UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE

QUARTERLY MEETING

Alexandria, Virginia

Thursday, September 27, 2012
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MR. BORSON: Well, good morning, everyone. My name is Ben Borson. I'm the acting chair of Patent Public Advisory Committee and I'd like to welcome members of the USPTO, members of the PPAC, and members of the public to this public session of the Patent Public Advisory Committee.

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

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

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

MS. KEPPLINGER: Esther Kepplinger, PPAC.

MR. SOBON: Wayne Sobon, PPAC.

MR. HIRSHFELD: Drew Hirshfeld, deputy commissioner for Patent Examination Policy.
MR. BORSON: Okay, good, thank you. I'd like to first of all encourage any member of the public that's either in the room to step up to the microphone if there's a question. We'll have a lot of opportunity for discussion and would like to get feedback from anybody that has anything to say. So, there are two microphones, one on either side of the room and please feel free to step up and use them. I don't know whether we have selected any member of the audience to be the first person to make a comment, but if one of you is willing to step up and be the first, then maybe that will break the ice a bit and we can get a more public conversation going.

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

Now, just as an overview, the Patent
Public Advisory Committee is a creature of
statute. Congress enacted the America Invents Act
and American Patent AIPA -- I think I've got that
right -- in 1999, authorizing the USPTO to form
this committee which is a committee from people
from the outside plus three union members, people
from the inside, in order to provide advice and
comment on patent office procedures, patent
policy, and submit a report to Congress. The PPAC
is now in the final stages of preparing the annual
report for 2012. We're preparing a draft and
we'll be submitting that shortly to the patent
office for their comments and then a final version
will be submitted November 1 for publication in
December.

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

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

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

Since we last met in June, we've been
extremely busy working on operational issues, such
as lowering the backlog along with implementation
details of the various provisions of the America
Invents Act.

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

As for our current patent examining staff levels, we currently have over 7,800 patent
examiners, including over 1,500 new hires this fiscal year in 2012. So, great hiring effort this year, great success, and, as a matter of fact, it's a unprecedented hiring effort and it's allowed us to make a really great strides of reducing the backlog by providing more resources to those technology areas where they are really most needed in the high-growth areas.

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

As our unexamined backlog has been declining steadily, our RCE backlog has been increasing gradually over the last year-and-a-half, and that backlog as of this morning is currently at 97,865 RCE applications.
awaiting action and we recognize that the RCE backlog is an area that our applicants and stakeholders are concerned about and we're taking steps to reduce this backlog and to lessen the need to file an RCE through a few of our newest program initiatives.

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

So, we've recently implemented -- September 16, 2012 was the date -- many patent AIA provisions, and in particular, those would be the inventor's oath and declaration, pre-issuance
submissions, supplemental examination, and all of these were implemented within timeframes prescribed by the legislation.

And just to give you an idea of what we're experiencing in those particular areas, pre-issuance or third party submissions, to date, we have 40 submissions in that category and the supplemental examination request currently stand at zero. So, we're pleased that most stakeholders have commented favorably on our transparent implementation process and the extent of our outreach during the implementation process, and I think many of you know we had roadshows all over the country, the last one takes place tomorrow in New York City, and we've gotten some really great feedback and are really hearing some consistent themes from our stakeholders. So, recognizing the importance of continuous improvement in this complex rulemaking and implementation process, we've made clear and I want to reiterate that we are taking input. Even once the final rules are in place, we will continue to take input as we
gain experience with these new rules with an eye towards further refinement and improvement.

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

For satellite offices, we have been moving forward with our efforts to open various satellite offices within three years of the AIA's enactment date. We opened our first office outside of the Washington, D.C. area when we opened the Elijah McCoy satellite office on July 13 in Detroit and that office is up and running
with several examiners there, already examining applications and a small contingent of board judges are also there. And we are now moving forward to establish three additional offices in Denver, Dallas, and the Silicon Valley area. So, needless to say, there's a lot going on at the USPTO.

So, today, you'll be hearing from Andy Faile, who's going to provide a more detailed discussion of our patent operations statistics and data. Some of the initiatives going on and the results as we move into fiscal year 2013 here in just several days, and, also, in addition to an update on patent operations, we'll also share with you updates on the AIA finances from our CFO legislative update, we'll talk a bit about our IT infrastructure and where we are on those initiatives. You'll get an international update on what's going on in that arena with some of our updates to harmonize and also an update from Chief Judge James Smith on the new patent trial and appeal board.
So, we've got a lot of things to cover, but we do look forward to your thoughts and we welcome your comments and any questions as we move through the agenda today. So, thank you for your time, look forward to a discussion today and if there's any questions?

MR. BORSON: Yes, Steve?

MR. MILLER: Yes, Commissioner, you mentioned that the new IPR and PGR for business methods came into effect September 16, and what I've also heard is that a lot of people had filed for the old inter parte re-exam procedures. Do you have any statistics on filings of those and then how the office is going to handle those?

MS. FOCARINO: Okay, that's a great question, Steve. So, I think it's pretty safe to say that within the three weeks preceding September 16, we had around 650 filings about equally divided between ex parte and inter parte re-exam requests, with inter parte outpacing the ex parte by around 50 cases. So, this level of
filing represents over half of last year's entire
workload in the CRU. So, and more striking is for
the inter partes, we've received the equivalent of
about 100 percent, exactly 96 percent of all the
IP filings last year in 3 week's timeframe. So,
the good news there is supplemental exam, which is
also the Central Re-exam Unit, we've gotten zero
requests. So, the CRU will be focused on handling
this bubble of work. They have a large staff now
and an experienced staff, so, I'm confident that
they'll be able to handle the bubble of work and
maintain the timeliness and pendency that they've
had in the past. So, I think we're well poised to
handle that workload.

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

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

MR. MILLER: Great, thank you.

MR. HIRSHFELD: I can actually add the
statistics for IPR and covered business methods.
The inter parte's review as of this morning was 17
and the covered business methods review as of this morning was 6.

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

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

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

MS. FOCARINO: And thank you for that comment. We understand that, so, we will be
reordering the RCEs in that special new case
docket and they will be reordered to conform to
the oldest effective filing date. So, and there's
other initiatives that are also going on to
address this growing backlog. So, we're aware of
some of the difficulties that you're experiencing.

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

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

MR. FAILE: Okay, good morning. So, we
have a number of different slides to go over in
the 15 minutes. So, I'll go through the data, and
to the extent we can hold questions to the end,
that would probably be a more expeditious way to
get through all this material.

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

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

As the Commissioner mentioned, our
current application backlog is around 617. As of
this slide, the 25th, 619. You can see the
general trend line coming down pretty dramatically
over the last few quarters to our current position at 619. It looks like we're pretty much hitting our target of the 621, 800 down or a little bit below that. Got a few days to go. We'll see if any other filings come in last minute to add into that equation.

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

So, what you see kind of in the blue there is the optimal inventory for the particular staff and the firepower that we have at any given moment. And as you can see, the blue line generally increases to the right as we add more staff. Obviously, we need more inventory for that staff. The red represents the excess inventory, counting the backlog. So, as you can see, the two colors are, as you move from left to right, kind of converging as we kind of chip down the backlog and add the staff, at some point in time, we want
these to converge where we have the appropriate staff for the optimal inventory and we have little or no excess inventory. So, kind of just a different picture of the backlog.

MR. SOBON: Andy?

MR. FAILE: Yes, Wayne?

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

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

MR. SOBON: Okay.

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

A further breakdown, we thought we would present a different slide here, and this kind of shows what work we had in front of us here. We're breaking down the RCE backlog into age. So, we have a volume of 97, 98,000, and then within that volume, we have a range of ages of that inventory. As you can see, it's broken down by number of applications on kind of the second line and then the percentage of that total backlog. As you move to the right, the 13.7 percent greater than 18 months is certainly an area of focus. Pretty much anything to the right there is an area of focus, and as the number on the right there is increasing here to 13.7, that's certainly a caution point for all of us to take a look at. It breaks down kind of along the lines, you see at the bottom here move up a little bit, relatively steady, takes a dip at about the 12-month point and then spikes back up at the 18-month point.

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

MR. BORSON: Okay, Andy, I understand this is corps-wide RCE filings. Do you have any sense of whether they're particular TCs or areas that seem to be more problematic than others or at least more delayed?
MR. FAILE: Probably in the electrical areas, you're going to see a little bit more of a delay. If you look at the breakdown on the discipline level, it's relatively even. As you move from the mechanical, electrical, chemical giant discipline levels into the TCs and into the art units and into the individual examiners, obviously, things spread out quite a bit, you get a bunch of asymmetrical activity there.

MR. BORSON: Okay, thank you.

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

There are a couple of pilot programs we've been running for a quarter or two now.

We're still pooling data on those and those are
you see in kind of the yellow circle up top, the AFCP, After Final Consideration Program, in QPIDS, Quick Path IDS Program.

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

We have some very preliminary data. We're looking at basically about a 4 percent bump for examiners that are using the pilot and moving those cases towards RCEs over the After Finals that get converted without using the program. So, we've got a little bit of a bump there. I'm still looking at the time usage and doing kind of a return on investment. I'll look at that.
For the QPIDS pilot, this is basically a pilot where practitioners can come in, if they have an IDS that they get that is after the issue fee is paid, normally, an RCE is needed to get that IDS considered. In the Quick Path IDS Program, we've allowed those particular IDSs to come in and we're taking a look there. If there's no change in the claims, a case could still stay in the allowance stream. Then we keep it in the allowance stream and move it on, compensate the examiner with some time for looking at those particular references, move it on to the allowance stream and not have to file the RCE. And if the patentability of the claims is affected by the references, obviously, then the RCE is kicked in and we reopen via a conditional RCE in that.

That's been a good program for us so far. Again, with the little data that we have, we've converted -- the vast number of cases stay in the allowance stream and move on to become patents versus a very small number that actually turn into RCEs to get that consideration.
The bubble you see on the bottom or the circle you see on the bottom left, the RCE leveling plan, that is an effort focused at the backlog of RCEs to continuing upturn of RCE filings. A little piece of that is the reordering of the RCEs that we just discussed. The next level of that is our sit down with the union with Robert and his folks in October, looking at different ways that we can look at the age and volume of those RCEs per the two previous graphs and figure different ways we can put incentives or reorganize cases to where we can get that backlog moved down to a lower number. So, we'll be sitting down the October timeframe and starting to work on that piece.

The bubble you see on the right, the RCE outreach, is a new program that I'd like to kind of give an announcement for here and you'll be much more about this. This is one where we need everyone involved. We're actually going to take a systematic look at the reasons RCEs are filed. This is kind of a root cause analysis for RCEs.
It has basically three components to it where you have an internal component; they are things that we are doing in the office, both process-wise and examiner-wise that contribute to RCEs and then there's the corollary to that, the applicant's point of view, the part they play in filing RCEs. So, we're kind of doing a systematic deep dive into both of these areas and pooling up some data on our internal processes and our internal focus on RCEs and then going to the external folks, you guys, and the public, and through focus sessions and different interviews and data-gathering techniques, both physical and virtual. We want to get at the reasons why RCEs are used from the external perspective, pool all this data together, and look at are there different programs, such as AFCP or QIPIDS, new programs that can be added that are pressure points in the RCE prosecution, is there any particular knowledge that we can share, maybe dispel some myths about RCEs as we move forward and kind of roll this up into a series of
potentially internally processing tweaks on our end as we look at RCEs.

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

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

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

Forward-looking pendencies is a measure we've talked about a little bit in the past PPACs, basically projecting pendency in a forward-looking manner. Currently at about 16.7 months. This is for cases filed on a given day and at the bottom, what's the time to first action from a forward-looking point of view? You'll see a little uptake on there between kind of July and August at the very end. We have a little bit of a spike upwards. That comes through some model adjustments that we're doing on our end in looking at number of hires from a projected number of hires down to a number of hires we think we're going to do since the forward-looking pendency takes into account firepower in the future, that's why you see that little kind of blip up there.
Okay, this is a new slide, percent of terminal disposals having at least one interview, and by "terminal disposals," we mean the abandonment or allowance, so, this would include any RCE particular activity.

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

If you look at the far left, starting about 2007, basically 15 percent of the time we had an interview, once we looked back at a case, once it's been finally disposed of, abandoned, or an allowance, we go back and count the interviews in that case. And this is the percentage of having at least one interview. So, we're at 15 percent, and as you can see, the trend line is kind of somewhat of a jagged fashion, moving up with kind of a sharp upturn around the end of 2011, beginning of 2012, mid of 2012, which kind
of corresponds to a lot of the compact prosecution
activity and interview training that we've been
doing and just the general awareness on interview
practice and moving cases forward.

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

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

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

This is a measure we introduced in the

last PPAC. I'll just take a second and talk about

this slide. These are the number of rejections

and terminal disposals by month and we're

basically charting this out from 2007 to current
date or it looks to be about June of this year.

So, what this is, this includes any RCE type of

filings, as well. So, what you have in the

numerator are the non-final actions, final

rejections, and any of the FAI, First Action to

Interview Pilot activity and then we're looking at

those number of rejections it takes to get to a

terminal disposal, again, identified as an

allowance or abandonment, including any RCE

activity, given the definitions that you see about

what constitutes a rejection.

So, if you're looking at that trend line

moving up generally somewhere between 2.1 and 2.5,
a little bit south of 2.5, currently at about

2.03. So, we're looking at about two of these

defined rejections in allowance or an abandonment.
The bottom trend line is the miscellaneous actions for those same allowances or abandonments, and it's hard to see the verbiage on the screen, but it basically captures all the "non-rejection" type of correspondence that would go back and forth between examiners and applicants.

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

Going to the attrition data, the Commissioner mentioned attrition at a little bit over 3 percent. You can see kind of the circled area, we kind of changed the scale at the bottom to kind of bullet it out per month. As you can
see, we've been holding steady just a little bit over 3 percent for a good bit now. So, very happy so far with the attrition data.

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

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

We also did a cleanup of kind of to the right of the red line and we had a goal of 98 percent of those 44 or so thousand cases from the previous COPA 1.0 effort to be cleaned up so we don't have the tale that you kind of see to the right there, would be the blue part of that tale,
the blue part of that bar would be the tail that we're looking at. We want to clean that tail up to the point where we kind of have a brick wall in pendency and we've caged it all in to the left.

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

Okay, track one. On the top, you can see we've had kind of two years of track one. I say "two years," we had actually one month in FY 2011 of track one. We started in September. You see the filings there, 855 filings for that.

Starting in October, starting in fiscal year 2012, you see the filings broken out by month there. For this year, at the end of September, we'll be ended up, but we're close to about 4,774 filings this year. The total filings for the program were somewhere in the 5,600 range for track one filings.

So, a few interesting statistics on the next line for track one. The percentage of small
entity participation here is 41.9 percent. So, to us, that's a huge takeaway, the 41.9 percent of small entity filers are taking advantage of the track one program.

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

Moving on to the right, we had stats on the oldest track one still in prosecution at 237 days and the oldest track one without a first action, 166 days. Again, just to make sure everyone's on the same page, the program looks at a 12-month goal at the aggregate level. We're actually so far able to keep all of our data points within the 12 months. So, even though our
goal was to get an aggregate level, we're trying to beat that and trying to see if we can keep all or at least the vast majority from hitting the actual 12-month point.

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

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

Moving along to the quality area, as we've discussed before, we have our seven internal components for quality that we kind of use and
weigh them according to certain weights and crank out what you see on the right, which is our quality composite score. That is actually a percentage. That is a percentage towards meeting all of our quality targets in FY 2015. So, the way to read that is currently, we’re 72.9 percent on our way to hitting all of our FY 2015 targets. The different parts of the quality metrics that make up the component here, you can see on the top, the final disposition compliance rate, in process compliance rate, those are basically our traditional measures, final disposition compliance rate obviously is our looking at final rejection and allowances and processes, cases that are in prosecution, et cetera, to the right.

I'll get to this slide a little bit later, but just to look at the external and internal quality surveys, we had a pretty significant jump on our internal quality survey from the previous measuring period from 5.1 to 9.4, and that's the second to the end of the
right, the internal quality survey line. The internal quality survey asks examiners questions such as gauging incoming application quality, gauging our training, our search tools, any of the rollouts that we have internally. We've seen a pretty big bump here. That's mainly due to the number of negative responses turning into positive responses. This is a ratio of 9.4 of positive responses to negative responses.

Okay, a further kind of granular breakdown of the quality composite, you can see here. Looking to the right, as you see, the stretch goal, that is the goal at 15. Again, from the previous slide, the 72.9 percent is our march towards those 15 goals. These are the actual goals here to the left of the green. So, for instance, for the final disposition compliance, we want to be at 97 percent, et cetera. In the green, you can see our current levels towards those ultimate 15 targets. The waiting, go over two columns to the left, each one of these parts to the composite has a different waiting. So,
you're basically looking at a waiting in a current
level and you're generating a component score
adding that up, giving our overall component score
here of 72.9 percent.

So, again, thanks to PPAC. This was
kind of a joint project we had with PPAC in the
past where we developed a different look at this
quality composite. It gives us kind of a richer
look at our overall quality. It's a mix of
obvious survey or perception data with empirical
data and sampling data all put together into a
composite that gives us kind of a health indicator
of where we are and also kind of a march, where we
are in our march towards hitting our goals that
were identified for 2015. So far, about 72.9
percent of the way there.

The next slide kind of breaks down --
again, another look -- each component of the
metric, the quality composite in kind of this
thermometer, kind of a different way to visualize
our progress. The very bottom of that is the
baseline, which we started. You'll notice some of
these have different baselines; some have an FY 2009 baseline, some have an FY 2011 baseline, depending on when that part of the composite came online. And the thermometer kind of gives our progress up towards the FY 2015 goal for each of the individual components.

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

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

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

Sorry, Ben. One other thing I wanted to
mention is our tech support group, it basically
does all the processing of applications and
handling of the incoming amendments, getting them
into the cases, getting the cases prepped up for
the examiners to examine. We've had some really
good success both in timeliness and quality.
Their sample quality for this year is at a 1.5
percent error rate, which is huge for that group.
They're doing a fantastic job.
On their processing times, so far to
date for entering non-final amendments, they're at
an average of 6.2 days. For after final
amendments, they're at an average of 3.5 days.
So, really fantastic progress in our tech support
in getting the cases prepped up, on getting to the
examiners in a very timely manner and with a very
good level of quality for the subsequent
examination. Thank you.

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

MR. BUDENS: I have a question for you,
Andy. On the optimal inventory slide, this new
slide, what are the assumptions that the agency is
working with to come up with that number for the optimal inventory?

MR. FAILE: Yes, okay, good question.

So, if you do the math, you're looking -- and this is a very high aggregate level at the corps, and, again, as we go and break this down per tech center, per art unit, you're going to get a little bit of a disturbance in that. But looking at the corps level, this represents for the optimal for the amount of examiners onboard, this is somewhere between a 40 and 50 case inventory for those examiners multiplied by the number of examiners gives you your optimal inventory. As the examining corps increases, kind of from the middle of the graph to the right and you're moving up, obviously, the optimal inventory does increase.

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

MR. FAILE: Thanks.

MR. BORSON: Oh, Esther, please.

MS. KEPPLINGER: Just one quick comment.

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

MR. FAILE: Okay, thanks.

MR. BORSON: Okay, thank you, Esther.

Well, what I'd like to do now is turn the floor over to Drew, who will give us the current update on implementation of the AIA.

MR. HIRSHFELD: Thank you, Ben. So, as was just stated, I'm going to give you a status report on the AIA and Janet Gongola, who's the patent reform coordinator, has been giving the update. She is on the road today. We are going to New York for the final roadshow, so, I will stand in her place to give you the update.
So, I first wanted to show you the timelines which have been discussed with this group and actually throughout the country at various meetings. The timelines of the final rules and this is the first time it's my pleasure that they're all gray, which means for these final rules, this is the first that we're showing the slides where we've completed everything. So, I won't go through them in detail, just to say at a very high level that the implementation went as planned for both the patent rules, the board rules, and those final rules are in place; they were discussed a little bit earlier today and effective, of course, on September 16.

Now, for the board, the PTAB, there is a new patent review processing system which helps them track their e-files and is their case management system. I just wanted to bring this to everyone's attention so that people are aware of the new system and there is a video currently on our microsite where you can get more information about how to make filings and what the system can
Okay, now, turning to some statistics, I'm going to go through this quickly since we're behind and we discussed this a little bit earlier. The statistics shown on this slide are as of Monday, September 24. However, this morning, we had updated statistics. So, for pre-issuance submissions, there's currently as of this morning 40 pre-issuance submissions filed. As Commissioner Focarino mentioned earlier, no supplemental exams have been filed and inter parte's review is currently at 17 as of this morning and covered business methods review. There have been six filings as of this morning. And, of course, examiners needed to be trained on the various final rules that affect them. Of course, the biggest effect to examiners will be the First-to-File. We, of course, not having gotten to a final rule yet, but the oath and dec and the pre-issuance submission changes are the ones that will affect them the most. So, there was a computer-based training module which
was sent to all examiners which discusses those rules and the impacts to examiners and then for the Central Re-Exam Unit, there was a computer-based training and supplemental exam which was given to all the examiners and, of course, as additional training is necessary, we'll roll out in whatever format is appropriate.

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

Now, it became very apparent that there
were numerous questions on the oath and dec. As a matter of fact, at many of the roadshows, the oath and dec questions monopolized the question period. So, we came out with a quick reference guide which is placed on the AIA microsite which will give people more information about the oath and dec questions.

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

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

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

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

Okay, and moving to some of the patent fees, I have a timeline for the patent fees, and, of course, we are also in the green period, which
is in a comment period and comments will be due on
November 5 on the proposed fees. The Notice of
Proposed Rulemaking, published on September 6, and
I know it's listed there as July or August. It
was slightly delayed, so, it's August 6, and, of
course, I don't need to tell this group, but the
PPAC report was made available, as Commissioner
Focarino mentioned earlier, on the 24th, and that
is proceeding as well for implementation in the
early April timeframe.

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

And moving on to the roadshows, we've
had a total of eight roadshows throughout the
country. We currently only have one roadshow
remaining. That roadshow is tomorrow, and we'll
be in New York. And on our Web site, Janet
Gongola is putting up a highlight from each of the
roadshows. So, they all have a little bit of
different personality, depending on the issues
that are raised. So, she's putting a small
summary up for each of the roadshows. And the first three roadshows were Webcasts and we're working on the video production to put those up on our microsite, as well.

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

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

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

Okay, and moving to the progress report on the AIA programs, Peggy mentioned the Pro Bono Program this morning, which is listed there as completed and it's completed only because it's started, but it's still a work in progress and, as was mentioned, we're having many more cities join the Pro Bono Program and she also mentioned number four, the satellite offices, which needs no further explanation. Of course, Detroit has
opened and we're working on the others and the
patents ombudsman for small businesses is listed
as completed, as well, and I'll also talk about
that a little more.

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

And returning to the Patents Ombudsman
Program, there are really two components to this
program. There's the Office of Innovation and
Development, which assists small businesses with everything on filing a patent application. So, it would be whatever they need assistance prior to the time of filing. That's our OID office and then there's also the Patents Ombudsman Program, which had been in place, which helps people from filing forward. So, that has been rolled jointly into this patent ombudsman for small businesses where the small businesses can get help prior to filing through the OID or using a process similar to our Patents Ombudsman for after filing and there is an explanation of this on our AIA microsite.

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

MR. BORSON: Thank you very much, Drew.

Quick comments from the committee or the members of the public?

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

MR. BORSON: Yes, Michelle, go ahead.
MS. LEE: Drew, thank you very much for that information, and two questions. One is one of the AIA studies, particularly the genetic testing one that was extended. I understand per your slide that there's going to be a hearing in the fall of 2012. Do you have a targeted completion date for that study?

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

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

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

MS. LEE: I mean, they'll be, I take it, examiners there who will support the examination
of applications in the Alexandria area, but will there be the opportunity for I guess board-related activities or hearings or video conferencings of that sort?

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

MS. LEE: Okay, thank you.

MR. HIRSHFELD: You're very welcome.

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

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

Do we have a motion from the committee?
MR. MILLER: So moved.

MR. BORSON: Second?

SPEAKER: Seconded.

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

SPEAKERS: Aye.

MR. BORSON: Any opposed?

(No response)

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

(Recess)

MR. BORSON: I'd like to welcome you all back to the public session of the Patent Public Advisory Committee. Thank you very much to the
members and the members of the public for being
flexible for time. We'll be on schedule.

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

    So, Tony, thank you very much for
coming.

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

    As far as petitions go, there are lots
of parts of the office where petitions are
decided. They're decided in the Office of
Petitions, they're decided in PCT Legal, Office of
Patent Legal Administration. We have the TCs that
will decide petitions and officials within the TCs
that are going to decide petitions. We have them
in the Central Re-Exam Unit. They're all across
the patent office as far as petitions go. The
vast majority of them are decided in the Office of
Petitions, and we'll see that in the slide coming
up.

Also with petitions, not only can they
be decided in one particular area, it may be
status-driven. So, depending upon where the
application is in the patenting process, a
petition may be decided. So, as we had with the
withdraw of attorney, before we made that an
electronic petition, that might have been decided
in the TC or it might have been decided in the
Office of Petitions or it might have been decided
in Office of Data Management, depending upon where
the application was in the process. So, if it was
still in the examination process, the TC would
handle that withdraw of attorney whereas if it was
after the examination process, maybe the
application was allowed, then it would be handled
in the Office of Data Management.

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

Some of the petitions that could be
filed by an applicant would be maybe there's an
abandonment of the application and they would like
to withdraw the holding of abandonment or revival
of the application, and this is one of these types
of petitions that is also going to be
status-driven, depending upon where the
application is in the process. It could be
decided in the technology centers, could be
decided in the Office of Petitions. The majority
of the Withdraw Holding of Abandonment Petitions
are decided in the Office of Petitions unless
there's a specific examining-related issue that
needs to be resolved and we'll get it resolved in
the TC, and then if there's a question about the
resolution in the TC, then it'll come up to the
Office of Petitions for supervisory review.

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

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

As far as volume of petitions go, this slide here is just to show you the volume of
petitions that we get and the fact that the Office of Petitions does more petitions by far than any other part of the office, and on the next slides that are coming up, I'll break down the number of petitions that are decided and the types of petitions that are decided.

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

This slide here shows the petitions that are decided in the Office of Petitions. In 2008,
we did about 32,000 petitions. 2009, we did 33,000. In 2010, we did 60,000 petitions. And then 2011, we did 34,000. This year, we'll do somewhere in the neighborhood of 37,000 petitions. And that's the total number of petitions that are decided.

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

If you notice at the top there, we have the blue part of the graph, which is the petitions that are decided in paper form and in the green part is the electronic processing, and electronic processing has been growing for us over the last few years. We're currently doing about 5,000 of those 37,000 petitions that we're going to decide
this year in electronic format. We expect that to
grow to be about one-third of the total number of
petitions that we have that we're going to decide.
So, it's a growing area for us, we're very excited
about it, and we just want to keep pushing and
but, again, you know is actually a way of getting
service very quickly and efficiently.

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

And one of the things that we find is
that a large part of the petitions that we do get
are people coming back in and asking for
reconsideration of a request. So, it eliminates that back and forth that you have between well, you have this informality or you don't have this informality, and, so, we can get rid of that. That just cuts out a lot of the work that we would have. Things that just would stop you from being able to have a process that goes forward very smoothly. And this also with the electronic petitions allows us to use our existing staff to decide other petitions.

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

And then the other area that we are
looking toward and we're looking toward in the future is the Patents End to End and with Patents End to End, it'll allow us to automate the entire process that we have in the Office of Petitions. As it currently stands right now, we are a paper-driven process.

We still have our electronic interface where we can get the applications, we can look at the petition that's filed, but when it comes to actually deciding the petition and getting the process done, it's still a paper-driven process, and, so, we'll write up our decisions, they'll come out in paper form, and then we have to scan the backend of the system, which is a little bit inefficient. But when we get End to End coming and when it comes here, it's going to be a great deal for us, it's going to cut down on our time in actually getting these petitions out and getting decisions out. It also should help us with dissemination of petition decisions. And I know that there's been a great interest in getting access to the decisions that we have and the
petitions that are filed and we've looked at different strategies of how to get that information out and nothing has been really satisfactory. I think we had somebody come in and actually copying the decisions for us and I don't think anybody's been very satisfied with the way the decisions are currently handled there.

Mr. Borsom: All right, well, thank you very much. What I'd like to do is ask a couple of questions about petitions.

Mr. Knight: Sure.

Mr. Borsom: One of them is the unpredictable time that it takes from submission of a petition to the office to a resolution. I don't know if other members of the outside community have had the same experience, but sometimes, a petition is handled very quickly -- paper form, I'm not talking about the electronics side -- but rather the question about how long does it take a petition? And I'm not interested in hearing any numbers, that's not where the question is driving towards, but it has to do with
the processes that you use.

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

Some of us have been somewhat frustrated on occasion and we are actually in some cases tempted to file a petition to request expedited review of a previously submitted petition. And I don't know that there is such a thing. There may be a petition for which there is no other venue,
but I'm just wondering if you could give us some advice or suggestions about how we can have a sense of predictability about petitions. Given the fact that petitions usually represent an issue that is maybe something that is unclear or something that fell through the cracks previously, we're trying to update, to revive an abandoned application for whatever reasons, and the applicant, of course, is very concerned about the status of their patent or their application.

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

MR. KNIGHT: Right. I understand the question and I took over the Office of Petitions in 2010, and I recognize the fact that we had a huge backlog of petitions that were there and one of the goals that I had and I currently still have is making sure that we get decisions out in a fairly quick timeframe so that people get a fairly quick resolution to whatever the issue is. There's nothing worse than having an unsettled matter and trying to go forward with the rest of
the prosecution of the case and still waiting for
us to make a decision.

So, when I started out with the
Petitions Office, we were somewhere in the
neighborhood of about two months in which to get a
decision out. We're currently down to about 30
days to our docketing of the decision or docketing
of the petition to getting the decision out. I
think what we have though is sometimes it's a
matter of just trying to make sure that actual
petition gets to us and what I would say is that
if you are having trouble with trying to get that
petition decided or just trying to make sure that
we have a petition and we're moving forward with
it is actually give us a call and you can call our
helpdesk and let us know that the petition is
there and that we will give you some ideas as to
when we're going to decide it or you can always
give me a call and I get calls on a regular basis,
I get several calls a day as to there's a petition
in this file, when am I going to get a decision?
Some of the petitions belong in the Office of
Petitions and those we'll move forward with and we'll get them decided as expeditiously as we possibly can. Some of them don't belong to us and we will contact those people in the other parts of the patent office and say look, you've got this particular matter, the applicant is looking for a decision, let's get them a decision as quickly as we can and we've been moving them that way, as well.

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

MS. FOCARINO: I think it's certainly helpful to track timeliness and depending on the nature of the petition, some can get very complex. So, we would expect longer timeframes for decision, but, certainly, I think it's something that we should take a look at and perhaps provide you with some data and timeliness based on the type of petition decision.
MR. BORSON: Okay, I think that would be helpful. This is an attempt to start a conversation with you.

And, so, yes, Drew?

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

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

I believe that the Patents End to End will really help in this regard because I think it will help us eliminate those cases which either
for patent office mistake or otherwise ended up in
a file without people actually knowing, and then
what happens is either the examiner picks the case
up to do another office action and says oh,
there's a petition in here, now what do we do?
And then everything gets thrown off or the
applicant calls and says hey, there's a petition
here.

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

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

MS. KEPPLINGER: Yes, if I could make a
suggestion. One thing that's useful for applicant
is to have your pendency time measured from
filing, not from when it's docketed for two
reasons. One, applicant really wants to know how
quickly they can get it processed, but, secondly, there's much less motivation for you to correct those upfront problems if you're only measuring it from the docketing. Thanks.

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

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

MR. KNIGHT: Okay, thank you. As far as trying to shorten the timeframe for track one, Office of Petitions has actually taken over at least the granting of the track one request and
we've shortened the timeframe from filing to grant
date of the track one requests and I think we were
at 45 or 48 days. We're now down to 36 days.
And the idea is to try to push that down even
further as far as the granting of the track one
requests, but this is another instance where we
have a split in the jurisdiction for a particular
case in that also, petitions will handle the
request itself, but as far as the prosecution of
the case, we're going to send that off to the TC
for handling and they have a team there is
concentrating on or trying to make sure that these
requests are done as quickly as possible or that
the track one case will be done as quickly as
possible.

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

Drew, please. Thank you very much,
Tony. Oh, before we do that, I just wanted to
make one amendment to the record. We did move
into executive session to discuss internal
practices in the committee, internal issues that
had nothing whatever to do with our public
activities. So, let's make sure that that is on
the record and we'll be in good shape.

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

So, anyway, I'll talk about the 101
issues first, and as you all know, there is a huge
Supreme Court case, Mayo v. Prometheus, decided,
and on July 3, guidance was given to all examiners
from my office about changes to implementation and
how they should look at subject matter eligibility
under 101. That guidance, of course, if available on the Web site for anybody's view as is all other guidance, all of the training materials that we put, whether it's 101 or any other area, we make sure we are making it publically available to everybody so that they can see exactly what we're training on.

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

So, we ended up creating I believe it was a 73-page training document that went out to
all examiners and then the technology centers
picked portions of that to train on. Of course,
the one portion that was mandatory for everyone
was the new guidance on Mayo v. Prometheus, but,
otherwise, it was up to the technology centers
themselves to decide additional training they
want.

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

Now, I thought it would be helpful to
discuss some of the back and forth that Ray and I
have when we are creating training guidelines and
I'll use as an example -- and, Ray, feel free to
jump in at any time -- but I'll use the 101 Mayo
v. Prometheus as an example, but I can tell you that every piece of training has a very different process to it, dependent on the subject matter, dependent on how controversial it may be, if it's review. So, we could have something so simple as some way we discover a need for training in the TCs, whether that comes from the TCs themselves or whether it comes from the Office of Patent Quality Assurance Review and feedback. If we notice something and it's basically might just create the training, give it to Ray's office for a sufficiency review after and then they might just bless it and we move forward. That's the simplest process.

But when you have something like the Mayo v. Prometheus, which, obviously required much more thoughtful implementation and discussion, what we went through is basically had first a group discussion where you had, of course, the board there, as well, and had discussions between the three different groups: Ray's office, my office, and James Smith's area, and we just had
general discussions to get the ball rolling about what we thought would be good to have in guidance. And, subsequent to that, we created a sort of preliminary guidance documents, more like a principles overview document. I don't even think it was a page, but it was really just to make sure that the overarching principles were the same.

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

Now, the draft guidance didn't include too many examples. It included some, as many as we could, but I'll get to that in a little while because we're still trying to add some examples to it. So, once we had the draft guidance document, we went back through Ray's office for discussions
again and then ended up, of course, with a back
and forth and then a final review and then the
guidance document was complete and then we came
out and created the training from that.

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

So, what I had was a group of mostly
supervisors and QASs, Quality Assurance
Specialists, from the TCs in a group that I would
meet with periodically to give them updates of the
process that we're going through that Ray and I
are going through as well as to get their feedback
on okay, this is something that we think we're
going to have trouble implementing or this is
something that we can do well. We got that
feedback from them and incorporated that into the
back and forth with Ray, and I think that's very
helpful because you can just imagine the situation
of creating a document without the input from the
technology centers, giving it to them, and they
say well, we can't understand this, right? And
then we also with some of the examples -- and,
actually, Robert was very instrumental in this, we
got some primary examiners in 1600 who are very
instrumental in working with us in the creation of
those example and the explanation that would be
most relevant to the people in that technology
center.

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

MR. CHEN: Thanks, Drew. I am Ray Chen,
solicitor here at the PTO.
I just want to echo everything that Drew said. It's very much a collaborative experience, collaborative journey inside the agency in terms of coming out with any kind of guidance on these difficult legal issues. And, so, there is a lot of coordination with Drew's shop and the solicitor's office, but it goes much broader than that, too.

You've talked about the TC directors, but also not only is Peggy involved, but Dave Kappos, Terry Rea, they're instrumental in all of this, as well, as well as the patent board. So, it's really a team effort which, to me, makes it all the more impressive that we were able to get out a first level response as quickly as we did. And I think that was something that Director Kappos was really looking for to make sure that we have an immediate stop gap signal and message to the examining corps, all 7,000, 8,000 examiners as well as the public and the patent bar about what's going on and what the PTO has to do because people might have competing conceptions as to what are
the actual rules from a case like Mayo v. Prometheus. But, at the very least, we have to get the message out that on some level, the law has changed and we need to make sure that the examining corps understands that and at the very least makes some immediate but conservative shift, and then after that first level response, we can go back with more consideration and reflection and figure out how we're really going to give a more meaningful level of guidance for all of our examiners and that is what we did with the subsequent memo and guidelines that Drew issued to the examiners.

The other thing, as from the solicitor's office perspective, obviously, what we have to care for and think about is not only the administrability question, which is really the heavy burden that falls on patents to try to come up with good, sound, concrete principles that can be administered on a consistent level across the board, but also we're also sensitive to the whole question of whatever we say, whatever we instruct
our examiners, to what degree of confidence do we feel that that will be defensible in court later on down the road? Everybody here knows that 101 is currently a very unstable doctrine, and, so, the whole question of what degree of confidence we can say that different positions that we take are defensible, it's a little more uncomfortable now than it was say 5 years ago or 10 years ago when it comes to Section 101. And, so, Section 101 is now an area that just doesn't have bright lines and maybe is starting to seem at least in my view something more like 103, where there's a little bit more of a judgment going on, there's a series of factors you have to consider, and it's not going to be something that we can just immediately resolve in 30 seconds and keep moving.

MR. BORSON: Okay, I wanted to, if I may, just share with you my thoughts on this issue, is that 101 is actually an agglomeration of a number of different doctrines. One of them is claim scope and there is a well-developed case law in 112, first paragraph, where scope of enablement
and description at least in some contexts, and I'm wondering whether you thought about seeing how your existing 112 guidance and training and examination procedures might at least carve out a small piece of the 101 issue and say that this is not necessary to handle under this unformed 101 doctrine, but rather it could be important or used.

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

MR. CHEN: Yes, that's something that Drew and I have spoken about and many others, including the director about how a lot of the claim breath issues that are now being debated within the realm of Section 101 are perhaps better suited under a different condition of patentability. Section 112, paragraph 1. Maybe Section 112, paragraph 6. Section 112, paragraph 2. There's a lot of different areas where we don't have to have this more philosophical inquiry about what is or is not an abstract idea and we can focus the inquiry in a much more technical way.
about how one of ordinary skill in the art would
look at the disclosure in the written description
compared to the breadth of the claim and figure
out whether or not this particular claim merits a
patent on that score.

Drew?

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

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

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

MR. HIRSHFELD: Well, certainly, I give endless thought to what "integration" is. I'll
also add works like focus, which the corps use.

When does a claim focus on a law of nature? These are all terms that we struggle with because you
have a court decision that we have to follow for the corps that is decided on a single set of fact
patterns and then when I get with the technology centers, and part of what I do is ask them to send
me examples of claims that they have which are borderline implicated. So, some that are
implicated, some that aren't implicated by any changes that we do, and you realize that the realm
of possibilities for how you define a term like "focus" or "integrate" can have so many effects
unintended for what might have been in that particular case. And that's one of the problems
that we struggle with.
So, yes, we're giving extensive thought to that, what my team is currently working on and we'll be getting examples over to Ray are all these claim examples. We're trying to get many more specific claim examples that we feel show both sides, show when you have integration, when you do not have integration, when new claim focuses or not on a law of nature and we're going to try to tease out those examples more so we can have additional training based on the examples. And what we did do in the training document itself, and we'll continue to do this, is have examples that build on each other so that you might start on one side of the answer and then you get to the other side of the answer so that examiners can see where the transition point is. And that is without a doubt, I think, one of my greatest challenges, if not my greatest challenge, to make that clear.

MR. BORSON: Well, I'm sure that I speak for the entire committee that we stand ready to assist you in any way that we can because those of
us sitting around the table do reflect a number of
different points of view in different
technologies. So, I think that you could get some
help if you so ask for it. I'd be more than happy
to work with you and I'm sure that others on the
committee would be, as well. So, thank you.

Esther?

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

MR. CHEN: Thanks, Esther. From Drew
and me, thank you. I just wanted to underscore
that we're not looking at these guidelines that
have been issued as being static and that there is
1.0, day after decision, 2.0, a month after the
decision, then there will be 3.0. Just like with
the KSR guidelines, you saw 1.0 the same year that
the opinion came out, you saw 2.0 come out about
two years ago. We're still collecting cases now
since 2.0 on KSR issues and we are looking and
planning one day --we don't know exactly when--
to come out with 3.0 when we feel like we've got a
nice collection of new insights and teaching
moments from the next batch of federal circuit
opinions.

MR. HIRSHFELD: If I may go off on a
slight tangent here, I know we're probably running
out of time, but the guidelines being as Ray said
not a static document and evolving over time, is
very important to us, and Andy, Peggy, Bruce, and
myself have been talking about examiner training
in general not being static in time also, and
we're looking at making some significant changes
to the way we train examiners. We're still in the
early stages of this, but at a high level, we'd
like to turn the training into a much more
continuous education, more of an adult learning where it's not one or two large lecture halls type of training once or twice a year where it's a continual learning and you might take smaller segments of training and do it more frequently, but it's something we're considering with the recognition that the case law is evolving and our roles and responsibilities evolve with it.

MR. FAILE: Just to add on to what Drew said, he's really come up with a different way of looking at training. From OPA's perspective and the way it's going to percolate into the corps is more training in smaller modules and more ongoing training, number one. Number two, a little bit more of bringing in examples, translating the more pragmatic type of training where we have examples and ranges from left to right, our examiners can kind of see the conceptual guidance in motion, which you spoke about. And, number three is capturing the training on computer-based training videos where an examiner, you never quite know when you may run across a particular area, we have
a video there with that training. We can refer
the examiner back to it in real time during the
examination of the case and to amplify that
training so it's more of an ongoing issue instead
of just a single point in time and it's maybe not
revisited for quite some time.

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

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

Thanks.

MR. BORSON: Okay, well, thank you very
much. We are now on break and we will reconvene
after lunch at 12:40. That will give us about 50
minutes of a break. So, thank you, all, very much
for joining us.

You had a question?

SPEAKER: No.

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

(Recess)

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

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

JUDGE SMITH: Good afternoon. Thank you
for the opportunity to speak with PPAC and to
share with you, again, the exciting things that
are going on at the board. I could not be more
excited, I think, than I am today about the way
things are trending at the board.
Just as a quick note, you mentioned my travels. The agency has afforded the board the opportunity to participate in the AIA roadshows. This is roadshows number two, after the one we did with the proposed rules. The roadshows that we are putting on, the depiction of them, for example, at the microsite does not reveal, however, the substantial number of additional roadshows we have agreed to with bar associations and other organizations. If you look at that, we actually have twice as many roadshow events as appear on the official map, which, of course, represents additional use of judge time to get things done. But the roadshows themselves represent a culmination of things we have been working on at the board with respect to AIA.

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

We also are a week, two weeks into the launch of the Patent Review Processing System, PERPS or PERPS as we're calling it. There's been
a substantial amount of information from the agency about the fact that we went live with the system midnight when AIA trial proceedings began and remained at the office for 24 hours while we both troubleshooted the system and took in the first set of filings.

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

Looking at one of things we've been working on there is hiring. We had a goal of bringing in 100 new administrative patent judges in 2012. We've made good progress in the doing of that, we believe. We've reviewed 1,000 applicant records
since the beginning of the year. We've actually
had in-person interviews or in some instances
in-person and by-video interviews with 190
candidates, including now candidates for Detroit,
which has resulted in 10 judges being there.

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

Already, 77 highly-qualified candidates
have been approved. Sixty-two of those will be
already in the job by the end of October. I think
we actually already have 58 of them present and
working. And that is, I think, fair to say a substantial change from 99 judges to 158 in the space of about 9 months. Certainly, that's not as large a number of new officials as the [Patent] Commissioner has to deal with.

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

Speaking of the new judges, where have they come from? I think I mentioned this to this group the last time I was here. It has continued in similar fashion the places from which we have been able to get new judges. We continue to have qualified candidates coming to us from the patent examining corps within the agency. We've also had another person or two join us from the Solicitor's Office. We have from time to time patent
attorneys at the board who become judges. We continue to draw from the International Trade Commission and the Department of Justice to the point that we're beginning to hear some complaints from our sister government agencies about the flow of talent. We apologize to them, but maybe not as sincerely as we should.

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

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

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

Of course, hiring is a key part of that, but you will readily appreciate that given how new so many of the judges are, they are only beginning, some of them, to approach what their steady state output as judges will look like. In fact, with a good two dozen judges who have been at the board for less than 30 to 45 days, that's really not where we're seeing most of the output.
I'll speak about that in some more detail in a few minutes.

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

This is not the most current 30-day snapshot as to board receipts and dispositions. It ends about a week ago, a little more than a week ago, but it's a good depiction of generally what we're seeing. Just directing your attention to the very small bottom row, it shows that in the time period there, we received 792 new cases, but decided 1,073, with a difference of 281, which represents a decrease in the backlog by that amount. And, as I just mentioned, that decrease looking at the 30-day period, which ended
yesterday, is closer to the number 400.

And let me also say about this slide, you'll note that one of the things we do in our regular study of the situation is determine by technical subject matter area how much each team is able to decrease the backlog in its respective area. A number of things flow from the study of that. One, of course, has to do with how many of any particular type of case by technological subject matter we are receiving. It also gives us some indication as to whether we need to make any adjustments and how the judge talent is deployed to make sure that we cover areas of greatest concern. The slide is unique in terms of our capturing this data in that the fewest number of minus signs in the right most column, which means essentially that only two groups, in fact, received more cases than they decided in that time period.

This is essentially data of a similar kind showing more time periods. The red bar represents how many cases came in the door; the
green bar, how many decisions went out the door. You'll note that going back to early September, we were still at times having more cases come in than we decided, but in recent times, it's definitely trending in the other way, and, in fact, again, as I mentioned, if we added the most recent set of bars to the graph, the right most bar would show a net decrease in the backlog of about 400 cases.

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

This will further emphasize the point I made about the size of the backlog. You'll note that the last three bars in the graph are essentially equivalent. They're not actually equivalent if you look at them in finer detail, but at the scale at which this graph is drawn, one sees the fundamental fact that the backlog did not
reach 30,000 cases and now because it's not
growing, we don't expect that it will.

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

January 2012 was the first month in which we had new judges as part of this hiring effort and in that month, actually the first two of the new judges started in late December 2011. In 2012, all of the new judges, and I believe there were about 5 of them at that point, accounted for 17 decisions. So, the real focus of this set of -- in this chart is the white bar, which shows the output of the judges who started late in December and you see that the output from those judges has grown as the number of them has, from 17 in January. In April, their output had risen to 82 cases, and you begin to see generally a decrease in the size of the contribution to the backlog, which is the yellow bar.
Focusing again on the white bars in the column, this is the same type of data going forward a few months, and you'll see that in the -- let's see, there's something a little strange about this. We should have dates at the bottom of the graph. But in each successive month, the new judge output has continued to grow, 110, 150, 186. This month, September, which is not depicted because that last set of bars is for August, in September, we believe new judge output will exceed 300 cases.

Last time I was here, I mentioned to you that one of our strategies has been to focus on looking for examiner answers which can serve as a sufficient basis, as the correct and sufficient basis for board decisions. The key with respect to that surge, of course, is making sure that should any given case come to be appealed, that the examiner answer is rich enough to provide the federal circuit with the opportunity to carefully consider and sufficiently consider the decision from the agency. And we've continued to find
instances where we can do that.

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

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

How are we doing at the federal circuit? The numbers are still quite good. Only 105 decisions disposed of by the federal circuit. Only 12 have involved remands and 13 decisions
which are either a remand or a reversal.

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

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

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

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

JUDGE SMITH: That's right.

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

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

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

JUDGE SMITH: Well, we think the timing will work out well right about the time that bubble begins to get to us, and it will take a while, probably at least a year or so before we begin to get the front end of that bubble moving from the CRU to the board. About that time, our new judges will be not so new. We may have leveled off at about 250 judges.
We would be eating into the backlog at a fairly substantial pace and then have some latitude with regard to two things that probably will happen at about that time. We expect that about the time he inter partes and ex partes re-exam bubble comes to us, we likely probably will be seeing more AIA proceedings because those potential filers who maybe are waiting to see how the proceedings, the first ones go and who also maybe opted for getting in under the old re-examination system. Some of them will have shifted their efforts to AIA proceedings.

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

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

I'd like to move on the agenda, if we may, to John Owens, the chief information officer.
So, thank you very much for coming. I noticed that you were walking without your crutch today. So, good for you.

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

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

There, of course, have been bumps along the way, but we'll talk a little bit about the items. I did notice a typo on this page. It's 9
programs, not 10. The current software
initiatives, the current roadmap we're putting
together for the replacement of all of the
software with Patent's End to End trademark NEXGEN
has 10 and I think the person who did this slide
made a little mistake. There were nine.

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

So, 35 projects were cancelled or
suspended along the way, and you'll see which ones
of those were. But as we learned different things
about the environment, for example, as we looked
at our Legacy applications and realized porting
them into a more stable environment really meant
rewriting them from scratch because they used
outdated Legacy products, for example. Certain
things that we were going to do in the data center
to get rid of older technologies could not be done
without significant software rewrite and because
of that software rewrite, we had decided to
suspend or delay some projects. We also decided
to suspend or delay projects based on funding and
put them off to future years, which were outside
of the scope of this roadmap, and I'm sure you all
remember those because we lived through those
together.

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

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

Process standardization, of course, we implemented the STLC and we have that enterprise project management system I just mentioned. We have not finished implementing the ITIL infrastructure library policies, practices for
incident problem management and service management and event management, that is ongoing, that will end soon. It was slightly delayed due to budget and, of course, adoption into the culture was quite an effort to get the federal government to change the way we do processes and adopt ITIL as opposed to try to change ITIL, thus not adopting anything, was quite an undertaking.

Our complete telecommunications infrastructure has been replaced. I hear sometimes people complain about oh, the network's slow. The network is actually not slow. People assume it's the network. We have the most modern fiber backbone network and we went from 300 megabit connection to the Internet to 3 gigabit connection to the Internet, which rivals some smaller ISPs. All of our bottlenecks are completely not in the network. We also have replaced our voicemail on our phone system with voiceover IP and all of our collaborations suite of tools that so many people complained about, there are always some issues here or there going
on inside of a large, complex, secure network, but
these are proving more stable than we've ever
had at the agency before.

Our data center infrastructure has also
been improved. We reduced the number of machines.
We have mapped all of our systems and where they
are and we're going through the process of moving
to better load balance on our environment and
improve our cooling efficiency, but what's really
slowed us down there is the number systems we were
able to virtualize. We've replaced 52 percent of
those systems. We virtualized 54 percent of the
environment and what I got here was less than 10
percent. However, some operating systems,
particularly those Legacy ones, do not afford
themselves to virtualization. And, therefore, the
software on them, because it's no longer supported
by the industries that created them, need to be
rewritten. And, as such, it would have been an
undue burden and cost to the agency to handle
that. At the same time, we were doing Patents End
to End. So, we gave up pursuing rewriting some of
those applications, not all of them, in lieu of Patents End to End and Next Generation initiatives as to not waste money by rewriting something Legacy and then replacing it with a new, modern infrastructure.

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

We just are meeting with the unions now to talk about the peripheral replacement next year as part of the continuous ongoing replacement of equipment to cover printers and monitors upcoming
here shortly. And, again, one of the biggest changes that we made was how we handle the budget in the CIO. No more are we going to get in the situation where we have a 7-year-old desktop and things are breaking and we're not conforming. We are on a budgetary cycle of five years to replace everything, just like industry would. So, we won't make that mistake again.

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

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

Our disaster recovery, we have an alternate processing site. Unfortunately, the
current systems did not lend themselves or most of
them did not lend themselves to being put into a
dual mode operation where you had alternate
servers. So, we could not run hot. We have a
couple of systems that are what's hot-cold. We
have a cold spare somewhere else.

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

If you look at the agency's recovery
plans, we're supposed to meet a multiple-date
turnaround, and, unfortunately, in the situation
we're in, we're in a multiple-month turnaround,
which if you go back to 2008, we were in a
multiple-year turnaround. So, we have made
improvement, but not quite where we wanted to be
with disaster recovery, and, unfortunately, we're
going to have to wait until some of the more modern tools that can actually accomplish this.

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

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

Never again. Never again will we end and come to you and ask to do this type of roadmap. We've built it in such a way and would appreciate your continued support of the budget.
necessary in IT and CIO to continue to evolve our
systems at a steady pace. Never again do we want
to see a hiatus for years where money is bled out
of the IT organization in lieu of something else,
only to find the infrastructure in which our
entire examining corps, whether it be patents or
trademarks realized crumble to dust.

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

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

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

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

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

MR. LANDRITH: Good afternoon. So, we've had a change of direction with where we are
headed with PE2E. We've spoken here quite frequently about the data conversion efforts, and so far, that has proven to be our biggest hurdle. So, the PE2E functionality has been well received, but the data conversion requirements have remained unmet.

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

We also ran into some pediments, so, the Legacy data integration proceeded slower than planned. Resource availability has always been a risk that we've discussed and we realized recently you've heard a lot today about the progress toward meeting the statutory obligations for AIA, but, unfortunately, that also caused resource constraints elsewhere, the changes to the CRU
caused them to have to be juggling those changes with Patents End to End and our independent oversight specialist recommended that we consider moving the focus away from the CRU. So, it bears emphasizing that the CRU engagement greatly improved PE2E's growth and improvement. It validated our design and functionality and exposed issues in a real-world environment that allowed us to make significant improvements, and, most of all, we got a very good idea of how the data conversion process can work.

So, in keeping with what we've learned, we're changing the pilot audience and the data source. With regard to the pilot audience, we're looking at getting a cross section of the examination corps. This narrows the focus of the document conversion efforts initially to the claims spec and abstract and it provides more flexibility with the conversion times. It also allows for earlier and wider exposure to all the tech centers to ensure that we align our needs with the eventual release to the patent corps.
We're also going to be, with regard to the data, leveraging the successful efforts that we already had to automatically convert documents.

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

Lastly with CRU as no longer our pilot audience, we've simplified our release schedule by dropping the CRU-related releases and delivering releases to a cross section of the examination corps. So, we're still on track for the already-scheduled November release, which is a pilot to the corps, including the docket functionality, case viewer, document viewer, note-taking, and the reference manager. The purpose of this is to obtain user feedback on how PE2E behaves in the wild and expose bugs that are
difficult to recreate without actual usage.

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

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

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

Other portfolio progress that we have is
patent family maps. It shows the genealogy of the U.S. patents. We've already completed internal proof of concepts and prototypes, and, so, we're now undertaking that to move it to a production level.

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

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

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

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

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

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

It looks like I was on the wrong slide.

Risks and issues. Risks and issues have not changed. We have the availability of human resources. Ambitious scope of features, scaling and improving imaged XML transformation, Legacy data quality, and contractor support for software development.

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

Are there any comments of questions from the members? Yes?

MR. SOBON: I guess my main question for
you is on slide five, which is the deployment plans. You've obviously taken off the deploying the portion of the development to the full corps as of yet. Do you have any clear vision of when that will happen or is it too early to tell before the pilots are done?

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

MR. SOBON: Yes, okay.

MR. LANDRITH: Does that answer your question?

MR. SOBON: Yes, it does.

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

Next would be legislative update with Dana Colarulli.

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

We'll start with the legislative highlights. As I said, there is still a lot of interest. I'll start with the two that we're really focused on, the two that certainly are achievable by the end of this Congress; one is
already one on its way to the president, not
listed here, but a technical correction to the
trademark statute. That's one of the few IT bills
that are going to get done by the end of the
Congress.

A second is one I think more important
to the patent world, which is the PLT and Hague,
the Geneva Act of the Hague agreement on designs.
This is implementing legislation to two
international treaties that were signed by the
U.S. way back in 1999. They require changes to
U.S. statute to be implemented for the U.S. to be
full members of these two treaties. The
administration sent up implementing legislation
twice actually since that time, 2007, 2010. There
was some interest on behalf of the Hill staff to
delay implementing these treaties until after
major patent reform legislation was accomplished.
It was accomplished and they moved swiftly
afterwards. We've been helping them to do so.
So, the legislation was entered in both
the Senate and the House. My staff has been
briefing Hill staff on what changes to U.S. law these would make and what benefits to U.S. Companies and innovators the two treaties will have. The Senate bill was introduced, they held a hearing, which Director Kappos mentioned both of these implementing pieces of legislation. Passed the Senate just before folks left for recess and is now being held to the desk in the House, which we expect to hopefully move pretty quickly once Congress returns on November 13. So, I think those are at least two successes for the IP world, both on the trademark side and finally after a long period of time implementing these two pieces of legislation.

I'll highlight, I think, the PLT further. It simplifies a number of provisions in the statute, addresses just formalities, but I think furthers a lot of the simplifications we've been doing outside of the statutory authority. The design treaty really brings the U.S. in line with the rest of the world. There's a lot of discussions occurring abroad, and particularly in
the U.K. and elsewhere, about whether we should
start an international discussion about a new
design treaty. This puts on level playing field
there.

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

Auto designs, that's a bill that H.R.
3889 that we've seen introduced now because the
third Congress don't expect it to move before the
end of this year, but that's continuing interest.

Fashion design, as well, trade secret issues, and
even more recently, questions about Internet
radio, copyright issues addressed there, questions
about the tax treatment of patent rights for those
of you familiar with the concept of patent box that we see internationally, providing preferred
tax treatment. In recent days, those bills have been introduced. Again, don't expect those to move. I think those are placeholders for a lot of members, but something we're following anyway and may be of interest.

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

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

That and the IP, intellectual property, Attaché Act. Again, something that we're very
interested in. Our members have seen our IP
Attaché Program as something that's been
successful, something that should be invested in,
and we certainly support them, would like to work
with them. I think we had some concerns with the
legislation they introduced, but, again, that will
be one certainly next Congress that will want to
focus on much more.

Outstanding reports required by the AIA,
three that you all maybe remember, one on genetic
testing, diagnostic testing. This is one that the
responsibility falls to the USPTO to complete. We
held two hearings, one on the east coast, one on
the west coast, had a number of written comments,
communicated to the Hill just before the one-year
mark that although we had these great discussions,
it was unclear what recommendations might be best
and we asked for more time, expressed an interest
in gathering one last forum to discuss these
issues, discuss the comments that we got. We'll
be moving forward to do that within the next few
months, trying to work out the timing for that and
then, hopefully, soon after that, submit a final report to Congress.

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

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

I will comment I think there is a benefit actually for not completing the study now, given that we're now having a discussion about the
proposed rules. The Office of Advocacy will have
the benefit of seeing our final rules and we hope
can comment on those rules.

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

Next few slides should be fairly quick.
I wanted to remind folks of the number of
appearances that we've had up on Capitol Hill.
Again, an indicator, certainly of interest not
just in the AIA, but international enforcement and
international IP policy issues. The Deputy Direct
Rea has been up to the Hill, as has our chief
economist, Dr. Stu Graham in addition to the
director. It's a record number of hearings we've
done at least in recent times.
Last slide just a number of issues on the legislative front that folks might be interested. Certainly sequestration, I know I'm going to be followed by our CFO staff. They could talk a little bit more about that, but, certainly, there's a bit of unknown there on the impact on the USPTO.

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

Remaining legislative items I actually went through a number of them already, things being introduced, a lot of placeholders for legislation, but very little action I think from my perspective expected except on the two treaties. I mentioned software patents as an issue
that is getting a lot of interest on Capitol Hill. There are a lot of stakeholders also hitting the Hill looking at these issues, too. But I'll mention there's a new Internet association. There's been a few actually over the last year that have been created. There are a few groups also looking at petitioning Congress to make changes to the ITC. So, that's another one that we're following. But, again, continued interest in the wake of AIA, what other changes could be made?

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

With that, I'll end. I'm happy to answer other questions, but that's what's going on up in Congress --
MR. BORSON: Why thank you very much, Dana. I think we have time for one question if there is one, maybe two.

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

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

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

MR. COLARULLI: Well, sequestration, sequestration is the act that Congress agreed to some year or so ago regarding passing a budget that reduced the size of the federal government. If they did not come to an agreement and legislation was not enacted before the January 1, 2010 date, there were certain cuts that would be automatic to the federal budget. A report came out recently indicating the size of those cuts if nothing else is done. On the USPTO, it would affect at least temporarily our appropriations level to the tune of $242
Now, it may be misleading somewhat because it doesn't affect the fees coming in, but it does affect our appropriations level. For the foreseeable future, we don't see that having a significant impact on USPTO operations. It may have an impact if nothing occurs, if Congress does not act, which I think there's a fairly good likelihood that they may act in some way, at least maybe reducing the size of the cuts, but especially in light of the fee increases at the agency. So, there are a lot of unknowns on the number of fees that we're going to bring in. I think one thing that is certain is we've looked at this post-AIA. This doesn't mean a loss of those fees; it just means a temporary unavailability of those fees and potentially creating an opportunity where we trigger the AIA reserve fund provisions. So, there are a couple of scenarios that I've run through with our CFO staff where the AIA reserve fund might be triggered for the first time. It may not. I think there's a lot to be
still determined, most importantly whether
Congress actually acts before January 1.

MS. LEE: Thank you.

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

(Recess)

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

If you would, please.

MR. SCARDINO: Good afternoon. Thank
you for having me. Before I go through my
presentation, I just wanted to thank you for the
fee report study that you did. I've been talking
to Director Kappos as well as my staff about it
and it's just very, very helpful to have this.

We've got some great recommendations in there and
I think you'll probably see us at least consider some changes for the final rule. So, that's our hope.

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

The plus side is we've had tremendous success operationally, which has driven some spending reductions. So, we've actually been able to reduce our budget by $93 million with no
impacts on operations. Still hired 1,500
examiners and associated support staff. We've had
full overtime all year long and that's why you see
the backlog down to 618, Peggy, I think was the
number I heard, and pendencies obviously moved in
the right direction. So, it really was a great
year and the operating reserve, this is the money
we carry forward from one year to the next. Back
in February, we estimated it'd be $121 million.
It's gone down to $105 million, which, again, is a
very healthy number and that's going to help us as
we move into fiscal year 2013 because we are going
to have a couple of dynamics. One you discussed
with Dana, but I'll go through in a little bit.

We'll have a six-month continuing
resolution. That means we will operate at fiscal
year 2012 levels, which is $2.706 billion. It's
about $250 million less than we requested of the
Congress this past February. So, that has got its
own challenges, but it's still a robust number
that if you recall fiscal year 2011, we were
operating at $2.1 billion budget. So, 2.7 is
still a nice sizeable increase from then. Having said that, we have also a lot more examiners onboard that we have to pay for and a lot more work that we have to get done, but we've planning for it, the CR is not a surprise to anyone. It's been around Washington for a while.

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

Again, we don't know what will happen. Congress still has time to act, but it'll be a furious and hectic three months trying to figure that out. I estimate there will be more activity after the election, with Congress and the administration trying to work that out.
But another dynamic for 2013 that is a challenge is our new fee-setting rule. Section 10 of AIA. The input from your fee-setting report will be very helpful. We also have a 60-day comment period going on right now from our Notice of Proposed Rulemaking that was published in early September, September 6. So, we'll be getting comments over the next 60 days including your comments from your fee report and then it's our job to respond to the comments and incorporate possible modifications to our fees.

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

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

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

And, finally, 2014, we submitted a budget to the Office of Management and Budget, like all federal agencies do the second Monday in September, which was September 10. Now is the time of year that we are working with OMB to
fine-tune that to be included as part of the
president's budget in February, when it's
released. And that period is very helpful for us
because over the new few months, we'll have a
better sense of when new fees will go into place
and what revenue we'll be expecting to collect in
2014, which to a certain extent, along with the
operating reserve, drives how much money we can
spend in 2014. So, we'll be providing PPAC a new
version of our 2014 budget in December.

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

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

MR. SCARDINO: Sure.

MR. BORSON: What would you suggest
would be a timeline for us to provide you with comments on the initial budget proposal that we saw?

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

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

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

So, we're happy to take comments now. Nothing will really change in the budget in terms of enhancements or new activities we want to do in 2014, but if there's anything in there about our basic that you have any questions on, we'd love to hear them at any point in time. But, again, we will give you something in December that will
highlight to you the changes between the version we've given you now and December so you'll know what to look for.

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

MR. SCARDINO: Sure.

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

MR. KISLIUK: Thank you, Ben. Great to be with you, good afternoon. I'm going to touch on two specific projects. One is an update on our Cooperative Patent Classification project that we're doing with the EPO. I think I gave you all a pretty robust briefing last time in June. Some of the slides are a repeat and I'll just give you an update on some statistics and some progress and then I'm going to give you a quick overview of the Global Dossier Project. While I'm not an expert,
our two experts happen to be overseas speaking on our international projects, so, I'm going to step in and try to fill the gap on that.

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

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

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

So, here's some updated numbers that we
thought were interesting to share and then I'm going to get to the timeline because next week we have a milestone event occurring on October 1.

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

The way this aspect of the project started was the actually drafted definitions and U.S. examiners, and we're passing them all around the examining corps, actually gave comments and edits to those during the process. We are now giving our comments back to the
EPO. So, only a limited number of the 624 have actually been finalized. We're going to continue doing those finalizations as we go.

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

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

Another interesting thing, and this is more of an element of the European or ECLA system
is that over 40 national offices are currently using ECLA, and they're going to be converting to CPC. So, in total now, including USPC, they're going to be over 40 national offices that will be using CPC in terms of classification search, which is over 20,000 patent examiners in the world, which is great.

Another interesting dynamic, and Robert's here, he's been part of the meetings with the CP and very closely working with us, is the training and it's an interesting kind of relationship because the EPO becomes kind of the teacher and we become the student and they are very anxious for us to get up to speed because the sooner we're up to speed, the less effort they have to do reclassifying our documents. So, we worked together on developing the training materials. So, they have helped develop the training materials and there's some basic training materials and then there's what we call field-specific training and that's basically looking at the main group levels and
actually talking and explaining them and we're putting together these video presentations where it's a discussion for about an hour or two about the technology. We're going to build a library of these to allow examiners to be able to view them and then reference them. And, so, it's a very interesting exercise.

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

The next slide, which I know is hard to see, but let me just point out where we are today and what is upcoming. So, we're right before the October 1 date. So, the October 1 date is an important one. That's when we're actually going to make public what we call the “launch version” of the CPC scheme, the definitions that have been finalized, as well as those related notes.
So, what's going to happen is we already posted -- we just did it this week. In fact, one of the notices went out today. We've made this preliminary version available to our USPTO examiners as well. So, all U.S. examiners now can see the preliminary scheme or we call it the launch scheme and the final definitions that are out there. The public will see this on October 1. We're going to make a joint announcement with the EPO. So, it goes live to the public. And we also make it available to the public in PDF, XML, and in text because a lot of the users, large users will want to get the format into their systems. So, the XML version allows them to do that. Then in January 2013 that system actually becomes searchable, meaning you can only see the scheme, but there are no documents yet in CPC. In January is when you can actually search CPC in both the European system and the U.S. system. So, those are the big milestones. So, next week is a big milestone and we're working actually this week to do some
finalizations to the notices and so forth. So, it's a big week.

Any specific questions on CPC?

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

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

MR. BORSON: Oh, I see.

MR. KISLIUK: -- in ECLA and will be convertible. So, all U.S. documents will be in CPC anyway, even all the back file.
MR. BORSON: And this includes both patent literature and NPL?

MR. KISLIUK: Not NPL.

MR. BORSON: Not NPL.

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

MR. BORSON: Right.

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

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

MR. KISLIUK: I understand. Okay.

Steve, did you have a comment?

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

MR. BORSON: Agreed.

MR. KISLIUK: Okay, thank you. The next
topic, last slide of CPC. So, here are just some next steps. So, we're going to, again, working with POPA on a lot of these issues in terms of implementation, finishing our review of the definitions. We also have a robust training schedule and then we have a transition plan. We're working with the union as well to make sure that we have a good, adequate training methodology and process to make sure our examiners can get up to speed on CPC as soon as possible.

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

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

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

So, let me go through a little bit of the high level. So, this was a U.S. proposal. We proposed it in November of last year and the concept was, again, to provide all stakeholders a
secure, one-stop dossier information,
particularly related to family applications. Not
surprisingly, the Japanese were the first to latch
on and agree and actually kind of build on the
concept that we did and then the remaining IP 5
offices joined in and WIPO, as well. I'll
explain to you a little bit about the WIPO
relationship, too. And what it does, like I
mentioned before, it really realigns to a great
extent and streamlines a number of the
international IT projects that we've already had
on the books. One of them in IP 5 was called One
Portal Dossier, which is very similar.
WIPO actually has a system; it's called
CASE, which is Centralized Access to Search and Examanination.
It's for their Vancouver group, which is the U.K.,
Australia, and Canada, and they actually share
application data between each other, but they do
it in a, I'm going to say, not so sophisticated IT
way, but they do share that information across
those three offices.
And then there's ePCT, which is really
equivalent to our USPTO PAIR system. It's a way for both the
public side and private side to access PCT
information. So, global dossier in a lot of ways
kind of aligns and puts all these things together
in hopefully what'll be a single system.

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

So, conceptually what it does is it
looks at filing and processing of applications
internationally not in terms of automating the
current process, but actually looking at what are
the processes and work streams, better business
process look, not necessarily automating paper
processes. So, one of the things that it does,
it's going to allow and facilitate the
pre-planning of cross-filed applications. So, if
you know you're going to cross-file applications
upfront, it will help facilitate that. It also will have
particular edits and prompts. For example, it'll prevent you
or give you a tickler for not missing a priority
date, things like that, and it would give you a
one portal management of these cross-filed
applications.

In terms of reducing duplication, at
least in a cross-filed application situation,
eliminates the need for filing duplicate priority
documents, duplicate prior art, those kinds of
things, which, again, is both a reduction in
duplication and increase in efficiency. And,
again, I mentioned a little bit the prevention of
loss of rights. It can trigger and give
you a prompt about timely filing via cross-filing if you
know upfront you intend to cross-file. So, it's going to need
some upfront information, but I think that for the large
extent, it's things that users are looking for.

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

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

Any questions that I can answer on global dossier?

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

MR. KISLIUK: Yes, I wish I could answer
it. I don't know the technical aspects right now, but I'll --

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

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

MR. BORSON: Oh, okay.

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

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

(Laughter)

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

MR. BORSON: Well, I would just offer
the suggestion that free is better than cost.
(Laughter) No, I'm serious. If there's some way
to figure out a way to make it available to users
in a very, cost-effective, simple way, that would
be very nice. Obviously, downloadable documents,
all the copyright issues aside, although, you may
find yourself in the process of trying to decide
about addressing this copyright issue from
non-patent literature, for example. That said, it
would be nice from the user community to have a
very simple, easy tool. PAIR is a very simple,
easy tool, if you spell it correctly anyway, then
it works fine.

Any other comments from the committee?
(No response) Now, this does not mean that each
one of us has a dossier on the global network. Is
that correct?

MR. PEARSON: No.

MR. KISLIUK: Not yet.

MR. BORSON: Not yet. (Laughter) Thank
you for laughing.

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

(No response)

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

MR. BUDENS: Okay, I'll pile on top of Bruce's comments and stuff just on the CPC issue. It kind of goes to the question you were asking about backwards compatibility because I think that we're going to have to figure out how you want to define that. It's not going to be a system that's backward compatible in the sense that the rules for placing documents in CPC are going to be different than USPC. They're going to follow IPC
rules of inventive concept and not necessarily
looking at the most comprehensive claim as we do
in the USPC.

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

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

So, right now, I have about 2:20. He's
scheduled to arrive in about 10 minute's time.
So, how about we collect back at 2:30?

MR. BORSON: Okay, thank you, Robert.

(Recess)

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

And, so, Director Kappos, if you please.

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

This is my first time, I think, closing out one of these meetings and I have the difficult task having been preceded by all of my colleagues here who undoubtedly sort of helped frame everything up well. But the main point that I can
make in trying to wrap up is to say that the
collaboration with the PPAC and our agency I think
is running at, in my knowledge, an all-time high.
My view, the value of having this advisory
committee is guiding the agency more and more in
real time, given that we're more and more expected
to operate in real time and you guys are really
doing that in an excellent way.

This is a world in which you can't get
enough input, can't get enough thoughtful input
from real experts, but, at the same time, the
governments got a lot of structure about how
input comes in. Having the PPAC as an integral
member of our team, which admittedly has taken
some time and doing and effort on all of our
parts, perhaps and frustration from time to time,
to get to is really, really important. I think
it's not only fair, but important to say that we
wouldn't be making the progress that I hope and
think we're making were it not for the kind of
teaming and really solid advice that we've gotten
from the PPAC.
Now, you've seen a lot of changes that we've made based directly, in fact taken from PPAC input, the draft fee proposal that came out recently as just the most recent example among many, and, to me, it goes to the huge value that we get from the advice that the PPAC is giving us. So, that's sort of my main comment that I think we're getting tremendous value. I see even more opportunity for the future, particularly as we work through I would say moving from a mode in which we were doing basically everything as quick as we could, given where we were the last few years, to a mode that's more nuanced and more calibrated where the PPAC can have a tremendously positive role to play in further guiding us. I would scope up and also say that we're sort of always in an important time in our country intellectual property wise, but we're in an even more important time given the high value that intellectual property has risen to in our economy and whether it's billion-dollar judgments in lawsuits or market caps of companies moving or
purchases, acquisitions of portfolios for very, very large amounts of money or companies going -- IPO were having exit events based on their intellectual property positions. Many of those kinds of things that don't make news headlines or whether it's the small entrant that's able to put a product on the market and actually get in business and create opportunity because of a patent position for purposes of the PPAC.

It certainly has come to be clear that patents are where the action is in innovation. They're the only thing that protects innovation that gives balance to it and enables it to move into the marketplace more and more and that has caused the patent system to have an increasingly prominent, but also an increasingly controversial role, and we see that play out at times in news reports and in the media taking positions that to those of us in this room and particularly to those of you on the PPAC, our advisory committee must seem rather odd and in some cases I would say rather uninformed. And when we have that kind of
dynamic playing out, one, the importance, but
also, two, the controversy, and three the
misinformation, we desperately need experts who
actually know the facts and know the policy
implications and are out there helping us to do
the right thing and guiding us to do the right
thing. And, so, the role of the PPAC in that
regard, to me, has risen to a new level of
importance and controversy involved in IP.

Then the one other thing I wanted to say
about that, add to all of that the new financial
oversight responsibility -- I'll call it that --
that the PPAC has through the AIA, statutorily
required to hold hearings and then comment on
fee-setting and this has become quite an important
body. And we're in the middle of fee-setting
right now, but I hope this isn't the only time we
do fee-setting. I hope we'll be able to do more
adjustments that'll be more calibrated, more
careful, and continue to keep our fee set moving
in a direction that's good policy and really
informed policy. To do that, the PPAC is going to
continue to play this enormous role that I think probably wasn't understood or anticipated when the group was first created, but it certainly has come to be that.

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

But no matter what the annual report looks like, I think there's actually tremendous value. And, so, in this unusual opportunity for me to close a meeting, that's the main message that I wanted to put out there. Thanks for being
part of our team in a way, but also thanks for objective, neutral, balanced advisors who are in there to tell us when we're doing something that might not make sense or that needs to be considered further, and I know you'll keep doing that.

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

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

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

So, look, with that, I'm being pretty today, Ben, but I'll finish there and again say we have lots going on as you've seen in the last day. We're going to need continued really solid, balanced advice. I think it's quite clear that we take advice well around here and we move quickly to get things right and we've seen in many, many instances the fee proposal being one, the oath and declaration being another, and many others, that it's only when you get this really great flow going between expert industry advisors and an agency that's aspiring to be a 21st Century agency that you can really get good policy coming out.
There's no way we can do it alone inside the agency. We just do not have the broad industry viewpoint, and, so, it makes the PPAC really, really critical for agency success.

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

MR. BORSON: Well, I'd just like to thank you very much, Dave. I wanted to sort of mirror what you said, but about all of a sudden the committee over these last years and currently have enjoyed tremendously working with the agency and with you and with all of your great colleagues. It has been a very valuable and very bipartisan, very conversational kind of interaction that we've had which has been very valuable for all of us. Certainly is an educational opportunity. It has given the members an opportunity to really see how the agency works and how the people work and to see the extremely high caliber of individuals both from their perspectives on problems identifying and solving problems, but also on their technical expertise in
the various areas and would like to thank Peggy again for all of your help and congratulations. And, Andy, thank you and, Bruce, thank you very much and, Andy, this has been a very good experience for me and I look forward to working with the committee in other ways or with the office in other ways as you deem fit and maybe the last comment would be for you personally, Dave, it's been a great pleasure to work with somebody with as much dedication and vigor and intelligence and perspective as you. So, I just wanted to thank you, all, very much. And if there are no other comments from the committee, we can bring this meeting to a close, but, please, if there's anyone else that has anything to say.

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

(Applause)

MR. BORSON: All right, with that, we'll bring this meeting of the Patent Public Advisory Committee to a close. Thank you very much for
your attendance and for those of you that are on
the Web, thank you very much for listening in and
watching in, and if anyone has any comments,
please feel free to make contact with uspto.gov.
You can go to the PPAC Web site and file comments.
Thank you very much.

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

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CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

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

(Signature and Seal on File)

Notary Public, in and for the Commonwealth of
Virginia

My Commission Expires: July 31, 2015

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