bit better than that.
10 We're up at the 72 percent range. So, we started
11 out a little bit under in FY 2011. We had
12 assigned a 35 percent to 43 percent range. We
13 ended up at a little bit over 30 percent range,
14 did a little bit under there, kind of made up some
15 ground, initially hitting the 72.9 percent range,
16 and as we march up through the fiscal year of
17 looking at the composite, going all the way to
18 2015.

19 Sorry, Ben. One other thing I wanted to
20 mention is our tech support group, it basically
21 does all the processing of applications and
22 handling of the incoming amendments, getting them

1 into the cases, getting the cases prepped up for
2 the examiners to examine. We've had some really
3 good success both in timeliness and quality.
4 Their sample quality for this year is at a 1.5
5 percent error rate, which is huge for that group.
6 They're doing a fantastic job.

7 On their processing times, so far to
8 date for entering non-final amendments, they're at
9 an average of 6.2 days. For after final
10 amendments, they're at an average of 3.5 days.
11 So, really fantastic progress in our tech support
12 in getting the cases prepped up, on getting to the
13 examiners in a very timely manner and with a very
14 good level of quality for the subsequent
15 examination. Thank you.

16 MR. BORSON: Okay, we're a little bit
17 over time, but if there are any comments from the
18 members of the committee? Take a few. And, if
19 not, any comments from the members of the public?

20 MR. BUDENS: I have a question for you,
21 Andy. On the optimal inventory slide, this new
22 slide, what are the assumptions that the agency is

1 working with to come up with that number for the
2 optimal inventory?

3 MR. FAILE: Yes, okay, good question.
4 So, if you do the math, you're looking -- and this
5 is a very high aggregate level at the corps, and,
6 again, as we go and break this down per tech
7 center, per art unit, you're going to get a little
8 bit of a disturbance in that. But looking at the
9 corps level, this represents for the optimal for
10 the amount of examiners onboard, this is somewhere
11 between a 40 and 50 case inventory for those
12 examiners multiplied by the number of examiners
13 gives you your optimal inventory. As the
14 examining corps increases, kind of from the middle
15 of the graph to the right and you're moving up,
16 obviously, the optimal inventory does increase.

17 MR. BORSON: Okay, well, thank you very
18 much, Andy.

19 MR. FAILE: Thanks.

20 MR. BORSON: Oh, Esther, please.

21 MS. KEPPLINGER: Just one quick comment.
22 We look forward to working with you on a number of

1 these initiatives, the RCE initiative and also the
2 quality. We look forward to actually including a
3 little more objective criteria into it because at
4 least from our perspective, I think the work that
5 was done -- I wasn't part of that group that
6 worked with you before, but I think they had
7 recommended more objective criteria and this is
8 still largely very subjective. So, I think from
9 the public and the PPAC, we'd like to go in that
10 direction.

11 MR. FAILE: Okay, thanks.

12 MR. BORSON: Okay, thank you, Esther.
13 Well, what I'd like to do now is turn the floor
14 over to Drew, who will give us the current update
15 on implementation of the AIA.

16 MR. HIRSHFELD: Thank you, Ben. So, as
17 was just stated, I'm going to give you a status
18 report on the AIA and Janet Gongola, who's the
19 patent reform coordinator, has been giving the
20 update. She is on the road today. We are going
21 to New York for the final roadshow, so, I will
22 stand in her place to give you the update.

1 So, I first wanted to show you the
2 timelines which have been discussed with this
3 group and actually throughout the country at
4 various meetings. The timelines of the final
5 rules and this is the first time it's my pleasure
6 that they're all gray, which means for these final
7 rules, this is the first that we're showing the
8 slides where we've completed everything. So, I
9 won't go through them in detail, just to say at a
10 very high level that the implementation went as

11 planned for both the patent rules, the board
12 rules, and those final rules are in place; they
13 were discussed a little bit earlier today and
14 effective, of course, on September 16.

15 Now, for the board, the PTAB, there is a
16 new patent review processing system which helps
17 them track their e-files and is their case
18 management system. I just wanted to bring this to
19 everyone's attention so that people are aware of
20 the new system and there is a video currently on
21 our microsite where you can get more information
22 about how to make filings and what the system can

1 do.

2 Okay, now, turning to some statistics,
3 I'm going to go through this quickly since we're
4 behind and we discussed this a little bit earlier.
5 The statistics shown on this slide are as of
6 Monday, September 24. However, this morning, we
7 had updated statistics. So, for pre-issuance
8 submissions, there's currently as of this morning
9 40 pre-issuance submissions filed. As
10 Commissioner Focarino mentioned earlier, no
11 supplemental exams have been filed and inter
12 parte's review is currently at 17 as of this
13 morning and covered business methods review.
14 There have been six filings as of this morning.

15 And, of course, examiners needed to be
16 trained on the various final rules that affect
17 them. Of course, the biggest effect to examiners
18 will be the First-to-File. We, of course, not
19 having gotten to a final rule yet, but the oath
20 and dec and the pre-issuance submission changes
21 are the ones that will affect them the most. So,
22 there was a computer-based training module which

1 was sent to all examiners which discusses those
2 rules and the impacts to examiners and then for
3 the Central Re-Exam Unit, there was a
4 computer-based training and supplemental exam
5 which was given to all the examiners and, of
6 course, as additional training is necessary, we'll
7 roll out in whatever format is appropriate.

8 Now, of course, we've had a number of
9 questions both internal and external. We've
10 created a call center just for the AIA. So, we
11 have 1-855-HELPAIA line which has been placed in
12 effect as of the 16th so that anyone can call in
13 and ask questions and get answers to what their
14 concerns are. We also have a dedicated e-mail box
15 and you can see the link on the slide that is for
16 anybody from the public. So, again, people can
17 write in any questions or you can call, either
18 way, and you'll get assistance. And then we also
19 have an AIA examiner-dedicated e-mail box, as
20 well, where examiners can write in any of their
21 questions.

22 Now, it became very apparent that there

1 were numerous questions on the oath and dec. As a
2 matter of fact, at many of the roadshows, the oath
3 and dec questions monopolized the question period.
4 So, we came out with a quick reference guide which
5 is placed on the AIA microsite which will give
6 people more information about the oath and dec
7 questions.

8 And then there are two more bullets on
9 there. We updated our frequently-asked questions.
10 This relates to the oath and dec. We'll do this
11 on a biweekly basis. So, for all the questions
12 we're getting, we'll be updating our
13 frequently-asked questions so we can give the most
14 effective feedback to everybody.

15 And then there's also the number of
16 calls, the statistics that we've received either
17 through e-mail or phone calls. It's listed on the
18 slide at 549, but as of this morning, there have
19 been over 740 inquiries either through the
20 telephone line or the e-mail.

21 Okay, so, moving from the final rules to
22 the rules still in progress, I mentioned a couple

1 of minutes ago that the First-Inventor-to-File
2 rulemaking will be a significant change for
3 examiners. This one is not entirely gray yet. It
4 will be gray as of March 16, but you can see the
5 green area represents where we are now, and of
6 course, we're in a public comment period on Notice
7 of Proposed Rulemaking and the guidance document
8 that have gone out. I'm going to go through these
9 quickly because I know these have been discussed
10 many times with this group. And comments for this
11 proposed rule are due October 5.

12 Now, of course, there was a
13 First-Inventor-to-File Roundtable. I apologize
14 about the typo. It actually should say that that
15 was September 6, 2012, where we had 12 presenters
16 and the video of the Webcast is available on our
17 Web site and we're working on the transcripts, as
18 well, which we'll put on the Web site as soon as
19 those transcripts are completed.

20 Okay, and moving to some of the patent
21 fees, I have a timeline for the patent fees, and,
22 of course, we are also in the green period, which

1 is in a comment period and comments will be due on
2 November 5 on the proposed fees. The Notice of
3 Proposed Rulemaking, published on September 6, and
4 I know it's listed there as July or August. It
5 was slightly delayed, so, it's August 6, and, of
6 course, I don't need to tell this group, but the
7 PPAC report was made available, as Commissioner
8 Focarino mentioned earlier, on the 24th, and that
9 is proceeding as well for implementation in the
10 early April timeframe.

11 Okay, and I just have a slide listing
12 the sites, again, with the comment period due
13 November 5.

14 And moving on to the roadshows, we've
15 had a total of eight roadshows throughout the
16 country. We currently only have one roadshow
17 remaining. That roadshow is tomorrow, and we'll
18 be in New York. And on our Web site, Janet
19 Gongola is putting up a highlight from each of the
20 roadshows. So, they all have a little bit of
21 different personality, depending on the issues
22 that are raised. So, she's putting a small

1 summary up for each of the roadshows. And the
2 first three roadshows were Webcasts and we're
3 working on the video production to put those up on
4 our microsite, as well.

5 Now, at the roadshows, we discussed a
6 variety of topics. Of course, we discussed all of
7 the final rules, but there was also a discussion
8 of the First-Inventor-to-File and the patent
9 fee-setting. And, as I mentioned previously,
10 there were a number of questions related to the
11 oath and declaration.

12 Okay, now for a progress on our AIA
13 studies. The slide lists the seven studies that
14 we have, and, of course, the international patent
15 protection for small businesses and the Prior User
16 Rights Study have been completed. The Genetic
17 Testing Study I'll talk about a little bit more in
18 a minute, and that one has actually been extended.
19 The due date from enactment for that was June 12,
20 and we are still working on that study. And then
21 there lists a number of studies that will be going
22 on in the future, some of which were mentioned

1 this morning on satellite offices.

2 Okay, and now getting back to the
3 genetic testing study, we are currently still
4 reviewing, and given the obvious complex nature
5 and the variety of feedback that was received
6 about the genetic testing, we have decided that
7 further review and discussion and analysis is
8 still needed. So, we're planning on having a
9 third hearing, which we're looking at at late fall
10 and that will, of course, take place before we're
11 able to finish the study. So, again, that was
12 delayed and Congress was notified of this
13 particular delay.

14 Okay, and moving to the progress report
15 on the AIA programs, Peggy mentioned the Pro Bono
16 Program this morning, which is listed there as
17 completed and it's completed only because it's
18 started, but it's still a work in progress and, as
19 was mentioned, we're having many more cities join
20 the Pro Bono Program and she also mentioned number
21 four, the satellite offices, which needs no
22 further explanation. Of course, Detroit has

1 opened and we're working on the others and the
2 patents ombudsman for small businesses is listed
3 as completed, as well, and I'll also talk about
4 that a little more.

5 But looking quickly to Detroit, I just
6 wanted to show you all a quick video of some of
7 the facilities in the Detroit office. Of course,
8 we need not really show the examiner's office, but
9 there is, of course, a public search room with
10 search facilities. We have a virtual interview
11 room, where the public can interview with people
12 in Detroit using the collaboration tools or they
13 can, of course, collaborate anywhere and then
14 there is training academy which is not shown in
15 that slide, but we also have in the training
16 academy very efficient collaboration tools which
17 enable people in the training academy to
18 correspond back to the USPTO should the training
19 be delivered from here.

20 And returning to the Patents Ombudsman
21 Program, there are really two components to this
22 program. There's the Office of Innovation and

1 Development, which assists small businesses with
2 everything on filing a patent application. So, it
3 would be whatever they need assistance prior to
4 the time of filing. That's our OID office and
5 then there's also the Patents Ombudsman Program,
6 which had been in place, which helps people from
7 filing forward. So, that has been rolled jointly
8 into this patent ombudsman for small businesses
9 where the small businesses can get help prior to
10 filing through the OID or using a process similar
11 to our Patents Ombudsman for after filing and
12 there is an explanation of this on our AIA
13 microsite.

14 And that is all I had today. I tried to
15 go quickly to have us catch up.

16 MR. BORSON: Thank you very much, Drew.
17 Quick comments from the committee or the members
18 of the public?

19 MS. LEE: Ben, this is Michelle Lee on
20 the phone. I do have a few questions for Mr.
21 Hirshfeld.

22 MR. BORSON: Yes, Michelle, go ahead.

1 MS. LEE: Drew, thank you very much for
2 that information, and two questions. One is one
3 the AIA studies, particularly the genetic testing
4 one that was extended. I understand per your
5 slide that there's going to be a hearing in the
6 fall of 2012. Do you have a targeted completion
7 date for that study?

8 MR. HIRSHFELD: At this point, I don't
9 have a targeted completion date. I think we need
10 to see how the study goes, and, as you know, there
11 have been a significant varying opinion as to how
12 we should approach that study. So, I'm going to
13 have to defer and see if we need to wait and get
14 more information and discover next steps.

15 MS. LEE: Okay, fair enough. And then
16 the second question is: In the Detroit office,
17 what are the plans for the services that will be
18 offered out of that office?

19 MR. HIRSHFELD: Could you be more
20 specific in terms of what you're looking for?

21 MS. LEE: I mean, they'll be, I take it,
22 examiners there who will support the examination

1 of applications in the Alexandria area, but will
2 there be the opportunity for I guess board-related
3 activities or hearings or video conferencings of
4 that sort?

5 MR. HIRSHFELD: So, the original plans
6 were just examiners, and as we progressed, we
7 realized there was strong desire to also have
8 judges there, to have board judges. So, right
9 now, you actually have both, and if I remember
10 correctly, I actually think the judges were there
11 first and then the examiners got there
12 subsequently. So, there is both services being
13 provided.

14 MS. LEE: Okay, thank you.

15 MR. HIRSHFELD: You're very welcome.

16 MR. BORSON: Okay, very good. Thank you
17 very much, Michelle.

18 Well, at this point, as I announced
19 earlier, we would like to have a motion to move
20 into executive session for a period of 15 or 20
21 minutes.

22 Do we have a motion from the committee?

1 MR. MILLER: So moved.

2 MR. BORSON: Second?

3 SPEAKER: Seconded.

4 MR. BORSON: Okay, there being a second,
5 what's the vote of the committee members?

6 SPEAKERS: Aye.

7 MR. BORSON: Any opposed?

8 (No response)

9 MR. BORSON: Thank you very much. At
10 this point, I'd like to invite the members of the
11 public to step out of the room for 15 or 20 minute
12 while we go into executive session and I would
13 also like to thank the members of the Web
14 audience. We will be back online in about 15 or
15 20 minutes. So, if you could please turn off the
16 projector, the Webcast, and we'll return. Let's
17 see, I have a time of now 10:50. We'll reconvene
18 at 11:05. Thank you.

19 (Recess)

20 MR. BORSON: I'd like to welcome you all
21 back to the public session of the Patent Public
22 Advisory Committee. Thank you very much to the

1 members and the members of the public for being
2 flexible for time. We'll be on schedule.

3 I'd like to now introduce Tony Knight
4 from the Office of Petitions, who will give us an
5 update on petitions practice.

6 So, Tony, thank you very much for
7 coming.

8 MR. KNIGHT: Okay, thank you very much.
9 Petitions are usually one of the areas that people
10 find it either is very helpful to them or they're
11 not very satisfied with what's going on.
12 Generally, there's some problem that's going on
13 with their application and they want to try and
14 get it resolved and they'll come to us and we'll
15 try to help them get their issues resolved.

16 As far as petitions go, there are lots
17 of parts of the office where petitions are
18 decided. They're decided in the Office of
19 Petitions, they're decided in PCT Legal, Office of
20 Patent Legal Administration. We have the TCs that
21 will decide petitions and officials within the TCs
22 that are going to decide petitions. We have them

1 in the Central Re-Exam Unit. They're all across
2 the patent office as far as petitions go. The
3 vast majority of them are decided in the Office of
4 Petitions, and we'll see that in the slide coming
5 up.

6 Also with petitions, not only can they
7 be decided in one particular area, it may be
8 status-driven. So, depending upon where the
9 application is in the patenting process, a
10 petition may be decided. So, as we had with the
11 withdraw of attorney, before we made that an
12 electronic petition, that might have been decided
13 in the TC or it might have been decided in the
14 Office of Petitions or it might have been decided
15 in Office of Data Management, depending upon where
16 the application was in the process. So, if it was
17 still in the examination process, the TC would
18 handle that withdraw of attorney whereas if it was
19 after the examination process, maybe the
20 application was allowed, then it would be handled
21 in the Office of Data Management.

22 And then even petitions that are decided

1 outside of the Office of Petitions and outside of
2 the patents organization, we have petitions that
3 are at the Board of Appeals or in the general
4 counsel's office or Office Enrollment and
5 Discipline, and these are just a few of the places
6 where petitions could be decided.

7 Some of the petitions that could be
8 filed by an applicant would be maybe there's an
9 abandonment of the application and they would like
10 to withdraw the holding of abandonment or revival
11 of the application, and this is one of these types
12 of petitions that is also going to be
13 status-driven, depending upon where the
14 application is in the process. It could be
15 decided in the technology centers, could be
16 decided in the Office of Petitions. The majority
17 of the Withdraw Holding of Abandonment Petitions
18 are decided in the Office of Petitions unless
19 there's a specific examining-related issue that
20 needs to be resolved and we'll get it resolved in
21 the TC, and then if there's a question about the
22 resolution in the TC, then it'll come up to the

1 Office of Petitions for supervisory review.

2 We have supervisory review that can
3 asked for and can occur in any of these areas,
4 whether it's Office of Petitions or the Central
5 Re-Exam Unit or the board of appeals, and that's
6 one way that we can ensure that there's
7 consistency between the decisions that are made in
8 the patent office so that you can't say that we're
9 arbitrary and capricious or abusing discretion in
10 deciding the petitions.

11 We also have maintenance fee petitions
12 and correction of inventorship and those are also
13 decided in the Office of Petitions, as well. I
14 mean, you'd have to look at the manual patent
15 examining procedure to after 1,000 really to get a
16 full list of all the petitions that are decided.
17 It goes on for pages and pages as to all the types
18 of petitions that can be filed. I'm just giving
19 you a bit of a list here of sample of all the
20 petitions that are filed in the patent office.

21 As far as volume of petitions go, this
22 slide here is just to show you the volume of

1 petitions that we get and the fact that the Office
2 of Petitions does more petitions by far than any
3 other part of the office, and on the next slides
4 that are coming up, I'll break down the number of
5 petitions that are decided and the types of
6 petitions that are decided.

7 So, if you look at the petitions that
8 are decided outside of the Office of Petitions,
9 you'll notice that the technology centers decide
10 most of the petitions outside of the petitions
11 office and in 2010 and 2011, there was an uptick
12 in the number of petitions that were decided and
13 those were basically the patent prosecution
14 highway requests that they were deciding. Office
15 of Petitions took those over and they're now back
16 down to their normal level, which is about 4,000
17 to 5,000 petitions decided per year. Office of
18 PTC Legal, they do about 4,500 to 5,000 petitions
19 per year and the rest of the patent office will do
20 about 2,000 petitions per year.

21 This slide here shows the petitions that
22 are decided in the Office of Petitions. In 2008,

1 we did about 32,000 petitions. 2009, we did
2 33,000. In 2010, we did 60,000 petitions. And
3 then 2011, we did 34,000. This year, we'll do
4 somewhere in the neighborhood of 37,000 petitions.
5 And that's the total number of petitions that are
6 decided.

7 2010 was a year for us when we had the
8 *Kappos v. Wyeth* and the decision on patent term
9 adjustment and we had to go back and recalculate
10 patent term adjustment. In that year, we
11 recalculated patent term adjustment for over
12 25,000 applications, and we did that in an
13 electronic format so that we were able to get
14 about a year's worth of work done within 1 day
15 just because we're able to do that.

16 If you notice at the top there, we have
17 the blue part of the graph, which is the petitions
18 that are decided in paper form and in the green
19 part is the electronic processing, and electronic
20 processing has been growing for us over the last
21 few years. We're currently doing about 5,000 of
22 those 37,000 petitions that we're going to decide

1 this year in electronic format. We expect that to
2 grow to be about one-third of the total number of
3 petitions that we have that we're going to decide.
4 So, it's a growing area for us, we're very excited
5 about it, and we just want to keep pushing and
6 but, again, you know is actually a way of getting
7 service very quickly and efficiently.

8 And, as I said before, this is really
9 the area that we really want to make sure that
10 everybody understands this. This is the way to
11 get an immediate response from the patent office
12 and immediate grant. As long as all the
13 requirements are met, you can get any petition
14 granted. And as you go through the e-petition
15 process, there are prompts on the screen that will
16 let you know whether you've met all the
17 requirements or not for that particular petition
18 and give you a chance to go back and make
19 corrections or make adjustments as needed.

20 And one of the things that we find is
21 that a large part of the petitions that we do get
22 are people coming back in and asking for

1 reconsideration of a request. So, it eliminates
2 that back and forth that you have between well,
3 you have this informality or you don't have this
4 informality, and, so, we can get rid of that.
5 That just cuts out a lot of the work that we would
6 have. Things that just would stop you from being
7 able to have a process that goes forward very
8 smoothly. And this also with the electronic
9 petitions allows us to use our existing staff to
10 decide other petitions.

11 Like I said before, the TCs were doing
12 the patent prosecution highway requests. They
13 were doing approximately 6,000 of those in a year
14 and we took those over and that's 6,000 hours
15 worth of work that they're not doing anymore, they
16 can actually spend that time working on getting
17 applications examined and getting patents issued.
18 And, so, the more work we can take up here in the
19 Office of Petitions with the electronic
20 processing, the better we can make the examination
21 process overall.

22 And then the other area that we are

1 looking toward and we're looking toward in the
2 future is the Patents End to End and with Patents
3 End to End, it'll allow us to automate the entire
4 process that we have in the Office of Petitions.
5 As it currently stands right now, we are a
6 paper-driven process.

7 We still have our electronic interface
8 where we can get the applications, we can look at
9 the petition that's filed, but when it comes to
10 actually deciding the petition and getting the
11 process done, it's still a paper-driven process,
12 and, so, we'll write up our decisions, they'll
13 come out in paper form, and then we have to scan
14 the backend of the system, which is a little bit
15 inefficient. But when we get End to End coming
16 and when it comes here, it's going to be a great
17 deal for us, it's going to cut down on our time in
18 actually getting these petitions out and getting
19 decisions out. It also should help us with
20 dissemination of petition decisions. And I know
21 that there's been a great interest in getting
22 access to the decisions that we have and the

1 petitions that are filed and we've looked at
2 different strategies of how to get that
3 information out and nothing has been really
4 satisfactory. I think we had somebody come in and
5 actually copying the decisions for us and I don't
6 think anybody's been very satisfied with the way
7 the decisions are currently handled there.

8 MR. BORSON: All right, well, thank you
9 very much. What I'd like to do is ask a couple of
10 questions about petitions.

11 MR. KNIGHT: Sure.

12 MR. BORSON: One of them is the
13 unpredictable time that it takes from submission
14 of a petition to the office to a resolution. I
15 don't know if other members of the outside
16 community have had the same experience, but
17 sometimes, a petition is handled very quickly --
18 paper form, I'm not talking about the electronics
19 side -- but rather the question about how long
20 does it take a petition? And I'm not interested
21 in hearing any numbers, that's not where the
22 question is driving towards, but it has to do with

1 the processes that you use.

2 Because it is a very disseminated
3 practice, the petitions are handled through many
4 different offices. A question is whether or not
5 there could be or is there some advantage to
6 having a centralized docketing or a chain of
7 responsibility so that in the context of a patent
8 examination process, the supervisory examiner is
9 notified of an upcoming date for one of the
10 examiners under his or her care and urges her and
11 says what's the status of this case? Please move
12 it along. It would be helpful if the members of
13 the public could learn about how that process
14 works in petitions. So, it's a question about
15 docketing and a question about responsibility.
16 Who's watching it?

17 Some of us have been somewhat frustrated
18 on occasion and we are actually in some cases
19 tempted to file a petition to request expedited
20 review of a previously submitted petition. And I
21 don't know that there is such a thing. There may
22 be a petition for which there is no other venue,

1 but I'm just wondering if you could give us some
2 advice or suggestions about how we can have a
3 sense of predictability about petitions. Given
4 the fact that petitions usually represent an issue
5 that is maybe something that is unclear or
6 something that fell through the cracks previously,
7 we're trying to update, to revive an abandoned
8 application for whatever reasons, and the
9 applicant, of course, is very concerned about the
10 status of their patent or their application.

11 So, if you could provide us some
12 guidance, it'd be very helpful, Tony.

13 MR. KNIGHT: Right. I understand the
14 question and I took over the Office of Petitions
15 in 2010, and I recognize the fact that we had a
16 huge backlog of petitions that were there and one
17 of the goals that I had and I currently still have
18 is making sure that we get decisions out in a
19 fairly quick timeframe so that people get a fairly
20 quick resolution to whatever the issue is.
21 There's nothing worse than having an unsettled
22 matter and trying to go forward with the rest of

1 the prosecution of the case and still waiting for
2 us to make a decision.

3 So, when I started out with the
4 Petitions Office, we were somewhere in the
5 neighborhood of about two months in which to get a
6 decision out. We're currently down to about 30
7 days to our docketing of the decision or docketing
8 of the petition to getting the decision out. I
9 think what we have though is sometimes it's a
10 matter of just trying to make sure that actual
11 petition gets to us and what I would say is that
12 if you are having trouble with trying to get that
13 petition decided or just trying to make sure that
14 we have a petition and we're moving forward with
15 it is actually give us a call and you can call our
16 helpdesk and let us know that the petition is
17 there and that we will give you some ideas as to
18 when we're going to decide it or you can always
19 give me a call and I get calls on a regular basis,
20 I get several calls a day as to there's a petition
21 in this file, when am I going to get a decision?
22 Some of the petitions belong in the Office of

1 Petitions and those we'll move forward with and
2 we'll get them decided as expeditiously as we
3 possibly can. Some of them don't belong to us and
4 we will contact those people in the other parts of
5 the patent office and say look, you've got this
6 particular matter, the applicant is looking for a
7 decision, let's get them a decision as quickly as
8 we can and we've been moving them that way, as
9 well.

10 MR. BORSON: Okay, thank you. Is there
11 any sense from either commissioner about whether
12 there is an agency-wide desired pendency for
13 petitions in the same way that there's desired
14 pendency for patents?

15 MS. FOCARINO: I think it's certainly
16 helpful to track timeliness and depending on the
17 nature of the petition, some can get very complex.
18 So, we would expect longer timeframes for
19 decision, but, certainly, I think it's something
20 that we should take a look at and perhaps provide
21 you with some data and timeliness based on the
22 type of petition decision.

1 MR. BORSON: Okay, I think that would be
2 helpful. This is an attempt to start a
3 conversation with you.

4 And, so, yes, Drew?

5 MR. HIRSHFELD: Okay, if I can chime in,
6 for those that don't know, the Office of Petitions
7 is under my area, and, so, Tony and I together are
8 very focused on improving the petitions that we
9 have in us also throughout the agency.

10 One problem that I've seen, and this
11 might account for some of the large variances,
12 there's occasionally a petition which gets into a
13 case that wasn't indexed properly. Sometimes,
14 that seems to be fault of the labeling that was
15 put on the applicant, sometimes it seems it was
16 PTO fault of not labeling this properly, but
17 there's a variety of reasons and I'm not trying to
18 assign blame to anybody, it's just something that
19 I've seen.

20 I believe that the Patents End to End
21 will really help in this regard because I think it
22 will help us eliminate those cases which either

1 for patent office mistake or otherwise ended up in
2 a file without people actually knowing, and then
3 what happens is either the examiner picks the case
4 up to do another office action and says oh,
5 there's a petition in here, now what do we do?
6 And then everything gets thrown off or the
7 applicant calls and says hey, there's a petition
8 here.

9 So, Patents End to End is certainly
10 something that will help. I think your comment on
11 a desired pendency is a very good one and
12 certainly something that we should consider.
13 We've been focused on trying to get pendency down,
14 but have not set targets, but I certainly see the
15 benefit to doing so.

16 MR. BORSON: Okay, thank you. Esther,
17 you had a comment?

18 MS. KEPPLINGER: Yes, if I could make a
19 suggestion. One thing that's useful for applicant
20 is to have your pendency time measured from
21 filing, not from when it's docketed for two
22 reasons. One, applicant really wants to know how

1 quickly they can get it processed, but, secondly,
2 there's much less motivation for you to correct
3 those upfront problems if you're only measuring it
4 from the docketing. Thanks.

5 MR. BORSON: Okay. Yes, member of the
6 public, please.

7 MR. IYER: Chid Iyer from Sughrue Mion.
8 This question pertains to track one petitions. Do
9 those come under the same office? And, if so, is
10 there any effort to shorten the pendency for track
11 one because the whole purpose of track one is to
12 -- and in the morning, you said that it takes an
13 average of 166 days from the grant of petition to
14 the issue approximately. Now, applicants,
15 obviously, are more interested from the filing
16 issue. So, is there an effort to -- things that
17 if fees have been charged, et cetera, et cetera.
18 Any thoughts on that would be appreciated.

19 MR. KNIGHT: Okay, thank you. As far as
20 trying to shorten the timeframe for track one,
21 Office of Petitions has actually taken over at
22 least the granting of the track one request and

1 we've shortened the timeframe from filing to grant
2 date of the track one requests and I think we were
3 at 45 or 48 days. We're now to down to 36 days.
4 And the idea is to try to push that down even
5 further as far as the granting of the track one
6 requests, but this is another instance where we
7 have a split in the jurisdiction for a particular
8 case in that also, petitions will handle the
9 request itself, but as far as the prosecution of
10 the case, we're going to send that off to the TC
11 for handling and they have a team there is
12 concentrating on or trying to make sure that these
13 requests are done as quickly as possible or that
14 the track one case will be done as quickly as
15 possible.

16 MR. BORSON: Okay, well, thank you very
17 much, Tony. Any comments from the members? If
18 not, we'd like to move ahead then to a discussion
19 of 101 and 112 training.

20 Drew, please. Thank you very much,
21 Tony. Oh, before we do that, I just wanted to
22 make one amendment to the record. We did move

1 into executive session to discuss internal
2 practices in the committee, internal issues that
3 had nothing whatever to do with our public
4 activities. So, let's make sure that that is on
5 the record and we'll be in good shape.

6 MR. HIRSHFELD: Okay, thanks, Ben. So,
7 I'm pleased to be joined her by Ray Chen, who
8 works very closely with me on getting any guidance
9 that goes out to the examining corps and what I'd
10 like to do today is discuss some of the recent
11 guidance that we've given out in training on 101
12 and some upcoming training on 112 that we're
13 planning and also discuss a little bit about the
14 interactions that Ray and I have when we go
15 through creating training. It's sometimes a
16 lengthy process to make sure we get it right.

17 So, anyway, I'll talk about the 101
18 issues first, and as you all know, there is a huge
19 Supreme Court case, Mayo v. Prometheus, decided,
20 and on July 3, guidance was given to all examiners
21 from my office about changes to implementation and
22 how they should look at subject matter eligibility

1 under 101. That guidance, of course, if available
2 on the Web site for anybody's view as is all other
3 guidance, all of the training materials that we
4 put, whether it's 101 or any other area, we make
5 sure we are making it publically available to
6 everybody so that they can see exactly what we're
7 training on.

8 And in August, we rolled out training to
9 all examiners on that guidance and that training
10 was face-to-face style training. We actually had
11 around 50 different sessions and the training
12 originated as let's make sure everybody gets
13 touched on the Mayo v. Prometheus guidelines and
14 then we started to get requests from certain
15 technology centers that okay, this doesn't affect
16 us as much as other areas, for example, the
17 electricals aren't as affected as 1600, for
18 example. So, they wanted to, in addition, add
19 other training areas under 101 like signals or
20 abstract ideas.

21 So, we ended up creating I believe it
22 was a 73-page training document that went out to

1 all examiners and then the technology centers
2 picked portions of that to train on. Of course,
3 the one portion that was mandatory for everyone
4 was the new guidance on Mayo v. Prometheus, but,
5 otherwise, it was up to the technology centers
6 themselves to decide additional training they
7 want.

8 So, we had 50 different sessions rolled
9 out throughout the corps and it ranged from -- one
10 thing I was pleased at is the people who taught
11 this. We had people in the TCs teaching it, we
12 had the Office of Patent Quality Assurance folks
13 teaching it and people from the Office of Patent
14 Legal Administration teaching it, as well. So, we
15 had a variety of different teachers and it seemed
16 to bring everybody together. So, that rollout,
17 again, took place all in August.

18 Now, I thought it would be helpful to
19 discuss some of the back and forth that Ray and I
20 have when we are creating training guidelines and
21 I'll use as an example -- and, Ray, feel free to
22 jump in at any time -- but I'll use the 101 Mayo

1 v. Prometheus as an example, but I can tell you
2 that every piece of training has a very different
3 process to it, dependent on the subject matter,
4 dependent on how controversial it may be, if it's
5 review. So, we could have something so simple as
6 some way we discover a need for training in the
7 TCs, whether that comes from the TCs themselves or
8 whether it comes from the Office of Patent Quality
9 Assurance Review and feedback. If we notice
10 something and it's basically might just create the
11 training, give it to Ray's office for a
12 sufficiency review after and then they might just
13 bless it and we move forward. That's the simplest
14 process.

15 But when you have something like the
16 Mayo v. Prometheus, which, obviously required much
17 more thoughtful implementation and discussion,
18 what we went through is basically had first a
19 group discussion where you had, of course, the
20 board there, as well, and had discussions between
21 the three different groups: Ray's office, my
22 office, and James Smith's area, and we just had

1 general discussions to get the ball rolling about
2 what we thought would be good to have in guidance.
3 And, subsequent to that, we created a sort of
4 preliminary guidance documents, more like a
5 principles overview document. I don't even think
6 it was a page, but it was really just to make sure
7 that the overarching principles were the same.

8 Now, when I look back at that, for those
9 of you that have seen the Mayo v. Prometheus
10 guidelines, we have three questions and the steps
11 and that was basically the overview of what came
12 out of that principle documents. So, once we
13 created that, we got together again, had a group
14 review to make sure that we were all on the same
15 page, and then from that, created the draft
16 guidance.

17 Now, the draft guidance didn't include
18 too many examples. It included some, as many as
19 we could, but I'll get to that in a little while
20 because we're still trying to add some examples to
21 it. So, once we had the draft guidance document,
22 we went back through Ray's office for discussions

1 again and then ended up, of course, with a back
2 and forth and then a final review and then the
3 guidance document was complete and then we came
4 out and created the training from that.

5 Now, what's not stated in this back and
6 forth -- at least I'll discuss my end and I'll
7 pass it over to Ray to discuss his -- are the
8 interactions that I and my team have the
9 technology centers because one of the problems
10 that we run into with almost training is making
11 sure we're using the correct legal words so we're
12 consistent with the all cases, but we're not
13 inadvertently creating any unintended consequences
14 for examiners. So, we wanted to make sure that
15 I'm very cognizant of getting input and feedback
16 from the technology centers.

17 So, what I had was a group of mostly
18 supervisors and QASs, Quality Assurance
19 Specialists, from the TCs in a group that I would
20 meet with periodically to give them updates of the
21 process that we're going through that Ray and I
22 are going through as well as to get their feedback

1 on okay, this is something that we think we're
2 going to have trouble implementing or this is
3 something that we can do well. We got that
4 feedback from them and incorporated that into the
5 back and forth with Ray, and I think that's very
6 helpful because you can just imagine the situation
7 of creating a document without the input from the
8 technology centers, giving it to them, and they
9 say well, we can't understand this, right? And
10 then we also with some of the examples -- and,
11 actually, Robert was very instrumental in this, we
12 got some primary examiners in 1600 who are very
13 instrumental in working with us in the creation of
14 those example and the explanation that would be
15 most relevant to the people in that technology
16 center.

17 So, that's a little bit from my
18 perspective of the area with the policy area, and
19 I thought this would be a good time for Ray to add
20 for his perspective.

21 MR. CHEN: Thanks, Drew. I am Ray Chen,
22 solicitor here at the PTO.

1 I just want to echo everything that Drew
2 said. It's very much a collaborative experience,
3 collaborative journey inside the agency in terms
4 of coming out with any kind of guidance on these
5 difficult legal issues. And, so, there is a lot
6 of coordination with Drew's shop and the
7 solicitor's office, but it goes much broader than
8 that, too.

9 You've talked about the TC directors,
10 but also not only is Peggy involved, but Dave
11 Kappos, Terry Rea, they're instrumental in all of
12 this, as well, as well as the patent board. So,
13 it's really a team effort which, to me, makes it
14 all the more impressive that we were able to get
15 out a first level response as quickly as we did.
16 And I think that was something that Director
17 Kappos was really looking for to make sure that we
18 have an immediate stop gap signal and message to
19 the examining corps, all 7,000, 8,000 examiners as
20 well as the public and the patent bar about what's
21 going on and what the PTO has to do because people
22 might have competing conceptions as to what are

1 the actual rules from a case like Mayo v.
2 Prometheus. But, at the very least, we have to
3 get the message out that on some level, the law
4 has changed and we need to make sure that the
5 examining corps understands that and at the very
6 least makes some immediate but conservative shift,
7 and then after that first level response, we can
8 go back with more consideration and reflection and
9 figure out how we're really going to give a more
10 meaningful level of guidance for all of our
11 examiners and that is what we did with the
12 subsequent memo and guidelines that Drew issued to
13 the examiners.

14 The other thing, as from the solicitor's
15 office perspective, obviously, what we have to
16 care for and think about is not only the
17 administrability question, which is really the
18 heavy burden that falls on patents to try to come
19 up with good, sound, concrete principles that can
20 be administered on a consistent level across the
21 board, but also we're also sensitive to the whole
22 question of whatever we say, whatever we instruct

1 our examiners, to what degree of confidence do we
2 feel that that will be defensible in court later
3 on down the road? Everybody here knows that 101
4 is currently a very unstable doctrine, and, so,
5 the whole question of what degree of confidence we
6 can say that different positions that we take are
7 defensible, it's a little more uncomfortable now
8 than it was say 5 years ago or 10 years ago when
9 it comes to Section 101. And, so, Section 101 is
10 now an area that just doesn't have bright lines
11 and maybe is starting to seem at least in my view
12 something more like 103, where there's a little
13 bit more of a judgment going on, there's a series
14 of factors you have to consider, and it's not
15 going to be something that we can just immediately
16 resolve in 30 seconds and keep moving.

17 MR. BORSON: Okay, I wanted to, if I
18 may, just share with you my thoughts on this
19 issue, is that 101 is actually an agglomeration of a
20 number of different doctrines. One of them is
21 claim scope and there is a well-developed case law
22 in 112, first paragraph, where scope of enablement

1 and description at least in some contexts, and I'm
2 wondering whether you thought about seeing how
3 your existing 112 guidance and training and
4 examination procedures might at least carve out a
5 small piece of the 101 issue and say that this is
6 not necessary to handle under this unformed 101
7 doctrine, but rather it could be important or
8 used.

9 Do you think that that could help create
10 a defensible position for the office?

11 MR. CHEN: Yes, that's something that
12 Drew and I have spoken about and many others,
13 including the director about how a lot of the
14 claim breath issues that are now being debated
15 within the realm of Section 101 are perhaps better
16 suited under a different condition of
17 patentability. Section 112, paragraph 1. Maybe
18 Section 112, paragraph 6. Section 112, paragraph
19 2. There's a lot of different areas where we
20 don't have to have this more philosophical inquiry
21 about what is or is not an abstract idea and we
22 can focus the inquiry in a much more technical way

1 about how one of ordinary skill in the art would
2 look at the disclosure in the written description
3 compared to the breadth of the claim and figure
4 out whether or not this particular claim merits a
5 patent on that score.

6 Drew?

7 MR. HIRSHFELD: Yes, I would also like
8 to add that Director Kappos actually blogged on
9 that issue. I believe it was after the CLS bank
10 case, where he had mentioned that his feeling is
11 generally, claims that are clear and well-defined
12 of the right scope don't typically have the 101
13 issues that we're often faced with. So, it is
14 something we are giving a lot of consideration to.

15 MR. BORSON: Well, one thing that's an
16 open question in my mind is how you would define
17 integration of a natural principle with an
18 application. That key term "integration" is one
19 that I think is going to be increasingly important
20 in prosecution as we see cases coming down with
21 office actions based on the Mayo decision.

22 Have you given further thought to what

1 you mean by "integration?" Yes, you have, I'm
2 sure. And do you think that there is a mechanism
3 to place to further define what you mean by
4 "integration" and how that can be implemented?

5 MR. HIRSHFELD: Well, certainly, I give
6 endless thought to what "integration" is. I'll
7 also add works like focus, which the corps use.
8 When does a claim focus on a law of nature? These
9 are all terms that we struggle with because you
10 have a court decision that we have to follow for
11 the corps that is decided on a single set of fact
12 patterns and then when I get with the technology
13 centers, and part of what I do is ask them to send
14 me examples of claims that they have which are
15 borderline implicated. So, some that are
16 implicated, some that aren't implicated by any
17 changes that we do, and you realize that the realm
18 of possibilities for how you define a term like
19 "focus" or "integrate" can have so many effects
20 unintended for what might have been in that
21 particular case. And that's one of the problems
22 that we struggle with.

1 So, yes, we're giving extensive thought
2 to that, what my team is currently working on and
3 we'll be getting examples over to Ray are all
4 these claim examples. We're trying to get many
5 more specific claim examples that we feel show
6 both sides, show when you have integration, when
7 you do not have integration, when new claim
8 focuses or not on a law of nature and we're going
9 to try to tease out those examples more so we can
10 have additional training based on the examples.
11 And what we did do in the training document
12 itself, and we'll continue to do this, is have
13 examples that build on each other so that you
14 might start on one side of the answer and then you
15 get to the other side of the answer so that
16 examiners can see where the transition point is.
17 And that is without a doubt, I think, one of my
18 greatest challenges, if not my greatest challenge,
19 to make that clear.

20 MR. BORSON: Well, I'm sure that I speak
21 for the entire committee that we stand ready to
22 assist you in any way that we can because those of

1 us sitting around the table do reflect a number of
2 different points of view in different
3 technologies. So, I think that you could get some
4 help if you so ask for it. I'd be more than happy
5 to work with you and I'm sure that others on the
6 committee would be, as well. So, thank you.

7 Esther?

8 MS. KEPPLINGER: Just one comment. The
9 kind of training you're talking about is very,
10 very helpful and building like that because that's
11 the kind of thing that helps not only the
12 examiners see the tipping point, but the outside
13 get an idea of how they might fix their claims.
14 The post-KSR guidelines that you put out were
15 excellent and building on that to do something in
16 this arena. Of course, you don't have all the fed
17 circuit cases yet, but something like that, it's
18 immeasurably helpful for the bar.

19 MR. CHEN: Thanks, Esther. From Drew
20 and me, thank you. I just wanted to underscore
21 that we're not looking at these guidelines that
22 have been issued as being static and that there is

1 1.0, day after decision, 2.0, a month after the
2 decision, then there will be 3.0. Just like with
3 the KSR guidelines, you saw 1.0 the same year that
4 the opinion came out, you saw 2.0 come out about
5 two years ago. We're still collecting cases now
6 since 2.0 on KSR issues and we are looking and
7 planning one day --we don't know exactly when --
8 to come out with 3.0 when we feel like we've got a
9 nice collection of new insights and teaching
10 moments from the next batch of federal circuit
11 opinions.

12 MR. HIRSHFELD: If I may go off on a
13 slight tangent here, I know we're probably running
14 out of time, but the guidelines being as Ray said
15 not a static document and evolving over time, is
16 very important to us, and Andy, Peggy, Bruce, and
17 myself have been talking about examiner training
18 in general not being static in time also, and
19 we're looking at making some significant changes
20 to the way we train examiners. We're still in the
21 early stages of this, but at a high level, we'd
22 like to turn the training into a much more

1 continuous education, more of an adult learning
2 where it's not one or two large lecture halls type
3 of training once or twice a year where it's a
4 continual learning and you might take smaller
5 segments of training and do it more frequently,
6 but it's something we're considering with the
7 recognition that the case law is evolving and our
8 roles and responsibilities evolve with it.

9 MR. FAILE: Just to add on to what Drew
10 said, he's really come up with a different way of
11 looking at training. From OPA's perspective and
12 the way it's going to percolate into the corps is
13 more training in smaller modules and more ongoing
14 training, number one. Number two, a little bit
15 more of bringing in examples, translating the more
16 pragmatic type of training where we have examples
17 and ranges from left to right, our examiners can
18 kind of see the conceptual guidance in motion,
19 which you spoke about. And, number three is
20 capturing the training on computer-based training
21 videos where an examiner, you never quite know
22 when you may run across a particular area, we have

1 a video there with that training. We can refer
2 the examiner back to it in real time during the
3 examination of the case and to amplify that
4 training so it's more of an ongoing issue instead
5 of just a single point in time and it's maybe not
6 revisited for quite some time.

7 MR. BORSON: Okay, thank you. Well, if
8 there's any other quick comments from the
9 committee -- yes, one quick. We're already over
10 time, so, please make your one comment, please.

11 MR. IYER: I'm Chid Iyer, Sughrue Mion.
12 Between the CLS case, Bancorp, and the (inaudible)
13 decisions, the spirit of Bilski has been produced a
14 little bit to a practical level. I would really
15 appreciate if the examiner guidelines and training
16 would incorporate all these three cases. I realize
17 that it's still a long way from reducing into actual
18 guidelines, but if it can be done as from a
19 practitioner's standpoint, I'd really appreciate it.
20 Thanks.

21 MR. BORSON: Okay, well, thank you very
22 much. We are now on break and we will reconvene

1 after lunch at 12:40. That will give us about 50
2 minutes of a break. So, thank you, all, very much
3 for joining us.

4 You had a question?

5 SPEAKER: No.

6 MR. BORSON: Oh, okay, very good. So,
7 see you in 50 minutes.

8 (Recess)

9 MR. BORSON: Good afternoon. This is
10 the opening of the next public session of the
11 PPAC, Patent Public Advisory Committee. I'm very
12 pleased that Judge James Smith has been able to
13 return from his travels to be with us this
14 afternoon.

15 So, Judge Smith, without further ado,
16 please provide us with your remarks.

17 JUDGE SMITH: Good afternoon. Thank you
18 for the opportunity to speak with PPAC and to
19 share with you, again, the exciting things that
20 are going on at the board. I could not be more
21 excited, I think, than I am today about the way
22 things are trending at the board.

1 Just as a quick note, you mentioned my
2 travels. The agency has afforded the board the
3 opportunity to participate in the AIA roadshows.
4 This is roadshows number two, after the one we did
5 with the proposed rules. The roadshows that we
6 are putting on, the depiction of them, for
7 example, at the microsite does not reveal, however,
8 the substantial number of additional roadshows we
9 have agreed to with bar associations and other
10 organizations. If you look at that, we actually
11 have twice as many roadshow events as appear on
12 the official map, which, of course, represents
13 additional use of judge time to get things done.
14 But the roadshows themselves represent a
15 culmination of things we have been working on at
16 the board with respect to AIA.

17 As you know, we are now at the
18 conclusion of the final rules. They've been out
19 for some time.

20 We also are a week, two weeks into the
21 launch of the Patent Review Processing System,
22 PERPS or PERPS as we're calling it. There's been

1 a substantial amount of information from the
2 agency about the fact that we went live with the
3 system midnight when AIA trial proceedings began
4 and remained at the office for 24 hours while we
5 both troubleshooted the system and took in the
6 first set of filings.

7 We're very appreciative of the
8 substantial effort by the CIO and his people to
9 support that effort and to make it possible, and
10 Mr. Owens was kind enough to remain awake during
11 those a.m. hours and stay in touch with us while we tried
12 to make sure that things went well. I will say it
13 is not unusual for board people to be at the
14 office at that time of the morning because of the
15 number of things we've had to do. But we think
16 with good result and we're excited about the
17 opportunities we have been presented.

18 Looking at one of things we've been
19 working on there is hiring. We had a goal of bringing in
20 100 new administrative patent judges in 2012.
21 We've made good progress in the doing of that, we
22 believe. We've reviewed 1,000 applicant records

1 since the beginning of the year. We've actually
2 had in-person interviews or in some instances
3 in-person and by-video interviews with 190
4 candidates, including now candidates for Detroit,
5 which has resulted in 10 judges being there.

6 We also have made initial selections --
7 which we will put forward to the Under Secretary --
8 for appointments in Dallas, Fort Worth, Denver, and
9 Silicon Valley. We have a good applicant pool
10 from all three cities. We believe the applicant
11 pool will become even richer in October, when our
12 second posting for applications ends after having
13 been up for about six weeks. And in the period
14 since our first posting began and in anticipation
15 of the closing of our second posting, we have made
16 numerous visits to the various cities and to bar
17 organizations within those cities to try to
18 increase the level of interest in the positions.

19 Already, 77 highly-qualified candidates
20 have been approved. Sixty-two of those will be
21 already in the job by the end of October. I think
22 we actually already have 58 of them present and

1 working. And that is, I think, fair to say a
2 substantial change from 99 judges to 158 in the
3 space of about 9 months. Certainly, that's not as
4 large a number of new officials as the [Patent]
5 Commissioner has to deal with.

6 In terms of percentage of our
7 organization, however, it is monumental trying to
8 bring aboard and train a judge corps that has
9 increased by almost 70 percent in that short
10 period of time. Fortunately, the judges we have
11 brought on truly represent among the best in the
12 profession and that certainly helps with the
13 onboarding process.

14 Speaking of the new judges, where have
15 they come from? I think I mentioned this to this
16 group the last time I was here. It has continued
17 in similar fashion the places from which we have
18 been able to get new judges. We continue to have
19 qualified candidates coming to us from the patent
20 examining corps within the agency. We've also had
21 another person or two join us from the Solicitor's
22 Office. We have from time to time patent

1 attorneys at the board who become judges. We
2 continue to draw from the International Trade
3 Commission and the Department of Justice to the
4 point that we're beginning to hear some complaints
5 from our sister government agencies about the flow
6 of talent. We apologize to them, but maybe not as
7 sincerely as we should.

8 So, here's the picture of just how
9 monumental this has been. Going back as recently
10 as 2000, there were not more than about 65 judges
11 at the board and the number had never been larger
12 than that prior to 2000. That now only represents
13 our incremental change in the last nine months.
14 So, that's a point probably that needs no more
15 emphasis.

16 What's crucial, however, at the end of
17 the day is focus on whether the things we're
18 doing, including the hiring, have caused us to
19 achieve any real result with respect to whether or
20 not we are carrying out our mission and the answer
21 to that is an unequivocal yes. As you know, the
22 backlog at the board had been growing for some

1 years and growing to astronomical levels.

2 We had expected, barring
3 successful strategies of various types, to be at a
4 backlog of about 40,000 ex parte appeals by late
5 2013. As it turns out, due in part to the hiring,
6 but maybe more so to just double down efforts by
7 the incumbent judges, the growth in the backlog
8 has ended. A few weeks ago, I would have been
9 hesitant to say that as declaratively as I just
10 have. But looking back at the last 30 days, not
11 only has the growth in the backlog ended, but the
12 total inventory of cases has declined by about
13 400, which is we believe a significant turnaround
14 in our success with moving the work forward.

15 Of course, hiring is a key part of that,
16 but you will readily appreciate that given how new
17 so many of the judges are, they are only
18 beginning, some of them, to approach what their
19 steady state output as judges will look like. In
20 fact, with a good two dozen judges who have been at
21 the board for less than 30 to 45 days, that's
22 really not where we're seeing most of the output.

1 I'll speak about that in some more detail in a few
2 minutes.

3 But the extraordinary efforts of the
4 incumbent judges have made a big difference. We've
5 done the things that we said we would do with
6 regard to efficiency and looking at per curiam
7 decisions. We also have made sure that we make
8 our judges know just how much we appreciate their
9 efforts and also just how important their efforts
10 are, which has resulted in a tremendous increase
11 in effort and output.

12 This is not the most current 30-day
13 snapshot as to board receipts and dispositions.
14 It ends about a week ago, a little more than a
15 week ago, but it's a good depiction of generally
16 what we're seeing. Just directing your attention
17 to the very small bottom row, it shows that in the
18 time period there, we received 792 new cases, but
19 decided 1,073, with a difference of 281, which
20 represents a decrease in the backlog by that
21 amount. And, as I just mentioned, that decrease
22 looking at the 30-day period, which ended

1 yesterday, is closer to the number 400.

2 And let me also say about this slide,
3 you'll note that one of the things we do in our
4 regular study of the situation is determine by
5 technical subject matter area how much each team
6 is able to decrease the backlog in its respective
7 area. A number of things flow from the study of
8 that. One, of course, has to do with how many of
9 any particular type of case by technological
10 subject matter we are receiving. It also gives us
11 some indication as to whether we need to make any
12 adjustments and how the judge talent is deployed
13 to make sure that we cover areas of greatest
14 concern. The slide is unique in terms of our

15 capturing this data in that the fewest number of
16 minus signs in the right most column, which means
17 essentially that only two groups, in fact,
18 received more cases than they decided in that time
19 period.

20 This is essentially data of a similar
21 kind showing more time periods. The red bar
22 represents how many cases came in the door; the

1 green bar, how many decisions went out the door.
2 You'll note that going back to early September, we
3 were still at times having more cases come in than
4 we decided, but in recent times, it's definitely
5 trending in the other way, and, in fact, again, as
6 I mentioned, if we added the most recent set of
7 bars to the graph, the right most bar would show a
8 net decrease in the backlog of about 400 cases.

9 Currently, our success rate or rather I
10 should say the success rate of the examining corps remains
11 essentially as it has been, which is to say that
12 nothing new has happened even as we've increased
13 the output. We're essentially seeing the same
14 percentage of cases being affirmed, affirmed-in-
15 part, reversed, et cetera.

16 This will further emphasize the point I
17 made about the size of the backlog. You'll note
18 that the last three bars in the graph are
19 essentially equivalent. They're not actually
20 equivalent if you look at them in finer detail,
21 but at the scale at which this graph is drawn, one
22 sees the fundamental fact that the backlog did not

1 reach 30,000 cases and now because it's not
2 growing, we don't expect that it will.

3 This focuses on the same type of data,
4 but it's broken out differently. It's by month.
5 And it has a different particular aspect added to
6 the information that's of particular interest to
7 us.

8 January 2012 was the first month in
9 which we had new judges as part of this hiring
10 effort and in that month, actually the first two
11 of the new judges started in late December 2011.
12 In 2012, all of the new judges, and I believe
13 there were about 5 of them at that point,
14 accounted for 17 decisions. So, the real focus of
15 this set of -- in this chart is the white bar,
16 which shows the output of the judges who started
17 late in December and you see that the output from
18 those judges has grown as the number of them has,
19 from 17 in January. In April, their output had
20 risen to 82 cases, and you begin to see generally
21 a decrease in the size of the contribution to the
22 backlog, which is the yellow bar.

1 Focusing again on the white bars in the
2 column, this is the same type of data going
3 forward a few months, and you'll see that in the
4 -- let's see, there's something a little strange
5 about this. We should have dates at the bottom of
6 the graph. But in each successive month, the new
7 judge output has continued to grow, 110, 150, 186.
8 This month, September, which is not depicted
9 because that last set of bars is for August, in
10 September, we believe new judge output will exceed
11 300 cases.

12 Last time I was here, I mentioned to you
13 that one of our strategies has been to focus on
14 looking for examiner answers which can serve as a

15 sufficient basis, as the correct and sufficient
16 basis for board decisions. The key with respect
17 to that surge, of course, is making sure that
18 should any given case come to be appealed, that
19 the examiner answer is rich enough to provide the
20 federal circuit with the opportunity to carefully
21 consider and sufficiently consider the decision
22 from the agency. And we've continued to find

1 instances where we can do that.

2 Although, we're using the term "per
3 curiam" somewhat more broadly not only to include
4 instances where the board adopts the examiner's
5 answer, but also instances in which the panel is
6 looking past issues of particular style of
7 authorship. The three panel members can agree
8 generally with regard to the language used, but
9 certainly agree to the decision itself and the
10 reason for it and simply denominate it as a per
11 curiam decision rather than engage in any extended
12 discussion about style.

13 As we approach the end of the fiscal
14 year, we see that we have 142 per curiam decisions
15 from the board this year in contrast with only 6
16 last year and 21 the year before. So, this
17 clearly illustrates the extent to which we are
18 focused on efficient decision-making.

19 How are we doing at the federal circuit?
20 The numbers are still quite good. Only 105
21 decisions disposed of by the federal circuit.
22 Only 12 have involved remands and 13 decisions

1 which are either a remand or a reversal.

2 We continue to explore collaboration
3 with the patent corps to help the overall appeal
4 process and giving examiners guidance and to some
5 extent receiving guidance from examiners about
6 issues that impact appeal. We have regular
7 meetings with various technology centers involving
8 judges who hear cases arising from both technology
9 centers.

10 MR. BORSON: Well, thank you very much,
11 Judge Smith. I would like to, if I could, return
12 -- we don't necessarily need to click back a
13 couple of slides, but you were discussing the per
14 curiam process in which you stated that you were
15 looking for examiner answers as the basis of a per
16 curiam decision, but I noticed in your slide, you
17 also noted that you could look at the applicant
18 submission as a basis for a per curiam decision.
19 And I wanted to follow-up on that, if I may. Of
20 the per curiam decisions that you have rendered,
21 what percentage have been based on the examiner's
22 answer and how many have been based on the

1 applicant's submission?

2 JUDGE SMITH: I haven't looked at the
3 precise numbers, but it's clearly dominated by
4 examiner's answers. And, to some extent, the
5 guidance we have from the Solicitor's Office is
6 that they view that as a much safer approach for
7 purposes of per curiam decisions, that the
8 challenge with the applicant's brief is that one
9 has to be sure that if one is adopting that as the
10 agency's final decision, i.e., the board decision,
11 that every part of it actually is being adopted or
12 else one has to distinguish those arguments that
13 have been made that are not being used as the
14 basis of the decision. Not quite as complex an
15 inquiry when one's working with examiner's
16 answers.

17 MR. BORSON: Okay, I understand that,
18 and if I may just have a follow-on to that, in
19 those situations in which there are relevant and
20 pertinent arguments from applicant that would not
21 render itself to be per curiam material, it would
22 be rather a board decision after evidence and

1 further submission. Is that correct?

2 JUDGE SMITH: That's right.

3 MR. BORSON: Okay. Are there any
4 questions? Yes, Mr. Miller?

5 MR. MILLER: Thank you. This morning,
6 we heard there was a bit of a bubble in pre-AIA
7 filings of inter parte's re-exams and ex parte
8 re-exams, and assuming in the inter parte's front
9 that about 90 percent of those are granted by the
10 office that that's going to be an increase in
11 workload for the board.

12 How do you anticipate that you're going
13 to handle those and your strategy for getting
14 through that large amount of cases?

15 JUDGE SMITH: Well, we think the timing
16 will work out well right about the time that
17 bubble begins to get to us, and it will take a
18 while, probably at least a year or so before we
19 begin to get the front end of that bubble moving
20 from the CRU to the board. About that time, our
21 new judges will be not so new. We may have
22 leveled off at about 250 judges.

1 We would be eating into the backlog at a
2 fairly substantial pace and then have some
3 latitude with regard to two things that probably
4 will happen at about that time. We expect that
5 about the time he inter partes and ex partes
6 re-exam bubble comes to us, we likely probably
7 will be seeing more AIA proceedings because those
8 potential filers who maybe are waiting to see how
9 the proceedings, the first ones go and who also
10 maybe opted for getting in under the old re-
11 examination system. Some of them will have
12 shifted their efforts to AIA proceedings.

13 So, we have at least two waves that
14 could hit us about a year from now. We will have
15 made sufficient progress, hopefully, with the
16 backlog to be able to shift more judge resource to
17 handle that work just at about the time that it
18 will arise.

19 MR. BORSON: Okay, well, thank you very
20 much, Judge Smith.

21 I'd like to move on the agenda, if we
22 may, to John Owens, the chief information officer.

1 So, thank you very much for coming. I noticed
2 that you were walking without your crutch today.
3 So, good for you.

4 MR. OWENS: Yes. Thank you. Well, good
5 afternoon, everybody. So, I'm going to remind you
6 that this is the year that the IT portfolio
7 improvement roadmap ends. It's not quite over,
8 but we've done quite well. And, so, I'm just
9 going to recap a little bit.

10 Back in 2008, when I first arrived here,
11 we put together a portfolio of nine major
12 initiatives to take care of some of our
13 infrastructure issues. And they are listed there,
14 everything from organizational strengthening to
15 improve the quality of performance to the
16 organization and improve the staff and management
17 of the staff right down through establishing
18 enterprise architecture standards. And I have to
19 tell you, it's done extremely well.

20 There, of course, have been bumps along
21 the way, but we'll talk a little bit about the
22 items. I did notice a typo on this page. It's 9

1 programs, not 10. The current software
2 initiatives, the current roadmap we're putting
3 together for the replacement of all of the
4 software with Patent's End to End trademark NEXGEN
5 has 10 and I think the person who did this slide
6 made a little mistake. There were nine.

7 But it led to the definition of 163
8 projects, which, by the way, is a staggering
9 number of projects for our staff to have
10 accomplished. We've completed 111 of them. We
11 have 17 left, and the chart on the next page will
12 explain where the rest went, but the current
13 budget variance, we're 7.2 percent off of that
14 initial budget. If you remember, that plan was
15 put together in three months. We wrote the plan
16 in a month, we got it through the process of
17 internal review in a month, and then we published
18 it and enacted it in a month, which for the
19 federal government is a rocking pace.

20 So, 35 projects were cancelled or
21 suspended along the way, and you'll see which ones
22 of those were. But as we learned different things

1 about the environment, for example, as we looked
2 at our Legacy applications and realized porting
3 them into a more stable environment really meant
4 rewriting them from scratch because they used
5 outdated Legacy products, for example. Certain
6 things that we were going to do in the data center
7 to get rid of older technologies could not be done
8 without significant software rewrite and because
9 of that software rewrite, we had decided to
10 suspend or delay some projects. We also decided
11 to suspend or delay projects based on funding and
12 put them off to future years, which were outside
13 of the scope of this roadmap, and I'm sure you all
14 remember those because we lived through those
15 together.

16 Let's talk a little bit about the money.
17 So, we originally estimated it was 189.7 million
18 and we came in so far at just 176 and we have a
19 couple projects that are left ending, as I said,
20 the 11, and we believe that we will still be well
21 under our estimated budget.

22 So, all of our organizational

1 strengthening efforts have come underway and have
2 completed. We now have new PAPs, we have definite
3 skill gap analysis done, we have put over \$1
4 million of training a year into improving our
5 staff. We have hired new and experienced staff
6 from industry as well as other places in the
7 federal government. We reorganized with
8 congressional approval and we have completely
9
10 implemented an executive information management
11 system that tracks all of our people assigned to
12 projects and so on. In fact, we have some of the
13 best reporting I've seen in the federal government
14 that will link people to portfolios like Patents
15 End to End, programs and projects right down to
16 who's doing what, when, where, why, and how, and
17 the associated costs, just like you'd see in
18 industry.

18 Process standardization, of course, we
19 implemented the STLC and we have that enterprise
20 project management system I just mentioned. We
21 have not finished implementing the ITIL
22 infrastructure library policies, practices for

1 incident problem management and service management
2 and event management, that is ongoing, that will
3 end soon. It was slightly delayed due to budget
4 and, of course, adoption into the culture was
5 quite an effort to get the federal government to
6 change the way we do processes and adopt ITIL as
7 opposed to try to change ITIL, thus not adopting
8 anything, was quite an undertaking.

9 Our complete telecommunications
10 infrastructure has been replaced. I hear
11 sometimes people complain about oh, the network's
12 slow. The network is actually not slow. People
13 assume it's the network. We have the most modern
14 fiber backbone network and we went from 300
15 megabit connection to the Internet to 3 gigabit
16 connection to the Internet, which rivals some
17 smaller ISPs. All of our bottlenecks are
18 completely not in the network. We also have
19 replaced our voicemail on our phone system with
20 voiceover IP and all of our collaborations suite
21 of tools that so many people complained about,
22 there are always some issues here or there going

1 on inside of a large, complex, secure network, but
2 these are proving more stable than we've ever
3 had at the agency before.

4 Our data center infrastructure has also
5 been improved. We reduced the number of machines.
6 We have mapped all of our systems and where they
7 are and we're going through the process of moving
8 to better load balance on our environment and
9 improve our cooling efficiency, but what's really
10 slowed us down there is the number systems we were
11 able to virtualize. We've replaced 52 percent of
12 those systems. We virtualized 54 percent of the
13 environment and what I got here was less than 10
14 percent. However, some operating systems,
15 particularly those Legacy ones, do not afford
16 themselves to virtualization. And, therefore, the
17 software on them, because it's no longer supported
18 by the industries that created them, need to be
19 rewritten. And, as such, it would have been an
20 undue burden and cost to the agency to handle
21 that. At the same time, we were doing Patents End
22 to End. So, we gave up pursuing rewriting some of

1 those applications, not all of them, in lieu of
2 Patents End to End and Next Generation initiatives
3 as to not waste money by rewriting something
4 Legacy and then replacing it with a new, modern
5 infrastructure.

6 Our desktop rollout is completed and it
7 is up to government and industry standards, the
8 laptop for rolled out desktops for contractors,
9 they are all federal desktop corps configuration
10 compliant. They have the latest and greatest
11 patches being addressed to them. In fact, we just
12 met on IE 9 and the rollout of IE 9 in the next
13 months to all of our folks as well as Google
14 Chrome will be rolling out to all of our folks
15 here as a browser that they can use particularly
16 for the future projects and so on and so forth.
17 So, not only do we have all modern equipment now,
18 but we are also updating it on a regular basis.

19 We just are meeting with the unions now
20 to talk about the peripheral replacement next year
21 as part of the continuous ongoing replacement of
22 equipment to cover printers and monitors upcoming

1 here shortly. And, again, one of the biggest
2 changes that we made was how we handle the budget
3 in the CIO. No more are we going to get in the
4 situation where we have a 7-year-old desktop and
5 things are breaking and we're not conforming. We
6 are on a budgetary cycle of five years to replace
7 everything, just like industry would. So, we
8 won't make that mistake again.

9 The service desk, the IT service
10 management tool, which, by the way, is ITIL-based,
11 is part of that same project I mentioned before
12 that's been delayed. We are working on completing
13 it. Again, the delay was due to budget and
14 adoption.

15 Enterprise architecture, all our current
16 enterprise architecture has been documented. We
17 have service-oriented design for all of our
18 current Next Generation Systems that will provide
19 24 by 7, 365 coverage with no down time, which is
20 the goal.

21 Our disaster recovery, we have an
22 alternate processing site. Unfortunately, the

1 current systems did not lend themselves or most of
2 them did not lend themselves to being put into a
3 dual mode operation where you had alternate
4 servers. So, we could not run hot. We have a
5 couple of systems that are what's hot-cold. We
6 have a cold spare somewhere else.

7 But, most importantly, when I arrived in
8 2008, not all of our electronic data was backed up
9 somewhere else. That has been complete. We also
10 have complete configuration management of our
11 environment also backed up elsewhere outside the
12 state. So, recovery would be possible, but we
13 have not met our obligation for how quickly we
14 could recover.

15 If you look at the agency's recovery
16 plans, we're supposed to meet a multiple-date
17 turnaround, and, unfortunately, in the situation
18 we're in, we're in a multiple-month turnaround,
19 which if you go back to 2008, we were in a
20 multiple-year turnaround. So, we have made
21 improvement, but not quite where we wanted to be
22 with disaster recovery, and, unfortunately, we're

1 going to have to wait until some of the more
2 modern tools that can actually accomplish this.

3 The bulk of the work we decided to put
4 off is with the applications, the IAS's automated
5 information systems mostly because of that
6 aforementioned Legacy Operating Systems and
7 software. There was just no reason to rewrite
8 that, throw it away in a couple of years. Once we
9 got Patent End to End, it would have been a waste
10 of time, effort, and money. Money which we did
11 not have, by the way. And that decision went all
12 the way to the top, of course, included our
13 customers, as well as Mr. Kappos and we made the
14 best business decision there.

15 And, of course, we have a very strong
16 capability to deliver, which we've continued to
17 improve year over year over year, as each year we
18 do more with less. Or, sometimes, more with more.

19 Never again. Never again will we end
20 and come to you and ask to do this type of
21 roadmap. We've built it in such a way and would
22 appreciate your continued support of the budget

1 necessary in IT and CIO to continue to evolve our
2 systems at a steady pace. Never again do we want
3 to see a hiatus for years where money is bled out
4 of the IT organization in lieu of something else,
5 only to find the infrastructure in which our
6 entire examining corps, whether it be patents or
7 trademarks realized crumble to dust.

8 This was an important effort. It is
9 about to end. It's ending as a success, but it
10 means that this agency, and I know I have Mr.
11 Kappos' support of this, needs to be diligent
12 about making sure that money is not taken for
13 OCIO, diverted outside of it, and then expect to
14 stay the status quo for year. IT changes.

15 The iPhone 5 didn't exist a few years
16 ago. It is now a standard. Standards
17 continuously change. Our world will continuously
18 change and our examiners are demanding more and
19 more tools and capabilities to do their job
20 efficiently and we need to continue to support
21 them. Unfortunately, we haven't been in a good
22 position other than the last year or so to do that

1 because our infrastructure was in such shambles.
2 I'm here today to tell you that we are not only on
3 track. We're just a couple of projects slightly
4 behind schedule, but we are ahead on our spending,
5 which is the good news story, but it will take
6 this organization's diligence and communication
7 with the management of this organization in the
8 future to make sure it never happens again.

9 So, let's talk a little bit about the
10 future, which is where we really wanted to be a
11 couple of years ago and that Mr. Landrith to my
12 left is going to tell you all the wonderful things
13 he is doing to bring it to fruition.

14 MR. BORSON: Okay, thank you very much,
15 John. I would like to just mention that we are
16 behind schedule, as often, and, so, if we could
17 move relatively quickly through and highlight the
18 key points that you'd like to make so that we can
19 have an opportunity for some discussion, if you
20 would.

21 MR. LANDRITH: Good afternoon. So,
22 we've had a change of direction with where we are

1 headed with PE2E. We've spoken here quite
2 frequently about the data conversion efforts, and
3 so far, that has proven to be our biggest hurdle.
4 So, the PE2E functionality has been well received,
5 but the data conversion requirements have remained
6 unmet.

7 So, some of the issues we ran into
8 included the fact that the CRU requires 100
9 percent of data to be converted, by the same time,
10 it requires a 60-day turnaround time. And, so,
11 those two requirements conflict because at this
12 point, we don't have the means to convert that
13 much data that quickly. It's something that we're
14 going to have to build up to.

15 We also ran into some pediments, so, the
16 Legacy data integration proceeded slower than
17 planned. Resource availability has always been a
18 risk that we've discussed and we realized recently
19 you've heard a lot today about the progress toward
20 meeting the statutory obligations for AIA, but,
21 unfortunately, that also caused resource
22 constraints elsewhere, the changes to the CRU

1 caused them to have to be juggling those changes
2 with Patents End to End and our independent
3 oversight specialist recommended that we consider
4 moving the focus away from the CRU. So, it bears
5 emphasizing that the CRU engagement greatly
6 improved PE2E's growth and improvement. It
7 validated our design and functionality and exposed
8 issues in a real-world environment that allowed us
9 to make significant improvements, and, most of
10 all, we got a very good idea of how the data
11 conversion process can work.

12 So, in keeping with what we've learned,
13 we're changing the pilot audience and the data
14 source. With regard to the pilot audience, we're
15 looking at getting a cross section of the
16 examination corps. This narrows the focus of the
17 document conversion efforts initially to the
18 claims spec and abstract and it provides more
19 flexibility with the conversion times. It also
20 allows for earlier and wider exposure to all the
21 tech centers to ensure that we align our needs
22 with the eventual release to the patent corps.

1 We're also going to be, with regard to the data,
2 leveraging the successful efforts that we already
3 had to automatically convert documents.

4 Going ahead with the data that we had in
5 hand, which is the data that has been converted as
6 far as Patents End to End PATI Project gives us
7 the claims spec and abstract to the active back
8 file and that is convertible to XML 4IP, we're
9 incrementally improving the range of documents
10 that PATI can convert so we'll make progress over
11 time toward encompassing the entire case file.

12 Lastly with CRU as no longer our pilot
13 audience, we've simplified our release schedule by
14 dropping the CRU-related releases and delivering
15 releases to a cross section of the examination
16 corps. So, we're still on track for the
17 already-scheduled November release, which is a
18 pilot to the corps, including the docket
19 functionality, case viewer, document viewer,
20 note-taking, and the reference manager. The
21 purpose of this is to obtain user feedback on how
22 PE2E behaves in the wild and expose bugs that are

1 difficult to recreate without actual usage.

2 It's important to note that at this
3 stage, we're not going to be releasing something
4 in November that would be capable of replacing the
5 Legacy tool that is comparable, but this is biting
6 off a significant amount of functionality there.

7 The challenges that we have are adapting
8 to displaying the new data source and then moving
9 straight to the more complex workflow, the
10 examiner office actions in April 2013 release.

11 So, this is what I was referring to when
12 I mentioned we simplified the deployment schedule.
13 The previous deployment plans you see at the top
14 include four releases that are staged between the
15 CRU and different groups within the corps, and,
16 so, we're focusing now on the November and the
17 April release, with the November including the
18 functionality I mentioned before and the April
19 expanding that to office action and some
20 significant portion of the workflow as well as
21 Legacy integration.

22 Other portfolio progress that we have is

1 patent family maps. It shows the genealogy of the
2 U.S. patents. We've already completed internal
3 proof of concepts and prototypes, and, so, we're
4 now undertaking that to move it to a production
5 level.

6 We've discussed already a little bit
7 about the Patent Application Text Initiative, or
8 PATI. PATI 1.1 successfully completed hardware
9 upgrades to indicate and enable corps-wide
10 employment as actually in late June, so, just
11 following our last meeting. The back file
12 migration worked in concert with that to convert
13 the active back file to 63 million pages. Claims,
14 spec, and abstract. So, all examiners have access
15 to this text.

16 We have some metrics that actually have
17 arisen since I had sent this in, and, so, they're
18 not included on this slide, but the early metrics
19 show that within the first 3 months of usage, we
20 have 47 percent of examiners using that. I think
21 that's really extraordinary and this is the data
22 that we're going to be moving forward with with

1 Patents End to End.

2 So, Text to PTO, which is our applicant
3 interface, is on track for a fall prototype. It
4 aligns with our strategic objective for Patents
5 End to End to receive XML all the way through to
6 publishing XML. The initial conversion that we're
7 doing is for the open document format, the doc x
8 format that is available in Word 2007 and after.
9 That represents the capabilities of 80 percent of
10 the users of EFS Web. And, so, we figured that
11 was the best place to start.

12 Outreach continues. It's been underway
13 since 2011 and we also have further work to do in
14 terms of making sure that we have a framework set
15 up operationally and legally that allows for this
16 to happen.

17 PATI text conversion is going to be
18 expanding scope in the second quarter of the next
19 fiscal year. That'll cover IDS-related documents
20 are remarks documents in addition to the claims,
21 spec, and abstract that we're already covering.

22 Continuous data conversion of additional

1 documents, that's a movement from right now we're
2 doing them in batched, where we'd be streaming
3 them basically as they come in. CPC, the
4 Cooperative Patent Classification, is on track for
5 voluntarily examiner usage and the second quarter
6 of fiscal year 2014 with CPC classifications
7 available to examiners in search as well as the
8 USPTO and EPO collaborating within a new
9 infrastructure to classify patents.

10 It looks like I was on the wrong slide.
11 Risks and issues. Risks and issues have not
12 changed. We have the availability of human
13 resources. Ambitious scope of features, scaling
14 and improving imaged XML transformation, Legacy
15 data quality, and contractor support for software
16 development.

17 MR. BORSON: Okay, well, thank you very
18 much. I know you went through a lot of material
19 relatively quickly and we thank you very much.

20 Are there any comments or questions from
21 the members? Yes?

22 MR. SOBON: I guess my main question for

1 you is on slide five, which is the deployment
2 plans. You've obviously taken off the deploying
3 the portion of the development to the full corps
4 as of yet. Do you have any clear vision of when
5 that will happen or is it too early to tell before
6 the pilots are done?

7 MR. LANDRITH: Well, we're targeting
8 that for 2014. We are going to be working with
9 our pilot audience in order to decide whether
10 critical mass are features that we would be going
11 live to the corps with. On the one hand, we want
12 to be able to provide value, the value that PE2E
13 offers to as many people as soon as possible, but,
14 on the other hand, we don't want to release it
15 prematurely. So, we don't anticipate waiting to
16 get 100 percent coverage of Legacy functionality,
17 but we're not sure where that threshold is yet.

18 MR. SOBON: Yes, okay.

19 MR. LANDRITH: Does that answer your
20 question?

21 MR. SOBON: Yes, it does.

22 MR. LANDRITH: Okay.

1 MR. BORSON: Okay, well, thank you very
2 much. If there are no further questions, I'd like
3 to move ahead. Thank you very much, John and
4 David. Good luck to you. You've done a good job
5 with what you have.

6 Next would be legislative update with
7 Dana Colarulli.

8 MR. COLARULLI: Hi. Your legislative
9 update. Well, the AIA passed, as you all might
10 have known. (Laughter) That was the big thing,
11 but there are lots of little things. There is
12 still a continuing interest on Capitol Hill on a
13 lot of IP issues. I'll try to give you a sense of
14 some of those discussions and some of the
15 follow-ups that we still have to do related to the
16 AIA, the congressional staff are equally
17 interested in.

18 We'll start with the legislative
19 highlights. As I said, there is still a lot of
20 interest. I'll start with the two that we're
21 really focused on, the two that certainly are
22 achievable by the end of this Congress; one is

1 already one on its way to the president, not
2 listed here, but a technical correction to the
3 trademark statute. That's one of the few IT bills
4 that are going to get done by the end of the
5 Congress.

6 A second is one I think more important
7 to the patent world, which is the PLT and Hague,
8 the Geneva Act of the Hague agreement on designs.
9 This is implementing legislation to two
10 international treaties that were signed by the
11 U.S. way back in 1999. They require changes to
12 U.S. statute to be implemented for the U.S. to be
13 full members of these two treaties. The
14 administration sent up implementing legislation
15 twice actually since that time, 2007, 2010. There
16 was some interest on behalf of the Hill staff to
17 delay implementing these treaties until after
18 major patent reform legislation was accomplished.
19 It was accomplished and they moved swiftly
20 afterwards. We've been helping them to do so.

21 So, the legislation was entered in both
22 the Senate and the House. My staff has been

1 briefing Hill staff on what changes to U.S. law
2 these would make and what benefits to U.S.
3 Companies and innovators the two treaties will
4 have. The Senate bill was introduced, they held a
5 hearing, which Director Kappos mentioned both of
6 these implementing pieces of legislation. Passed
7 the Senate just before folks left for recess and
8 is now being held to the desk in the House, which
9 we expect to hopefully move pretty quickly once
10 Congress returns on November 13. So, I think
11 those are at least two successes for the IP world,
12 both on the trademark side and finally after a
13 long period of time implementing these two pieces
14 of legislation.

15 I'll highlight, I think, the PLT
16 further. It simplifies a number of provisions in
17 the statute, addresses just formalities, but I
18 think furthers a lot of the simplifications we've
19 been doing outside of the statutory authority.
20 The design treaty really brings the U.S. in line
21 with the rest of the world. There's a lot of
22 discussions occurring abroad, and particularly in

1 the U.K. and elsewhere, about whether we should
2 start an international discussion about a new
3 design treaty. This puts on level playing field
4 there.

5 But there are a number of other issues
6 that our Congress has been interested. Certainly
7 software driven in part I think I can say by folks
8 that were involved in patent reform discussions,
9 maybe didn't get out of the AIA what they thought
10 they needed to help their business plans. So,
11 there is continuing discussion about whether
12 legislation is necessary here, could there be
13 additional legislation, and, frankly, what else is
14 there that's addressing those concerns?

15 Auto designs, that's a bill that H.R.
16 3889 that we've seen introduced now because the
17 third Congress don't expect it to move before the
18 end of this year, but that's continuing interest.
19 Fashion design, as well, trade secret issues, and
20 even more recently, questions about Internet
21 radio, copyright issues addressed there, questions
22 about the tax treatment of patent rights for those

1 of you familiar with the concept of patent box
2 that we see internationally, providing preferred
3 tax treatment. In recent days, those bills have
4 been introduced. Again, don't expect those to
5 move. I think those are placeholders for a lot of
6 members, but something we're following anyway and
7 may be of interest.

8 On the bottom there, I included draft
9 legislation discussed. I've mentioned to this
10 group a number of technical corrections that have
11 been discussed. I've seen some from the user
12 community that are less technical. Certainly,
13 there are a number that are very technical that I
14 think the agency would have an interest in seeing
15 happen, as well.

16 The time looks like it's run out for
17 that, although, we're continuing to see
18 discussions up on the Hill. So, I keep hope
19 alive, I suppose is the best thing I can say about
20 that one.

21 That and the IP, intellectual property,
22 Attaché Act. Again, something that we're very

1 interested in. Our members have seen our IP
2 Attaché Program as something that's been
3 successful, something that should be invested in,
4 and we certainly support them, would like to work
5 with them. I think we had some concerns with the
6 legislation they introduced, but, again, that will
7 be one certainly next Congress that will want to
8 focus on much more.

9 Outstanding reports required by the AIA,
10 three that you all maybe remember, one on genetic
11 testing, diagnostic testing. This is one that the
12 responsibility falls to the USPTO to complete. We
13 held two hearings, one on the east coast, one on
14 the west coast, had a number of written comments,
15 communicated to the Hill just before the one-year
16 mark that although we had these great discussions,
17 it was unclear what recommendations might be best
18 and we asked for more time, expressed an interest
19 in gathering one last forum to discuss these
20 issues, discuss the comments that we got. We'll
21 be moving forward to do that within the next few
22 months, trying to work out the timing for that and

1 then, hopefully, soon after that, submit a final
2 report to Congress.

3 The next two on this page are not in the
4 responsibility of the USPTO, but USPTO plays a
5 supporting role. One is the impact of
6 First-Inventor-to-File on small business. That's
7 the Office of Advocacy at the Small Business
8 Administration in consultation with our general
9 counsel here, Bernie Knight.

10 The SBA Office of Advocacy indicated to
11 us that they wouldn't be able to complete that
12 report within a year, in part due to funding.
13 They've, similar to the USPTO on genetic testing,
14 worked with the committee to come up with an
15 agreement, I understand, on both funding and
16 timing. So, I wouldn't expect that report to get
17 done in the very near future, but we'll be working
18 with the SBA to make sure they keep this on their
19 to-do list.

20 I will comment I think there is a
21 benefit actually for not completing the study now,
22 given that we're now having a discussion about the

1 proposed rules. The Office of Advocacy will have
2 the benefit of seeing our final rules and we hope
3 can comment on those rules.

4 The second patent legislation by NPE,
5 this is one that's in the General Accounting
6 Office's lap. They've indicated to us that they
7 expect to release the report in November 2012.
8 We've had a team here that's met with them,
9 provided them a significant amount of information,
10 as they've requested. Unclear to us how the how
11 the report might come up, but we're looking
12 forward to it, as well.

13 Next few slides should be fairly quick.
14 I wanted to remind folks of the number of
15 appearances that we've had up on Capitol Hill.
16 Again, an indicator, certainly of interest not
17 just in the AIA, but international enforcement and
18 international IP policy issues. The Deputy Direct
19 Rea has been up to the Hill, as has our chief
20 economist, Dr. Stu Graham in addition to the
21 director. It's a record number of hearings we've
22 done at least in recent times.

1 Last slide just a number of issues on
2 the legislative front that folks might be
3 interested. Certainly sequestration, I know I'm
4 going to be followed by our CFO staff. They could
5 talk a little bit more about that, but, certainly,
6 there's a bit of unknown there on the impact on
7 the USPTO.

8 Satellite offices, we're continuing to
9 meet with Hill staff for delegations that are
10 extremely exciting. A number of delegations that
11 we decided not to move to their locations, but are
12 interested to continue working with us on
13 increasing PTO presence, increasing PTO resources.
14 So, we're looking to see what we can do there, as
15 well, within our other resources we have.

16 Remaining legislative items I actually
17 went through a number of them already, things
18 being introduced, a lot of placeholders for
19 legislation, but very little action I think from
20 my perspective expected except on the two
21 treaties.

22 I mentioned software patents as an issue

1 that is getting a lot of interest on Capitol Hill.
2 There are a lot of stakeholders also hitting the
3 Hill looking at these issues, too. But I'll
4 mention there's a new Internet association.
5 There's been a few actually over the last year
6 that have been created. There are a few groups
7 also looking at petitioning Congress to make
8 changes to the ITC. So, that's another one that
9 we're following. But, again, continued interest
10 in the wake of AIA, what other changes could be
11 made?

12 And then my office is continuing to work
13 with congressional staffers, giving them a sense
14 of what it is that we do here, bringing them out
15 to the office, also going up there briefing them,
16 as requested, but also, we look for good
17 opportunities to update folks on where we are on
18 our backlog in particular because that's the issue
19 of most interest.

20 With that, I'll end. I'm happy to
21 answer other questions, but that's what's going on
22 up in Congress --

1 MR. BORSON: Why thank you very much,
2 Dana. I think we have time for one question if
3 there is one, maybe two.

4 MS. LEE: Ben, I have a question. This
5 is Michelle Lee on the line.

6 MR. BORSON: Yes, Michelle. Very good.
7 Yes, thank you, please.

8 MS. LEE: Dana, I would love a
9 clarification for my benefit and perhaps those of
10 others of what "sequestration" means.

11 MR. COLARULLI: Well, sequestration,
12 sequestration is the act that Congress agreed to
13 some year or so ago regarding passing a budget
14 that reduced the size of the federal government.
15 If they did not come to an agreement and
16 legislation was not enacted before the January 1,
17 2010 date, there were certain cuts that would be
18 automatic to the federal budget.

19 A report came out recently indicating
20 the size of those cuts if nothing else is done.
21 On the USPTO, it would affect at least temporarily
22 our appropriations level to the tune of \$242

1 million. Now, it may be misleading somewhat
2 because it doesn't affect the fees coming in, but
3 it does affect our appropriations level.

4 For the foreseeable future, we don't see
5 that having a significant impact on USPTO
6 operations. It may have an impact if nothing
7 occurs, if Congress does not act, which I think
8 there's a fairly good likelihood that they may act
9 in some way, at least maybe reducing the size of
10 the cuts, but especially in light of the fee
11 increases at the agency. So, there are a lot of
12 unknowns on the number of fees that we're going to
13 bring in. I think one thing that is certain is
14 we've looked at this post-AIA. This doesn't mean
15 a loss of those fees; it just means a temporary
16 unavailability of those fees and potentially
17 creating an opportunity where we trigger the AIA
18 reserve fund provisions.

19 So, there are a couple of scenarios that
20 I've run through with our CFO staff where the AIA
21 reserve fund might be triggered for the first
22 time. It may not. I think there's a lot to be

1 still determined, most importantly whether
2 Congress actually acts before January 1.

3 MS. LEE: Thank you.

4 MR. BORSON: Okay, thank you very much,
5 Dana. We're up for another break. Let's make
6 this one be just a quick break of five minutes or
7 so. We're scheduled to return here at 1:50 and
8 it's 1:45 now. So, if we can just take a quick
9 break, we can come back and finish up with our
10 last session.

11 (Recess)

12 MR. BORSON: Okay, well, thank you very
13 much. We're resuming our session here with the
14 finance update.

15 If you would, please.

16 MR. SCARDINO: Good afternoon. Thank
17 you for having me. Before I go through my
18 presentation, I just wanted to thank you for the
19 fee report study that you did. I've been talking
20 to Director Kappos as well as my staff about it
21 and it's just very, very helpful to have this.
22 We've got some great recommendations in there and

1 I think you'll probably see us at least consider
2 some changes for the final rule. So, that's our
3 hope.

4 So, turning to my presentation for
5 today, fiscal year 2012 ends in four days, three
6 days, Sunday, and it was an interesting year after
7 we got the surcharge from the AIA last fall at
8 this time last September. We saw what we called
9 the bubble before the fiscal year started and then
10 we had a troth and we've been trying to kind of
11 manage that since then and try to model for it the
12 future. Any time we get a fee increase, what
13 happens in terms of behavior and we've seen a
14 little more elasticity, we think, than we probably
15 estimated last year at this time, as well as a
16 somewhat stagnant economy. It's caused us to
17 actually have a reduction in fees of \$115 million
18 this year. That's been a challenge on one hand.

19 The plus side is we've had tremendous
20 success operationally, which has driven some
21 spending reductions. So, we've actually been able
22 to reduce our budget by \$93 million with no

1 impacts on operations. Still hired 1,500
2 examiners and associated support staff. We've had
3 full overtime all year long and that's why you see
4 the backlog down to 618, Peggy, I think was the
5 number I heard, and pendencies obviously moved in
6 the right direction. So, it really was a great
7 year and the operating reserve, this is the money
8 we carry forward from one year to the next. Back
9 in February, we estimated it'd be \$121 million.
10 It's gone down to \$105 million, which, again, is a
11 very healthy number and that's going to help us as
12 we move into fiscal year 2013 because we are going
13 to have a couple of dynamics. One you discussed
14 with Dana, but I'll go through in a little bit.

15 We'll have a six-month continuing
16 resolution. That means we will operate at fiscal
17 year 2012 levels, which is \$2.706 billion. It's
18 about \$250 million less than we requested of the
19 Congress this past February. So, that has got its
20 own challenges, but it's still a robust number
21 that if you recall fiscal year 2011, we were
22 operating at \$2.1 billion budget. So, 2.7 is

1 still a nice sizeable increase from then. Having
2 said that, we have also a lot more examiners
3 onboard that we have to pay for and a lot more
4 work that we have to get done, but we've planning
5 for it, the CR is not a surprise to anyone. It's
6 been around Washington for a while.

7 So, I know Dana mentioned this, but
8 budget sequestration, this has a little more
9 detail for you. The number for USPTO is \$242
10 million. Again, that comes off the president's
11 budget request of \$2.753 billion. So, again,
12 coincidentally, that number gets us right back
13 down to about \$2.7 billion. It's totally
14 coincidental that it's basically the CR number as
15 well as the after sequestration number if that did
16 come to pass.

17 Again, we don't know what will happen.
18 Congress still has time to act, but it'll be a
19 furious and hectic three months trying to figure
20 that out. I estimate there will be more activity
21 after the election, with Congress and the
22 administration trying to work that out.

1 But another dynamic for 2013 that is a
2 challenge is our new fee-setting rule. Section 10
3 of AIA. The input from your fee-setting report
4 will be very helpful. We also have a 60-day
5 comment period going on right now from our Notice

6 of Proposed Rulemaking that was published in early
7 September, September 6. So, we'll be getting
8 comments over the next 60 days including your
9 comments from your fee report and then it's our
10 job to respond to the comments and incorporate
11 possible modifications to our fees.

12 And we have been building a budget for
13 2014 as well as trying to operate on the 2013
14 ones. It starts with new fees going into place at
15 some point in time. It was March 1 for a while
16 and now it's closer probably to April 15, and that
17 will mean some probable reduction in revenue for
18 2013. So, we're just trying to manage that
19 accordingly and I think we'll be fine. It's just
20 further delays would of course impact us a bit
21 more negatively.

22 So, along those lines, we are continuing

1 to kind of recalibrate our needs for fiscal year
2 2013, which due to our fiscal outlook as well as
3 the operational efficiencies that we've noticed in
4 2012, we're going to probably hire less than 1,500
5 new examiners in 2013. The number is not definite
6 yet, but it will be less than that number and
7 associated support hiring will also be reassessed.

8 So, as Director Kappos likes to say,
9 we're shooting for that soft landing where we
10 don't want to hire too many examiners, but at the
11 same time, we want to continue to dig into the
12 backlog and have pendency go where we need it to
13 go. And we are doing so. So, we'll continue to
14 see plans in place regardless of what happens,
15 regardless of what happens. We have different
16 spending scenarios that we're preparing for the
17 director.

18 And, finally, 2014, we submitted a
19 budget to the Office of Management and Budget,
20 like all federal agencies do the second Monday in
21 September, which was September 10. Now is the
22 time of year that we are working with OMB to

1 fine-tune that to be included as part of the
2 president's budget in February, when it's
3 released. And that period is very helpful for us
4 because over the new few months, we'll have a
5 better sense of when new fees will go into place
6 and what revenue we'll be expecting to collect in
7 2014, which to a certain extent, along with the
8 operating reserve, drives how much money we can
9 spend in 2014. So, we'll be providing PPAC a new
10 version of our 2014 budget in December.

11 I'm happy to take any questions at any
12 point in time between now and then because really
13 is a point in time budget where we're frequently
14 making modifications as more data comes in. And
15 that's in.

16 MR. BORSON: Okay, thank you very much,
17 Tony. I did want to ask you a question about the
18 timing because we understand that we're looking at
19 a fairly quick turnaround time on suggestions from
20 this committee about the budget.

21 MR. SCARDINO: Sure.

22 MR. BORSON: What would you suggest

1 would be a timeline for us to provide you with
2 comments on the initial budget proposal that we
3 saw?

4 MR. SCARDINO: The one that you've seen
5 right now?

6 MR. BORSON: Yes, or do you plan to have
7 a more current version of the budget that maybe we
8 could look at as opposed to the original one?

9 MR. SCARDINO: Right, we'll have
10 something to you in early December for what I
11 would say more current in terms of having new
12 information from the patent model, new information
13 from fiscal year 2012 actuals, as well as updated
14 information as to when we think new fees will be
15 in place.

16 So, we're happy to take comments now.
17 Nothing will really change in the budget in terms
18 of enhancements or new activities we want to do in
19 2014, but if there's anything in there about our
20 basic that you have any questions on, we'd love to
21 hear them at any point in time. But, again, we
22 will give you something in December that will

1 highlight to you the changes between the version
2 we've given you now and December so you'll know
3 what to look for.

4 MR. BORSON: Okay, thank you very much.
5 Thank you. Okay, are there any other questions or
6 comments from the members or the members of the
7 public? And, if not, thank you very much. I
8 appreciate your comments.

9 MR. SCARDINO: Sure.

10 MR. BORSON: And we'd like to move now
11 to Bruce to give us an update on the international
12 activities.

13 MR. KISLIUK: Thank you, Ben. Great to
14 be with you, good afternoon. I'm going to touch
15 on two specific projects. One is an update on our
16 Cooperative Patent Classification project that
17 we're doing with the EPO. I think I gave you all
18 a pretty robust briefing last time in June. Some
19 of the slides are a repeat and I'll just give you
20 an update on some statistics and some progress and
21 then I'm going to give you a quick overview of the
22 Global Dossier Project. While I'm not an expert,

1 our two experts happen to be overseas speaking on
2 our international projects, so, I'm going to step in and
3 try to fill the gap on that.

4 So, on the CPC project, actually this
5 week, we have our European colleagues with us.
6 So, we're hosting the meetings and I'm running
7 back and forth between meetings. As soon as I'm
8 done, I'm back chairing that meeting, as well.

9 So, last time, we just went over it
10 briefly. I'll run through the first five slides,
11 they're repeats. So, the agreement was signed in
12 October of 2010 between USPTO Director Kappos and EPO
13 President Wabatastelli. This is some of the
14 reasons why we're pursuing the CPC initiative,
15 which is a cooperative joint classification system
16 that is IPC-based, and, of course, it moves the
17 USPC to an IPC-based system which we are not
18 today.

19 There are some general features about
20 CPC. I'll get some statistics in a
21 minute and some more general features.

22 So, here's some updated numbers that we

1 thought were interesting to share and then I'm
2 going to get to the timeline because next week we
3 have a milestone event occurring on
4 October 1.

5 So, one of the things about CPC is there
6 are going to be over 250,000 CPC scheme breakdowns
7 and that is a number that is, in fact, larger than
8 the USPC number today. There are going to be 624
9 main group definitions. Now, one of the best
10 practices that the USPTO system brings to CPC is
11 definitions. The ECLA system, while they have
12 fairly graphic explanations in their titles of
13 their classes, subclasses, and main groups, they
14 don't have formal definitions. So, one of the I
15 call it, "heavy lifts" of this CPC project is to actually
16 write definitions for all of the main groups.

EPO

17
18 The way this aspect of the project started was the
19 actually drafted definitions and U.S. examiners,
20 and we're passing them all around the examining corps,
21 actually gave comments and edits to those during
22 the process. We are now giving our comments back to the

1 EPO. So, only a limited number of the 624 have
2 actually been finalized. We're going to continue
3 doing those finalizations as we go.

4 So, as it says in the bullets, we are
5 still going under the review of our examiner
6 experts and we're passing our comments back to the
7 EPO and we're going to continue to finalize them
8 so every month we will be publishing or posting
9 the sets of finalized definitions and
10 while this slide says through January, I
11 expect that will probably go on a few months
12 into the next calendar year, as well.

13 One of the other statistical notes is
14 CPC is going to have a base population of over 35
15 million documents, and just to give you a
16 comparison, in our USPTO east and west system, our
17 publications and U.S. patents are about 12
18 million. So, kind of tells you the volume of data
19 that will be searchable using the same
20 classification system, which is a good benefit.

21 Another interesting thing, and this is
22 more of an element of the European or ECLA system

1 is that over 40 national offices are currently
2 using ECLA, and they're going
3 to be converting to CPC. So, in total now,
4 including USPC, they're going to be over 40
5 national offices that will be using CPC in terms
6 of classification search, which is over 20,000
7 patent examiners in the world, which is great.

8 Another interesting dynamic, and
9 Robert's here, he's been part of the meetings with
10 the CP and very closely working with us, is the
11 training and it's an interesting kind of
12 relationship because the EPO becomes kind of the
13 teacher and we become the student and they are
14 very anxious for us to get up to speed because the
15 sooner we're up to speed, the less effort they
16 have to do reclassifying our documents.
17 So, we worked together on developing the training
18 materials. So, they have helped develop the
19 training materials and there's some basic training
20 materials and then there's what we call
21 field-specific training and that's basically
22 looking at the main group levels and

these

1 actually talking and explaining them and we're putting together
2 video presentations where it's a discussion for
3 about an hour or two about the technology.
4 We're going to build a library of these to allow
5 examiners to be able to view them and then
6 reference them. And, so, it's a very interesting
7 exercise.

8 We're in the pilot phase of learning how
9 to do it. It's a lot of resources, a lot of
10 video, a lot of hours. They're going to be doing
11 over 400 of these, so, it's going to be a lot of
12 work in the next few months, but we're doing that.
13 So, it just kind of tells you the scope of what
14 we're doing.

15 The next slide, which I know is hard to
16 see, but let me just point out where we are today
17 and what is upcoming. So, we're right before the
18 October 1 date. So, the October 1 date is an
19 important one. That's when we're actually going
20 to make public what we call the "launch version" of
21 the CPC scheme, the definitions that have been
22 finalized, as well as those related notes.

1 So, what's going to happen is we already
2 posted -- we just did it this week. In fact, one
3 of the notices went out today. We've made this
4 preliminary version available to our USPTO examiners as well.

So,

5 all U.S. examiners now can see the preliminary
6 scheme or we call it the launch scheme and the
7 final definitions that are out there. The public
8 will see this on October 1. We're going to make a
9 joint announcement with the EPO. So, it goes live
10 to the public.
11 And we also make it available
12 to the public in PDF, XML, and in text because a
13 lot of the users, large users will want to get
14 the format into their systems. So, the
15 XML version allows them to do that. Then in January 2013 that
16 system actually becomes searchable, meaning you
17 can only see the scheme, but there are no documents yet
18 in CPC. In January is when you can actually
19 search CPC in both the European system and the
20 U.S. system. So, those are the big
21 milestones. So, next week is a big milestone and
22 we're working actually this week to do some

1 finalizations to the notices and so forth. So,
2 it's a big week.

3 Any specific questions on CPC?

4 MR. BORSON: Yes, I wanted to ask one,
5 Bruce, and that relates to backwards
6 compatibility. Certainly, there's a huge amount
7 of information in the U.S. system that is useful.
8 People can search on the U.S. classification
9 system and get lots of art. The question is
10 whether or not the new system, the CPC, will be
11 backwards compatible and be able to take advantage
12 of the amount of information that the U.S. current
13 classification system could provide.

14 MR. KISLIUK: Let me tell you what I
15 know. I'm not sure I can interpret backward
16 compatible. The EPO has been classifying all U.S.
17 documents in ECLA. They have been. So, all U.S.
18 documents already classified --

19 MR. BORSON: Oh, I see.

20 MR. KISLIUK: -- in ECLA and will be
21 convertible. So, all U.S. documents will be in
22 CPC anyway, even all the back file.

1 MR. BORSON: And this includes both
2 patent literature and NPL?

3 MR. KISLIUK: Not NPL.

4 MR. BORSON: Not NPL.

5 MR. KISLIUK: Okay, yes. Okay, I mean,
6 that's really one of the issues.

7 MR. BORSON: Right.

8 MR. KISLIUK: This is maybe a
9 technology-dependent area. Certainly, some arts
10 rely heavily on patent or --

11 MR. BORSON: Right, but we don't have
12 USPC for NPL now.

13 MR. KISLIUK: I understand. Okay.
14 Steve, did you have a comment?

15 MR. MILLER: No, I would just say this
16 is great work and shows that the office is really
17 thinking globally on how they want to work and get
18 work sharing across the groups and I think we want
19 to commend the office for the great work that
20 they've done.

21 MR. BORSON: Agreed.

22 MR. KISLIUK: Okay, thank you. The next

1 topic, last slide of CPC. So, here are just some next
2 steps. So, we're going to, again, working with
3 POPA on a lot of these issues in terms of
4 implementation, finishing our review of the
5 definitions. We also have a robust training
6 schedule and then we have a transition plan.
7 We're working with the union as well to make
8 sure that we have a good, adequate training
9 methodology and process to make sure our examiners
10 can get up to speed on CPC as soon as possible.

11 Again, many opportunities for examiners to
12 participate. We're rolling out a lot of the
13 training very shortly and bringing on the IT
14 systems. And, of course, I have to give you the
15 Web site information.

16 So, the next topic I want to talk about
17 is the global dossier. And, again, I'll admit
18 right upfront I'm not an expert on this and I'm
19 using slides from Mark Powell, but I think I
20 understand it generally enough and kind of paint
21 the big picture.

22 So, most of you know that we have been

1 involved in what we call the IP 5 group, which is
2 the 5 main, large IP offices in the world and that
3 group has gotten together and the idea was to find
4 ways to build on work sharing, ways to work together
5 to enhance work sharing, and one of the components
6 of the IP 5 projects had been IT
7 components and while they were kind of
8 independent, there wasn't really a vision of how
9 they would all fit together. They were kind of
10 unique projects, each had a little component.
11 What the global dossier concept really is is
12 taking all of those projects and a lot of that
13 work and putting it into kind of a single system,
14 and as I go through the slides, you'll see that
15 it's something that all of the IP 5 offices have
16 now really latched onto and I think that is an
17 indication that we were all looking for a vision
18 to put some of these pieces together.

19 So, let me go through a little bit of
20 the high level. So, this was a U.S. proposal. We
21 proposed it in November of last year and the
22 concept was, again, to provide all stakeholders a

1 secure, one-stop dossier information,
2 particularly related to family applications. Not
3 surprisingly, the Japanese were the first to latch
4 on and agree and actually kind of build on the
5 concept that we did and then the remaining IP 5
6 offices joined in and WIPO, as well. I'll
7 explain to you a little bit about the WIPO
8 relationship, too. And what it does, like I
9 mentioned before, it really realigns to a great
10 extent and streamlines a number of the
11 international IT projects that we've already had
12 on the books. One of them in IP 5 was called One
13 Portal Dossier, which is very similar.

14 WIPO actually has a system; it's called
15 CASE, which is Centralized Access to Search and Examination.
16 It's for their Vancouver group, which is the U.K.,
17 Australia, and Canada, and they actually share
18 application data between each other, but they do
19 it in a, I'm going to say, not so sophisticated IT
20 way, but they do share that information across
21 those three offices.

22 And then there's ePCT, which is really

1 equivalent to our USPTO PAIR system. It's a way for both the
2 public side and private side to access PCT
3 information. So, global dossier in a lot of ways
4 kind of aligns and puts all these things together
5 in hopefully what'll be a single system.

6 What kind of changed the dynamic of the
7 discussion was a lot of the IP 5 IT projects were
8 focused on the countries themselves and their
9 systems, improvements to their systems. What
10 global dossier really does is looks at the
11 stakeholder point of view. What do applicants
12 need? What systems and processes make the
13 applicant interface better internationally? So,
14 that was a big turning point, and, again, the word
15 up here is "user-centric," and I think that was
16 really important. I think the last bullet talking
17 about promoting innovation and job growth, I think
18 the state of the global economy made this even
19 more of an urgency for most of the countries
20 involved in these discussions.

21 So, conceptually what it does is it
22 looks at filing and processing of applications

1 internationally not in terms of automating the
2 current process, but actually looking at what are
3 the processes and work streams, better business
4 process look, not necessarily automating paper
5 processes. So, one of the things that it does,
6 it's going to allow and facilitate the
7 pre-planning of cross-filed applications. So, if
8 you know you're going to cross-file applications
9 upfront, it will help facilitate that. It also will have
10 particular edits and prompts. For example, it'll prevent you
11 or give you a tickler for not missing a priority
12 date, things like that, and it would give you a
13 one portal management of these cross-filed
14 applications.

15 In terms of reducing duplication, at
16 least in a cross-filed application situation,
17 eliminates the need for filing duplicate priority
18 documents, duplicate prior art, those kinds of
19 things, which, again, is both a reduction in
20 duplication and increase in efficiency. And,
21 again, I mentioned a little bit the prevention of
22 loss of rights. It can trigger and give

1 you a prompt about timely filing via cross-filing if you
2 know upfront you intend to cross-file. So, it's going to need
some upfront
3 information, but I think that for the large
4 extent, it's things that users are looking for.

5 So, the system or the project now has
6 been formulated as an initiative under the IP 5
7 framework. So, it is going to be done with the
8 IP5. One thing that's different is that WIPO is
9 onboard as a full partner. Now, typically, WIPO
10 in like the trilateral and IP 5 environment, they
11 usually sit on as an observer and not
12 necessarily active in the projects. In this
13 project, they are going to be a full partner and
14 the first step of the project is to form a
15 taskforce that are going to go out and gather user
16 requirements from the IP 5 offices, WIPO, and IP 5
17 industry. So, it's really going out and not just
18 representing themselves, but to go out and get
19 input from all users, which we think is a very
20 important aspect. And the technical analysis
21 right now is underway to determine
22 and align what we have today and what certain

1 countries are doing today to this global-type
2 system.

3 Online, we have a short video. Of
4 course, Mark Powell wanted me to show you the
5 video, but, of course, I know there's not time to
6 do that, but you can see it online, this short
7 video that kind of outlines the concepts of global
8 dossier and there is a global dossier mailbox for
9 comments, as well.

10 Any questions that I can answer on
11 global dossier?

12 MR. BORSON: Yes, I just had to start
13 off, Bruce, thank you very much. This is the
14 second time we've heard about this. Director
15 Kappos mentioned it in June. But I did want to
16 ask you what's the vision for its implementation?
17 Who will be able to have access to it? At what
18 cost, if any? Will it be something as simple as
19 PAIR or EPC? You simply go to e-global dossier,
20 for example, and have access to all this
21 information?

22 MR. KISLIUK: Yes, I wish I could answer

1 it. I don't know the technical aspects right now,
2 but I'll --

3 MR. BORSON: Well, I'm thinking less in
4 terms of the technical aspects and more in terms
5 of what the user would expect to be able to get
6 and what it would cost, if anything. I know that
7 there are certain programs that are done on a
8 contracted-out basis.

9 MR. KISLIUK: Yes, I'm going to invite
10 -- Charlie may have some more information that I
11 do on this specifically.

12 MR. BORSON: Oh, okay.

13 MR. PEARSON: Well, no, I don't think I
14 really do.

15 MR. BORSON: Well, it's nice to see you
16 anyway.

17 (Laughter)

18 MR. PEARSON: Good. It's early and the project
19 is still in its conceptual stages. The details
20 simply haven't been worked out yet. As I
21 said, we are still at the conceptual stage and I think we'll do
22 the studies and then see how best we're going to arrive at a

1 final solution.

2 MR. BORSON: Well, I would just offer
3 the suggestion that free is better than cost.

4 (Laughter) No, I'm serious. If there's some way
5 to figure out a way to make it available to users
6 in a very, cost-effective, simple way, that would
7 be very nice. Obviously, downloadable documents,
8 all the copyright issues aside, although, you may
9 find yourself in the process of trying to decide
10 about addressing this copyright issue from
11 non-patent literature, for example. That said, it
12 would be nice from the user community to have a
13 very simple, easy tool. PAIR is a very simple,
14 easy tool, if you spell it correctly anyway, then
15 it works fine.

16 Any other comments from the committee?

17 (No response) Now, this does not mean that each
18 one of us has a dossier on the global network. Is
19 that correct?

20 MR. PEARSON: No.

21 MR. KISLIUK: Not yet.

22 MR. BORSON: Not yet. (Laughter) Thank

1 you for laughing.

2 Okay, well, is there anything else? We
3 have an opportunity now to have just a wide open
4 discussion about anything we've talked about
5 today? We have a few minutes before Director
6 Kappos is scheduled to come down. Is there
7 anything that anybody from the committee would
8 like to address, any unanswered question? Any
9 unasked question?

10 (No response)

11 MR. BORSON: Any further comments from
12 Peggy or Andy or Bruce? Andrew, anybody? Robert?
13 You're usually pretty good for a comment or two.

14 MR. BUDENS: Okay, I'll pile on top of
15 Bruce's comments and stuff just on the CPC issue.
16 It kind of goes to the question you were asking
17 about backwards compatibility because I think that
18 we're going to have to figure out how you want to
19 define that. It's not going to be a system that's
20 backward compatible in the sense that the rules
21 for placing documents in CPC are going to be
22 different than USPC. They're going to follow IPC

1 rules of inventive concept and not necessarily
2 looking at the most comprehensive claim as we do
3 in the USPC.

4 That said, during this two-year
5 transition period, that were going to be using,
6 we're going to be keeping USPC alive also so that
7 examiners will be able to be searching in both
8 systems simultaneously so that they can start
9 seeing are we finding the same art in CPC that we
10 were finding in USPC? Are we finding better art
11 in CPC now and where are the improvements there?
12 Where do we need to do revision projects and stuff
13 to try and make the system useful? It's a
14 monumental project from the examiner's point of
15 view and I suspect from the commissioner's office
16 point of view also.

17 MR. BORSON: Okay, thank you, Robert.
18 Well, perhaps, we can take a short break. When
19 the director comes, we'll reconvene and finish up
20 our session today. Does that make sense? Okay,
21 very good.

22 So, right now, I have about 2:20. He's

1 scheduled to arrive in about 10 minute's time.

2 So, how about we collect back at 2:30?

3 MR. BORSON: Okay, thank you, Robert.

4 (Recess)

5 MR. BORSON: I would like to invite you
6 all to reconvene. We will have our last session
7 of the day. I'm very pleased to have Director
8 Kappos with us this afternoon. He's taken some
9 time out from his very busy schedule to make some
10 remarks.

11 And, so, Director Kappos, if you please.

12 MR. KAPPOS: Okay, Ben. Thank you very
13 much and thanks to the whole PPAC team for
14 spending a long day and all the excellent advice
15 that you're continuing to give us here at USPTO.
16 Thanks for the USPTO team that's spent a lot of
17 time collaborating here today with the PPAC folks.

18 This is my first time, I think, closing
19 out one of these meetings and I have the difficult
20 task having been preceded by all of my colleagues
21 here who undoubtedly sort of helped frame
22 everything up well. But the main point that I can

1 make in trying to wrap up is to say that the
2 collaboration with the PPAC and our agency I think
3 is running at, in my knowledge, an all-time high.
4 My view, the value of having this advisory
5 committee is guiding the agency more and more in
6 real time, given that we're more and more expected
7 to operate in real time and you guys are really
8 doing that in an excellent way.

9 This is a world in which you can't get
10 enough input, can't get enough thoughtful input
11 from real experts, but, at the same time, the
12 governments got a lot of structure about how
13 input comes in. Having the PPAC as an integral
14 member of our team, which admittedly has taken
15 some time and doing and effort on all of our
16 parts, perhaps and frustration from time to time,
17 to get to is really, really important. I think
18 it's not only fair, but important to say that we
19 wouldn't be making the progress that I hope and
20 think we're making were it not for the kind of
21 teaming and really solid advice that we've gotten
22 from the PPAC.

1 Now, you've seen a lot of changes that
2 we've made based directly, in fact taken from PPAC
3 input, the draft fee proposal that came out
4 recently as just the most recent example among
5 many, and, to me, it goes to the huge value that
6 we get from the advice that the PPAC is giving us.

7 So, that's sort of my main comment that
8 I think we're getting tremendous value. I see
9 even more opportunity for the future, particularly
10 as we work through I would say moving from a mode
11 in which we were doing basically everything as
12 quick as we could, given where we were the last
13 few years, to a mode that's more nuanced and more
14 calibrated where the PPAC can have a tremendously
15 positive role to play in further guiding us.

16 I would scope up and also say that we're
17 sort of always in an important time in our country
18 intellectual property wise, but we're in an even
19 more important time given the high value that
20 intellectual property has risen to in our economy
21 and whether it's billion-dollar judgments in
22 lawsuits or market caps of companies moving or

1 purchases, acquisitions of portfolios for very,
2 very large amounts of money or companies going --
3 IPO were having exit events based on their
4 intellectual property positions. Many of those
5 kinds of things that don't make news headlines or
6 whether it's the small entrant that's able to put
7 a product on the market and actually get in
8 business and create opportunity because of a
9 patent position for purposes of the PPAC.

10 It certainly has come to be clear that
11 patents are where the action is in innovation.
12 They're the only thing that protects innovation
13 that gives balance to it and enables it to move
14 into the marketplace more and more and that has
15 caused the patent system to have an increasingly
16 prominent, but also an increasingly controversial
17 role, and we see that play out at times in news
18 reports and in the media taking positions that to
19 those of us in this room and particularly to those
20 of you on the PPAC, our advisory committee must
21 seem rather odd and in some cases I would say
22 rather uninformed. And when we have that kind of

1 dynamic playing out, one, the importance, but
2 also, two, the controversy, and three the
3 misinformation, we desperately need experts who
4 actually know the facts and know the policy
5 implications and are out there helping us to do
6 the right thing and guiding us to do the right
7 thing. And, so, the role of the PPAC in that
8 regard, to me, has risen to a new level of
9 importance and controversy involved in IP.

10 Then the one other thing I wanted to say
11 about that, add to all of that the new financial
12 oversight responsibility -- I'll call it that --
13 that the PPAC has through the AIA, statutorily
14 required to hold hearings and then comment on
15 fee-setting and this has become quite an important
16 body. And we're in the middle of fee-setting
17 right now, but I hope this isn't the only time we
18 do fee-setting. I hope we'll be able to do more
19 adjustments that'll be more calibrated, more
20 careful, and continue to keep our fee set moving
21 in a direction that's good policy and really
22 informed policy. To do that, the PPAC is going to

1 continue to play this enormous role that I think
2 probably wasn't understood or anticipated when the
3 group was first created, but it certainly has come
4 to be that.

5 I think I can also say just on sort of
6 the way our team in the PTO has come to view the
7 PPAC, there are any number of times when we're
8 having internal discussions about something, and
9 it's almost a reflex of reaction, well, let's get
10 the PPAC involved in this and let's get their
11 views and guidance, and that, to me, is a sign of
12 a really healthy kind of collegial and balanced
13 relationship. So, I think it feels to me like
14 we've gotten to a really good place, we're getting
15 excellent advice. I say that even before I've
16 seen the PPAC's annual report. (Laughter) So,
17 see how that comes out.

18 But no matter what the annual report
19 looks like, I think there's actually tremendous
20 value. And, so, in this unusual opportunity for
21 me to close a meeting, that's the main message
22 that I wanted to put out there. Thanks for being

1 part of our team in a way, but also thanks for
2 objective, neutral, balanced advisors who are in
3 there to tell us when we're doing something that
4 might not make sense or that needs to be
5 considered further, and I know you'll keep doing
6 that.

7 So, the other thing that I wanted to do
8 in this discussion is to thank the three members
9 of the PPAC who are finishing their service right
10 now and offer them, the two that are in the room,
11 a certificate of appreciation, and Damon Matteo,
12 who's not in the room, our thanks and we'll mail
13 his later. So, to Steve Miller, right, and to Ben
14 Borson, who are finishing up, it seems like only
15 yesterday when we all started almost together here
16 and now it's three years later. You guys have
17 been absolutely fantastic. Ben, for providing so
18 much leadership of the PPAC. Thank you so much
19 for the really, really wonderful work. It's been
20 great and I hope that certificate of appreciation
21 says something. Thank you for serving both our
22 agency, but also more importantly, thank you for

1 serving our country.

2 And, Steve, I'm going to move away from
3 the microphone. Thank you so much for serving our
4 agency and our country and it's been a far too
5 short three years working together.

6 And, Damon, who's not here today, I'll
7 repeat the same thing. Thanks for your leadership
8 as chair of the PPAC for three years of service
9 and your certificate will be sent along by mail.

10 So, look, with that, I'm being pretty
11 today, Ben, but I'll finish there and again say we
12 have lots going on as you've seen in the last day.
13 We're going to need continued really solid,
14 balanced advice. I think it's quite clear that we
15 take advice well around here and we move quickly
16 to get things right and we've seen in many, many
17 instances the fee proposal being one, the oath and
18 declaration being another, and many others, that
19 it's only when you get this really great flow
20 going between expert industry advisors and an
21 agency that's aspiring to be a 21st Century agency
22 that you can really get good policy coming out.

1 There's no way we can do it alone inside the
2 agency. We just do not have the broad industry
3 viewpoint, and, so, it makes the PPAC really,
4 really critical for agency success.

5 So, I'll stop there and, Ben, let you I
6 guess move the meeting forward.

7 MR. BORSON: Well, I'd just like to
8 thank you very much, Dave. I wanted to sort of
9 mirror what you said, but about all of a sudden
10 the committee over these last years and currently
11 have enjoyed tremendously working with the agency
12 and with you and with all of your great
13 colleagues. It has been a very valuable and very
14 bipartisan, very conversational kind of
15 interaction that we've had which has been very
16 valuable for all of us. Certainly is an
17 educational opportunity. It has given the members
18 an opportunity to really see how the agency works
19 and how the people work and to see the extremely
20 high caliber of individuals both from their
21 perspectives on problems identifying and solving
22 problems, but also on their technical expertise in

1 the various areas and would like to thank Peggy
2 again for all of your help and congratulations
3 and, Andy, thank you and, Bruce, thank you very
4 much and, Andy, this has been a very good
5 experience for me and I look forward to working
6 with the committee in other ways or with the
7 office in other ways as you deem fit and maybe the
8 last comment would be for you personally, Dave,
9 it's been a great pleasure to work with somebody
10 with as much dedication and vigor and intelligence
11 and perspective as you. So, I just wanted to
12 thank you, all, very much. And if there are no
13 other comments from the committee, we can bring
14 this meeting to a close, but, please, if there's
15 anyone else that has anything to say.

16 MR. SOBON: I'd just move a round of
17 applause to Ben, Steve, and Damon in absence for
18 your service. That's great.

19 (Applause)

20 MR. BORSON: All right, with that, we'll
21 bring this meeting of the Patent Public Advisory
22 Committee to a close. Thank you very much for

1 your attendance and for those of you that are on
2 the Web, thank you very much for listening in and
3 watching in, and if anyone has any comments,
4 please feel free to make contact with uspto.gov.
5 You can go to the PPAC Web site and file comments.
6 Thank you very much.

7 (Whereupon, at 2:47 p.m., the
8 PROCEEDINGS were adjourned.)

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