

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE

QUARTERLY MEETING

Alexandria, Virginia

Thursday, March 14, 2013

1 PARTICIPANTS:
2 PPAC Members:
3 LOUIS J. FOREMAN
4 VALERIE McDEVITT
5 WAYNE SOBON
6 A. CRISTAL SHEPPARD
7 PETER G. THURLOW
8 PAUL JACOBS
9 CLINTON H. HALLMAN, JR.
10 MARYLEE JENKINS
11 USPTO:
12 PEGGY FOCARINO
13 ANDREW FAILE
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15 JAMES SMITH
16 TERESA STANEK-REA
17 ANTHONY P. SCARDINO
18 VALENCIA WALLACE-MARTIN
19 JANET GONGOLA
20 GEORGE ELLIOT
21 MARTY RATER
22 MICHAEL TIERNEY

1 PARTICIPANTS (CONT'D):

2 Union Members:

3 ROBERT D. BUDENS

4 CATHERINE FAINT

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

2 (12:00 p.m.)

3 MR. FOREMAN: Good morning, everyone.

4 My name is Louis Foreman, and I'd like to welcome
5 you this morning to the first Patent Public
6 Advisory Committee for 2013. Just a reminder,
7 this is a public session, so I'd like to welcome
8 all those from the public who are joining us here
9 in Alexandria, as well as those who have joined us
10 on the phone and online.

11 PPAC was established in 1999, and it's
12 comprised of nine members from the public that
13 come from various industries and diverse
14 backgrounds. But today, when we come here to
15 Alexandria, we represent the United States Patent
16 and Trademark Office and the Intellectual Property
17 Community.

18 So I'd like to start off this morning by
19 making brief introductions. If we could start to
20 my left with the Commissioner of Patents, Peggy
21 Focarino, and --

22 MR. SOBAN: Wayne Soban, PPAC.

1 MR. THURLOW: Peter Thurlow, PPAC.

2 MS. SHEPPARD: Christal Sheppard, PPAC.

3 MR. BUDENS: Robert Budens, PPAC.

4 MS. FAINT: Catherine Faint, PPAC.

5 MS. MARTIN-WALLACE: Valencia

6 Martin-Wallace, Assistant Deputy Commissioner of
7 Patents.

8 MR. FAILE: Andrew Faile, USPTO.

9 MS. JENKINS: Marylee Jenkins, new PPAC.

10 MS. MCDEVITT: Valerie McDevitt, PPAC.

11 MR. HALLMAN: Clinton Hallman, PPAC.

12 MR. HIRSHFELD: Drew Hirshfeld, PTO.

13 MR. FOREMAN: And I believe we have two
14 members of PPAC on the phone, do we have Esther
15 Kepplinger or Paul Jacobs on the phone?
16 Hopefully, they're listening in. Unfortunately,
17 they're both traveling internationally so couldn't
18 be with us today.

19 So we'd like to go ahead and get
20 started, we're very fortunate this morning to be
21 able to start our discussion with the Acting Under
22 Secretary for Patents -- of the USPTO, my

1 apologies, Terry Stanek-Rea. Good morning.

2 MS. STANEK-RAE: Good morning, Louis, it
3 is always a pleasure to be here. This is a little
4 bit early in the morning to me, to those of you
5 who know me, I am not a morning person, but I'm
6 feeling great today, and this is a great way to
7 start my day.

8 So, here in Alexandria, Virginia, we
9 already have enthusiastic, dynamic people who are
10 more awake than I am. And I have to tell you,
11 it's always a pleasure to be here, because the
12 PPAC members do as much or more work than our
13 employees here at the U.S. Patent and Trademark
14 Office. And most of you have very intense day
15 jobs, so we appreciate your efforts even more than
16 you would imagine, so thank you so very, very much
17 for being here today.

18 I wanted to especially welcome the
19 newest member of PPAC, she's actually a good
20 friend of mine, so I'm a little bit biased,
21 Marylee Jenkins. So I'm going to give you a
22 little bit of her bio so those of you, especially

1 on the web cast, can get to know the
2 qualifications of our newest member and why she
3 can contribute along with all of our current
4 members at this time.

5 So she leads the IP group in the New
6 York office of Arent Fox and her practice focuses
7 on counseling and litigation for computer and
8 internet matters, including e-commerce, licensing
9 and code branding, advertising, domain name
10 disputes, portfolio management, patent
11 applications enforcement, as well as bankruptcy
12 type issues.

13 When I think of Marylee, I think of her
14 expertise in hardware and the software industries,
15 as well as electrical and electromechanical
16 engineering-type systems. She actually is very
17 well known in our profession, she's a former
18 chairperson of the American Bar Association,
19 intellectual Property Law section, and she was a
20 wonderful chair of that section. She was actually
21 a former president also of the New York
22 Intellectual Property Law Association, and they

1 wouldn't let her go.

2 So she currently serves on the American
3 Bar Association's standing committee on technology
4 and information systems, she has a Bachelor's
5 degree in mechanical engineering from Columbia, a
6 Bachelor's degree in physics from the Center
7 College of Kentucky, and she has a law degree from
8 New York Law School.

9 Marylee, welcome, it is a pleasure to
10 have you join us here today and to be a member of
11 PPAC.

12 MS. JENKINS: Thank you so much. I'll
13 learn to use the microphone very quickly.

14 MS. STANEK-RAE: Great. So, just to
15 update you, we met last December, and guess what,
16 we've been really busy, and a lot of the
17 operational issues have been taking up a great
18 deal of our time, and you're going to hear a lot
19 about that today. But the operational issues
20 continue to be working on our backlog of pending
21 patent applications, we're developing strategies
22 for our RCE requests for continuing examination

1 outreach efforts, and we're also implementing the
2 final provisions of the America Invents Act.

3 However, I have to tell you, even though
4 we're ready to implement the final provisions, our
5 job has not ended there. We still have a few
6 studies that are outgoing that we still owe to
7 Congress, so our job is not done, but the big
8 heavy lift is indeed, will be done shortly, and I
9 think all of us at the PTO, as well as PPAC, can
10 breathe a sigh of relief. So we've made really
11 steady progress on reducing the backlog, we pretty
12 much got down below 600,000.

13 But in view of the recent events, the
14 March 16th converting to a first-inventor-to-file
15 system, and March 19th, our Section 10 Fee Setting
16 coming into effect. Guess what, to those of you
17 out there on the web cast, your filing with us
18 more than ever before, and we appreciate your
19 business. So we're in the midst of a little
20 bubble right now, we think we're going to go
21 slightly above 600,000, and then after these two
22 AIA events and we're going to go below 600,000

1 consistently here at the USPTO. And the next
2 threshold we'll look forward to will probably be
3 550,000.

4 So based on the events that the Patent
5 and Trademark Office have already put into place,
6 and especially ex Director Kappos' vision, we are
7 on a nice trajectory down with the backlog, and I
8 think everything is going well there. Our unions
9 have worked with us and it's been a very good
10 thing, our examiners have done that little bit
11 extra effort, and that's what it takes to bring
12 the backlog down.

13 Now, we also have other forms of
14 backlogs, not just pending patent applications,
15 but the RCE backlog that I just very briefly
16 alluded to. As of yesterday, March 13th, I
17 understand that our RCE application backlog is
18 112,128. Those are RCEs waiting for their first
19 office action, and we think that backlog is much
20 too high. So what we did with our able patents
21 business unit, led by Peggy Focarino, Drew
22 Hirshfeld and others, is we held two, or actually

1 four very constructive round tables from February
2 20th to March 8th.

3 We're going to hold one here in
4 Alexandria, we had inclement weather last week
5 when the PTO was closed, the entire U.S.
6 Government, so what we did is we delayed that
7 round table until April 3rd. Our outreach to
8 Europe, to the business community, to our users,
9 and your comments are very, very helpful in having
10 us better understand why we have so many RCEs, and
11 for us to come up with the most targeted, precise
12 ways to decrease that backlog and to get it down
13 to a more reasonable number.

14 So I want to thank all of you who
15 participated in our programs, in our outreach
16 efforts, and continue to provide your ongoing
17 comments, because we really do listen to them, we
18 listen to you to try and come up with the best
19 systems possible to deal with our situation.
20 Actually, a little bit later on, Andy Faile from
21 the USPTO is going to be providing you an update,
22 specifics on that RCE outreach effort.

1 Before we get to that, I'll give you
2 some highlights of today, our Assistant Deputy
3 Commissioner for Patent Operations, Valencia
4 Martin-Wallace, will provide a more detailed
5 discussion of our patent operations, overall
6 statistics, initiatives, and results as we close
7 out the first half of our fiscal year 2013. After
8 that, you're going to hear some updates on AIA
9 implementation from Janet Gongola, she is a
10 never-ending energized battery bunny-type person,
11 I don't think I've seen her slow down. I am sure
12 she is going to find a great deal to do, even
13 after we finish AIA implementation, because there
14 is never, I don't think you're going to have a
15 slow moment here at the PTO, Janet.

16 All right. So, at any rate, she's going
17 to let you know what we're going so far, but it's
18 not like her job or our job will have ended there.
19 Our legislative and outreach efforts, Dana
20 Colarulli, is going to give you a very nice
21 presentation. Also, Drew Hirshfeld is going to
22 talk about our recently completed software round

1 tables in Silicon Valley and New York, and he's
2 also going to provide a discussion of the quality
3 composite matrix, which goes into a lot of the
4 quality initiatives we have here at the PTO.

5 PPAC was actually initially very
6 involved in developing that quality matrix, so we
7 do look to this August body of individuals to make
8 sure we are on target with what we're developing.
9 So, to those of you new members or newer members
10 that want a better description of what we're doing
11 with that quality matrix, I encourage especially
12 the PPAC members to make sure you actually know
13 what we're doing in case we can modify or tweak
14 what we're doing in a way that's more effective,
15 because we want to capture as much as possible
16 during patent prosecution to keep our quality as
17 high as possible.

18 You're also going to hear from Peter
19 Thurlow, who is going to give us a great
20 discussion on patent quality; Chief Judge Smith,
21 who is going to provide an update on the Patent
22 Trial and Appeal Board, what they're doing, their

1 initiatives, and how the trial procedures are
2 going; you're going to get an update on finances
3 from our CFO, Tony Scardino; and, finally, you're
4 going to hear closing remarks from our august
5 Commissioner of Patents, Peggy Focarino.

6 So you have a big day ahead, we look
7 forward to engagement from our PPAC members, ask
8 the difficult questions, make sure everyone's
9 engaged, make sure we're on track. To those of
10 you who are on the web cast, I hope you do pay
11 attention, because the content and the volume of
12 information you're going to get is going to be
13 very helpful to all of you in your practices in
14 your day-to-day jobs.

15 And, with that, I will turn to my very
16 tested and able colleague, Valencia
17 Martin-Wallace, the Assistant Deputy Commissioner
18 for Patent Operations for an update on patent
19 operations. Valencia?

20 MS. MARTIN-WALLACE: Thank you, Terry.
21 And thank you for the PPAC members for inviting me
22 in for this presentation. So we'll go to the next

1 slide. So the first slide shows the total filings
2 from fiscal year 2002 through present day, March
3 of this fiscal year. And in 2013, you can see our
4 targets based on the fiscal year '14 President's
5 budget model in the hash blue bar, that represents
6 our projected RCE filings to be about 150,000
7 applications, which is a 0.8 percent reduction
8 from fiscal year '12. And the red checkered bar
9 represents projected serialized filings at an
10 increase of 7.2 percent over the fiscal year '12.

11 To the right of that bar shows currently
12 that we are running slightly higher than those
13 projections. As of March 2nd, our total filings
14 are 227,828 applications, and we're also, as Terry
15 already mentioned, projected a bubble, and they're
16 seeing that bubble in the applications due to the
17 impending implementation of first-inventor-to-file
18 March 16th, as well as fee changes March 19th.

19 The graph on slide three year represents
20 the unexamined patent applications backlog. This
21 is our 2013 end-of-year goal is to reduce the
22 backlog to 567,000 applications. At the end of

1 the first quarter of this fiscal year, the backlog
2 was 593,000. As of March 8th, the backlog was
3 596,295. Now, this is a snapshot from that March
4 8th date, so this is right before our mid-year
5 where we will have a lot of applications that will
6 be examined.

7 So we're expecting to see a lot of
8 fluctuation, as Terry mentioned, based on the
9 mid-year push, as well as fee changes and the
10 first inventory to file implementation. Now, in
11 comparison, the backlog at the end of fiscal year
12 '12 was 608,000, and the backlog at the end of
13 2011 fiscal year is 705,000. Now, this slide
14 represents an excess versus optimal unexamined
15 application inventory. The excess is represented
16 in red and optimal is represented in blue.

17 And, as I mentioned in a previous slide,
18 the backlog is currently about 596,295
19 applications, which equates to that current
20 excess, the red, being 228,367 unexamined
21 applications. As we look at that optimal backlog
22 of, in blue, of 367,000 applications in order to

1 sustain the ten-month dependency. Now, our goal
2 is to merge those two lines together, and, as you
3 can see, we have had some improvement on that.

4 So this next graph is the RCE backlog,
5 and it's charted from 2010 to 2013, present. As
6 of March 14th, as Terry mentioned, the backlog
7 stands at 112,128 applications in comparison to
8 2012, where it was 95,200. And this is definitely
9 an area of focus for improvement, we've held a
10 series, as you know, a series of outreach
11 sessions, as Terry mentioned, and that's helping
12 us to identify the areas of improvement. And I'd
13 like to thank the PPAC members for supporting that
14 effort, as well as participating in the round
15 tables, as well. And Andy Faile will be speaking
16 with you later on specifics of the RCE
17 initiatives.

18 Now, this slide represents the first
19 action pendency, as seen in green on the chart,
20 and the total pendency, as seen in blue, so this
21 represents looking back about 10 to 12 months
22 worked on. So the fiscal year 2013 target for

1 first action pendency is 18 months on average, and
2 as of the end of February, we are at 19.2 months.
3 And the fiscal year target for total pendency is
4 30.1 months on average, and at the end of
5 February, we're at 31.2 months, so we're
6 absolutely going in the right direction on these
7 pendencies.

8 The next slide is the forward-looking
9 first action pendency, and this represents an
10 estimate of the average number of months it would
11 take to complete a first office action based on
12 our current and projected workload, and the
13 resource levels for an application at a given
14 date, and this is based on the President's budget
15 model. As of the end of February, the
16 forward-looking first action pendency is 15.4
17 months.

18 And this slide represents a percentage
19 of serial disposal that have had at least one
20 interview. By the end of February, we're at a
21 little over 30 percent of these applications
22 having an interview. In comparison, by the end of

1 last fiscal year, we were at 25 percent having
2 interview, so we are still seeing a positive
3 increase in the number of interviews per
4 application.

5 Slide nine is the 12-month rolling
6 average allowance rate, which is tracked biweekly,
7 and at the end of February, we were running at 52
8 percent allowance, which is consistent with the
9 end of fiscal year '12, which was a little over 51
10 percent allowance. Now, this is the 12-month
11 rolling actions per disposal, and as of February
12 23rd, the actions per disposal are at 2.52, which
13 has remained, as you can see, pretty consistent
14 since mid-year of last year.

15 And this next slide is our examiner
16 attrition rates. The blue line represents the
17 overall attrition rate, which at the end of
18 February was 3.79 percent, the red line represents
19 the attrition rate for employees less the
20 transfers and retirees. And at the end of
21 February, we were at 2.94 percent, which is a
22 historic low rate for us.

1 Next slide is our Track1 statistics, and
2 through March 8th, we've received 2,599 petitions
3 for fiscal year 2013, which is tracking to meet
4 our fiscal year '13 goal of 7,500 applications in
5 this process. Percentage of petitions from small
6 entities was 44 percent, the average days to
7 petition decisions 48.7, and the percentage of
8 decided petitions granted is 94 percent. There
9 have been 5,772 first actions completed, and 1,957
10 allowances in the program so far, and we're
11 averaging about sixth months from petition grant
12 to final disposition, which is well below our
13 one-year goal, and you can also find the Track1
14 statistics on our dashboard.

15 And my final slide is the quality
16 composite that we've compiled on a quarterly
17 basis. Quality composite currently is 68.6, which
18 is well within our fiscal year range. The final
19 dispositions in process compliance rate and the
20 quality index report also are within our 2013
21 target ranges, and you will receive a more
22 in-depth discussion with Marty Rater later on

1 today. And that's my last slide.

2 MR. FOREMAN: Thank you. Do we have any
3 questions from members of PPAC? Robert?

4 MR. BUDENS: Valencia, going back to
5 slide four on the excess and optimal; do you have
6 this information at a tech center level? In other
7 words, one of the things we're starting to see is
8 pocketing of areas with kind of short dockets, and
9 it's one thing to say, you know, 350,000 might be
10 an optimal for the agency, but if most of those
11 applications are in the electrical area, for
12 example, what's happening in mechanical and
13 chemical areas and stuff like that?

14 So, from a staffing point, I was
15 wondering if we have that data at the tech center
16 levels or even lower?

17 MS. MARTIN-WALLACE: Actually, yes, we
18 do, Robert, we have the data, and we are currently
19 in the process TC to TC, the directors are looking
20 and analyzing that data for areas that are true
21 short docket type of area, and looking at ways of
22 making sure that there's remaining balance.

1 MR. BUDENS: Could we get that data?

2 MS. MARTIN-WALLACE: We're in the
3 process of working it right now, but, yes, I
4 believe one of the next meetings, POPA usually has
5 a meeting with the assistant deputy commissioners,
6 and that's on our agenda to discuss with you, I
7 think it's coming in the next couple of weeks.

8 MR. BUDENS: Thank you.

9 MS. MARTIN-WALLACE: Sure.

10 MS. SHEPPARD: One of the things I'm
11 interested in is the interviews. And it's
12 encouraging to see that this program is going
13 forward, and you are getting, what, 32 percent,
14 there's actually a conversation between both the
15 patentee and the examiner. I was wondering if
16 you've broken down the numbers to see whether or
17 not people get to final disposition faster if they
18 have an interview. What's the amount that you end
19 up with in allowances or rejections, if that
20 changes the dynamic?

21 Because if it does, perhaps you can get
22 this number from 32 to maybe 90 percent or higher.

1 My understanding is that's in the fast track,
2 what's it called, the first action in Track1, that
3 perhaps that's one of the reasons why it goes so
4 quickly. You're seeing six months because
5 you're getting the patentee and the examiner on
6 the same page before they even start with the
7 search; is that correct, with Track1?

8 MS. MARTIN-WALLACE: I don't have, I
9 apologize, I don't have those particular data
10 numbers with me. But some of the things that we
11 have done, I would tend to agree with you, that we
12 are seeing an improvement in getting cases to
13 disposal quicker through the interviews, as well
14 as some compact prosecution initiatives that we've
15 put in place. And those interviews, encouraging
16 examiners to initiate interviews, as well as
17 interviews from attorneys have made a significant
18 difference for us.

19 But, I apologize, I don't have that
20 data.

21 MS. SHEPPARD: It would be nice to have
22 those numbers, you know, sitting next to their

1 union representatives, because I think that if
2 people would see that those numbers make a
3 difference, there's no impediment to the examiners
4 having these conversations early, then it helps
5 everybody.

6 MR. FAILE: Thanks, Christal. In the
7 past, we have taken a look at the interviews and
8 the final disposition being allowance, and we do
9 see, we have seen in the past a relationship there
10 where an interview is likely to increase the
11 chances of getting allowance. But it would be a
12 good thing to go back and kind of refresh that
13 data and take another look so with can have
14 something, potentially, for the next PPAC and take
15 a look at that from that angle and maybe even
16 build a slide from that.

17 MR. SOBAN: I think, to that point,
18 looking at not just allowances, but I think
19 overall, if you have examinations, do you get a
20 quicker full disposition, does it reduce the need
21 to go to appeals. Like, looking at all sort of
22 life events that might happen and whether those

1 things are shortened and/or eliminated based on
2 that would be, I think, very, very helpful.

3 Overall, it's in the benefit of the
4 entire public, the office and the applicants to --
5 I'm a huge fan, as you know, Andy, and I think
6 anything that shows that data is really
7 efficacious for these overall goals would be
8 great.

9 MR. FAILE: Will do.

10 MS. JENKINS: Do you keep track, too, of
11 if I call and have an interview or if the examiner
12 reaches out, do you keep track of that, or is that
13 too minute?

14 MS. MARTIN-WALLACE: No, we do have
15 separate codes for that type of data, so we are
16 keeping track of --

17 MS. JENKINS: Because I think it would
18 be really helpful for the community itself --
19 sorry -- I think it would be really helpful for
20 the community itself to see. I mean, if you reach
21 out, you know, you will probably get a better
22 response and quicker, and I know it's something

1 the trademark side does very, very well, so I
2 encourage that data to be shown, as well.

3 MS. MARTIN-WALLACE: Thank you.

4 MR. THURLOW: Just on the Track1 slide
5 that you had, just to focus on what I look are
6 some positive things. And I guess some folks are
7 on Track1 because, in discussions we've had
8 between the December meeting and over the years,
9 any time we get a chance to tout Track1, it's
10 benefits, the numbers here are pretty, they kind
11 of tell a story itself. The percentage of
12 petitions that are granted are 94 percent, I'd be
13 curious why 6 percent are denied, but we can save
14 that.

15 But what's nice to see is that
16 percentage from small entities, hopefully
17 independent inventors, small companies, they need
18 the patent to get the funding, and so on, that 44
19 percent. I look at that as a high member, and
20 that's great. And then the average days to the
21 petition decision, and then just the time it takes
22 to actually get final decision positions, really

1 benefit.

2 The more and more people I work with on
3 this, the more and more clients, I have never
4 heard a bad thing about it, so whatever the PTO
5 can do to continue to promote this and what PPAC
6 can do to help do in that, I would suggest we do.

7 The question I have is actually dealing
8 with the spike that we're seeing now. I know the
9 PTO analyzes a lot of different data, can we tell
10 from this spike if they're mainly provisionals,
11 non provisionals, or where they're at? And that
12 has an issue, of course, an effect on the funding
13 between the two.

14 MS. FOCARINO: Yeah, I can answer that,
15 Peter. There's actually a spike in both
16 categories, in both serialized filings, as well as
17 provisional applications.

18 MR. FOREMAN: Any last questions for
19 Valencia before we move on?

20 MS. SHEPPARD: Just another question
21 about the Track1. As it becomes more popular, is
22 there a point where, what's the point where it's

1 the breaking point where you're going to have too
2 many applications and you still can't get them
3 through as quickly?

4 MS. MARTIN-WALLACE: Well, we haven't
5 gotten to that point yet, but we are looking at
6 10,000 per fiscal year as our number, as our
7 optimal number.

8 MS. SHEPPARD: And what's the nonoptimal
9 number?

10 MS. MARTIN-WALLACE: Anything over 10.

11 MS. SHEPPARD: Anything over 10, okay.
12 Right, right now, you're at?

13 MS. MARTIN-WALLACE: We're at 70 -- our
14 goal is 7,500, but we've had, so far this year,
15 2,599.

16 MS. SHEPPARD: So you're nowhere near
17 that yet?

18 MS. MARTIN-WALLACE: Yes, we're -- yes.

19 MS. SHEPPARD: Right.

20 MS. FOCARINO: I should add to that, so
21 10,000 is a number that was arrived at based on
22 our staffing level and our about to deliver on the

1 commitment for 12-month disposition, right, from
2 petition grants. So that's where that number came
3 from. We would love to see 10,000. Last year, we
4 got around 5,000, so we're really trying to market
5 the program by showing the difference in time to
6 first action on the merits and final disposition
7 on our website, on our dashboard. And also the
8 fee will be lowered here next week, so we'll see
9 if that provides an additional incentive for
10 people to enter into the program.

11 MS. SHEPPARD: Right. You want it to be
12 popular, but not too popular.

13 MS. FOCARINO: Right. And as pendency
14 goes down, obviously, the demand for this may also
15 go down, right?

16 MR. THURLOW: Just one last comment on
17 Track1, and to be fair, there's a lot of positive
18 things that are going on in the patent office
19 today, we're going to focus on them, and I'm going
20 to praise them as they happen. One of my concerns
21 from my practice that I'm seeing with Track1, I've
22 discussed this with many people in the patent

1 office, and it's hopefully something that we can
2 track going forward is the use of Track1 one year
3 after an RCE has been filed.

4 There's a number of situations where you
5 have to wait two or three years after the RCE is
6 filed to get it considered. We're all aware of
7 the RCE concerns, we're going to be addressing
8 them today. But the use of Track1 I don't think
9 many people first know that you can use it, but I
10 don't think that was the initial purpose of
11 putting Track1. I think most people associated
12 Track1 with a new application getting an expedited
13 review and examination getting a patent.

14 And not, I don't think the patent
15 community really expected Track1 to be used in the
16 RCE area, so if we can track that and just watch
17 that, I would recommend that.

18 MR. FOREMAN: Thank you, Valencia. So,
19 Acting Director Rea refers to her as the Energizer
20 Bunny, but for the purposes of this meeting today,
21 she's just Janet Gongola. So I'd like to welcome
22 Janet to update us on AIA, and at a fitting time.

1 MS. GONGOLA: Good morning, everyone.

2 It is always my pleasure to come to talk with
3 PPAC, and I want to thank Acting Director Rea for
4 her energetic introduction of me.

5 So let me start by kind of reviewing
6 where we've been in our AIA enactment time line.
7 This slide features for you the 21 provisions that
8 the patent office was required to implement
9 beginning on September 16, 2011, the date that the
10 AIA became law through March of this year, the
11 18-month time point.

12 So the boxes designated in green show
13 the provisions that we've already enacted, 16 in
14 total, and the box in blue shows the provisions
15 that are imminently about to go into effect either
16 this Saturday, March 16th, with the
17 first-inventor-to-file provision, or next Tuesday,
18 March 19th, with the microentity discount and new
19 patent fee schedule.

20 So what I'd like to do today is first
21 talk about those provisions in blue that are about
22 to go into effect, and then look backwards in time

1 and give you some updates on how we're doing in
2 terms of filings for provisions and new procedures
3 that we already have available to the public.

4 So our first-inventor-to-file provision
5 goes into effect March 16th, we issued final rules
6 and final guidance implementing that provision on
7 Valentine's Day. We are presently in the process
8 of training our 8,000 examiners on the
9 first-inventor-to-file provision. And I want to
10 spend some time explaining how we are training
11 those examiners so you all know what to expect
12 from them and at what points in time.

13 We have staged our training into three
14 different phases, it will occur in March, and that
15 training is ongoing, we'll have a second wave of
16 training in July, and then a final wave kind of
17 goes in between March and July to handle
18 applications that come up for examination. And
19 I'll tell you about each. The reason we've chosen
20 a staged training plan is twofold. First of all,
21 examiners are not going to have AIA cases on their
22 dockets for examination for some months.

1 The average examiner probably won't have
2 a case for examination until the early fall, so we
3 don't want to train too soon, lest the examiners
4 forget the information they've learned. Also, by
5 doing this staged training, we will have the
6 chance to reinforce the different provisions of
7 law, the different pieces of information they need
8 to know in a repetitive fashion so that the
9 information can be solidified in their minds.

10 Now, beginning with our March training,
11 what we're presently spending time doing is
12 familiarizing examiners with the new
13 first-inventor-to-file framework. And I see some
14 of our have our cards, the teaching tools that we
15 are using to train our examiners, so we are
16 distributing them widely across the agency, and
17 we'll be doing the same for the public, which I'll
18 talk about that momentarily.

19 A second part of our March training is
20 to help examiners understand if they have an AIA
21 application on their dockets or if they have a pre
22 AIA application so they will know which regime to

1 apply to the applications. We're spending a good
2 bit of time on this because it's important to make
3 the distinction for examiners, given that pre AIA
4 law is much different than AIA law. So we do not
5 want examiners to be confused, we want to
6 emphasize the points of difference in their
7 examination to them.

8 We are conducting this March training
9 through the use of about 30 one-hour training
10 sessions, and as of this morning, we've had about
11 3,000 examiners go through that training session.
12 In fact, one is ongoing in the other side of the
13 Madison Auditorium as we speak. Besides the live
14 training, we prefaced it with an introductory
15 video to help the examiners start to get
16 acquainted so they were better equipped to sit
17 through the live training and gather more from it.

18 We will follow up with the live training
19 through a second video that's going to hammer home
20 a variety of different practical examples that
21 will have examiners applying the framework that
22 they learned at the live training to these

1 examples to make sure they're understanding the
2 concepts.

3 Then when we turn to our July training,
4 what we plan to do there is dig to the next level,
5 fill gaps in the training. For example, we
6 haven't talked too much to date with our examiners
7 about the rules, we've stuck so far to the
8 statutory framework. In July, we'll get more into
9 our rules; filing certified copies of foreign
10 priority documents, how to handle affidavits and
11 declarations, raising exceptions to prior art, how
12 examiners themselves can determine which version
13 of the law AIA or pre AIA will apply.

14 And we're allowing the examiners to help
15 us build this July training, as well, because we
16 are collecting feedback from each and every
17 examiner which attends the live training so that
18 we can hear from them what information they feel
19 like they need to hear.

20 And then, finally, I'm calling it
21 just-in-time training for those cases that require
22 examination under the AIA framework between March

1 and July. For example, prioritized cases that
2 we've talked about, design applications. We will
3 be offering what we call just-in-time training to
4 those examiners, either in small groups or
5 one-on-one to make sure they're equipped to handle
6 the applications and that nothing is being delayed
7 in examination due to the need to familiarize
8 examiners with the AIA framework.

9 Hand in hand with our training of
10 examiners, we are engaged in a training of the
11 public. If we could please advance to the next
12 slide. My remote seems to be stuck, so perhaps IT
13 folks could advance -- there we go, thank you. So
14 hand-in-hand with training the examiners, we are
15 also offering public training.

16 Tomorrow from 1:00 to 4:00 in this very
17 room, we're conducting a public training session
18 on our first-inventor-to-file implementation,
19 along with our implementation of the microentity
20 discount and new patent fee schedule. This
21 training is going to be webcast, the webcast
22 instructions are featured on the slide, so I

1 encourage everyone in our stakeholder to community
2 to consider participating in the training so that
3 we can help you navigate the new regime.

4 And I want to thank our PPAC member,
5 Valerie McDevitt, because she's been very helpful
6 to us in preparing those aspects of the training
7 pertaining to this microentity discount. She set
8 forth a lot of examples that we intend to include
9 in the training to give a real world perspective
10 of how the discount is going to operate in
11 practice, in particular for university communities
12 and university researchers.

13 Now, let's look back a little bit and
14 see how the provisions have been working that
15 we've already implemented. I've chosen to start
16 with prioritized examination, but you all have had
17 a pretty good discussion of that subject already,
18 so I'm going pass forward. The only point that I
19 will add, which Commissioner Focarino mentioned,
20 the cost for prioritized examination is going to
21 drop starting on March 19th. Currently, the cost
22 is \$4,800, it's going to drop to \$4,000 next

1 Tuesday.

2 In addition, the microentity discount
3 will be kicking in, so for a microentity to secure
4 a prioritized examination starting next Tuesday,
5 we're looking only at \$1,000, so I want to make
6 sure that you know that. As well, we have 43
7 percent of petitions from small entities, many of
8 whom will be qualifying for this additional
9 discount, so they should be aware that the program
10 is available to them, and it's becoming cost
11 attainable at the same time.

12 Next, I'll turn to pre issuance
13 submissions. And for the remaining provisions, I
14 want to give for each one practice tip for folks
15 out there who have tried the provision and maybe
16 something they can learn and incorporate into
17 their practices going forward. So you can see so
18 far we've had a substantial number of pre issuance
19 submissions provided to the agency, 440 as of the
20 end of February.

21 I also want to point out that this data
22 that I'm featuring here is found on the AIA

1 microsite. We have a new page on the microsite to
2 track all statistics for filings associated with
3 AIA provisions. And this is exactly what this
4 information looks like on the microsite, so I
5 encourage you to check that out if you want to
6 know on a monthly basis how we're doing in terms
7 of new provisions and these filings.

8 Now, when we take those 440 filings and
9 break them down to look at where are they falling
10 within the agency, you can see we have a
11 distribution basically across all technology
12 centers, although some technology centers have
13 received more filings than others, 1,600, 1,700;
14 the chemical, biotech, pharmaceutical arts have a
15 larger number, 2,800, which I believe is the
16 semiconductor arts; 3,600 civil engineering,
17 business methods; and, finally, 3,700, which is
18 mechanical engineering and medical devices. But
19 we have received them across the technology
20 centers.

21 Further, when we take a look at those
22 440-some submissions, what type of art are we

1 receiving? Well, the art is split across all
2 types, from patent applications to non patent
3 literature. You can see the largest number of
4 submissions come between patents and non patent
5 literature, and the non patent literature, in
6 particular, is helpful for our examiners to
7 receive, because that type of art is the most
8 difficult for them to find.

9 So now the examiners are working through
10 these submissions in their examinations of the
11 particular cases where they've come in. The one
12 tip here to the public, a third party, if you're
13 interested in making a submission; to insure that
14 your submission is compliant, you want to be
15 careful when you supply the concise description of
16 relevance of each piece of art that you are
17 submitting.

18 A member of the public wants to
19 factually tie the prior art or document to the
20 particular complained invention by pointing out
21 where in the document the claim limitations are
22 located so that the examiner can easily see the

1 reason they're looking at this reference is column
2 two, you know, lines 10 to 20, there's limitation
3 12, or whatever you're doing, so there's a direct
4 tie. What is not too helpful is when the art is
5 submitted without that connection or third parties
6 are using the submission to make ultimate legal
7 conclusions that the complained invention is
8 rejectable for one of the grounds of
9 unpatentability.

10 Now, next we have supplemental
11 examinations. Again, if we could, the IT folks
12 could please advance the slide. You'll see here
13 we've had nine supplemental examination requests
14 filed through the end of February, we haven't had
15 a large number, but they are steadily coming in.
16 And the one tip that I have here is for each item
17 of information, the submitter needs to be specific
18 as to which claims that item of information
19 pertains.

20 So what we're seeing is, a lot of times,
21 the submissions are not connecting the item of
22 information with the dependent claims, so we're

1 not really sure whether the submission is to be
2 applied only to the independent claims or if the
3 dependent claims rise or fall with the independent
4 claims. So a more particular connection needs to
5 be made, perhaps through the use of headings or a
6 statement, that would greatly help.

7 So now I'm going to turn to the
8 administrative trials. We've received filings to
9 date on only two types of administrative trials,
10 interparty's reviews and covered business method
11 reviews. We've had 150 filings as of the end of
12 February for interparty's reviews and we've had 15
13 filings for covered business method reviews. I
14 won't talk about this extensively because I expect
15 that Chief Judge Smith will give you a lot more
16 detail.

17 But the tip here for the public is, when
18 filing petitions, please support the arguments for
19 unpatentability that are being made by ties to the
20 record. Where in the record can you substantiate
21 the arguments with evidence? The same goes for
22 proffered claim constructions. What the board is

1 seeing so far in petitions is, oftentimes, there
2 is a kitchen sink approach where numerous
3 arguments are raised for many different claims
4 without adequate support for those arguments. So
5 please be sure to make the connection to the
6 evidence and each and every one of the arguments
7 for each and every one of the claims.

8 Now, if you look across the trial types,
9 you'll see that the majority of the filings are
10 coming in the electrical and computer area, with
11 only a scant number of filings across the other
12 technology areas for the trials.

13 Now I'm going to end talking about the
14 provisions of law that we've implemented and move
15 in and talk about the studies that we are yet to
16 do. So our one ongoing study is genetic testing.
17 We conducted our third event with the public on
18 January 10th, that event was a round table where
19 20 witnesses provided additional information and
20 commentary about the subject matter of this study.

21 We felt that we needed to conduct this
22 third round table because we had gaps in our

1 record for the areas that Congress had asked us to
2 study. So to be able to complete a full report on
3 all the areas we were tasked to research, we
4 wanted to collect additional information from the
5 public. So we are now distilling that information
6 and are in the process of preparing our final
7 report.

8 I want to highlight a few features on
9 the microsite for you so that you know things are
10 happening and you know to look at the microsite
11 for continuing developments. First, I mentioned
12 the AIA statistics so we're bringing that data to
13 you on the microsite on a special statistics page.
14 We are also continuing to update our blog to
15 highlight the different filings, knew pieces of
16 information we want you to know about those
17 proceedings. So I encourage you to look at our
18 blogs for ongoing information as it rolls out.

19 Lastly, we have updated all frequently
20 asked questions pertaining to the three
21 provisions, first inventor to file, microentity,
22 and the new patent fee schedule which become

1 effective over the next two or three days. So
2 lots more information on those provisions have now
3 become available on our microsite.

4 Further, don't forget about our AIA help
5 center. We are continuing to receive about 1,300
6 calls each week at our help center, we expect the
7 numbers to rise as our AIA provisions in March
8 become effective. There, too, we have updated the
9 telephone FAQ with additional information for the
10 new provisions effective in March. So if you need
11 help, have questions, contact 1-855-HELPAIA, and
12 someone will be able to address your question.

13 And lastly, as Acting Director Rae
14 alluded to, our implementation activities are
15 winding down, so I wanted to let you know exactly
16 what we have left to do. You'll see those
17 activities listed on this slide, and they focus
18 exclusively on studies. We have, at the end of
19 this anniversary, the second anniversary of the
20 AIA, we have a report due on misconduct that the
21 Office of Enrollment and Discipline addresses.

22 And then, from there, we don't have any

1 additional work due until the third and fourth
2 anniversaries with studies on satellite offices,
3 virtual marking, and then an overall study on the
4 effectiveness of our AIA implementation
5 activities.

6 So that brings me to a close on my
7 topics, and I'm happy to answer any questions that
8 you might have.

9 MR. FOREMAN: Thank you, Janet. We've
10 got a few minutes before our next presentation,
11 any questions? Wayne.

12 MR. SOBAN: Just one to that last slide.
13 I know it's not required under AIA, but have you
14 had any discussions our thoughts about having at
15 least yearly or some period of review of the fee
16 setting and scheduling that, has there been any
17 discussion within the office about that, looking
18 back and looking forward and adjustments?

19 MS. GONGOLA: Yes. So we are going --
20 and this is true not just for fee setting, but for
21 all of our implementation of rule makings. We
22 intend to be monitoring each of those rule makings

1 that we've engaged in to identify areas that might
2 need adjustments, maybe gaps, maybe things that
3 we've forgotten. We will be continuing to do that
4 over the next several months to several years.

5 And in particular for fee setting, our
6 authority to set or adjust patent fees sunsets in
7 seven years, so we will very actively be
8 monitoring our fee sitting as we go forward and
9 have more than one opportunity to reengage the
10 rule making process, if we need to.

11 MR. SOBAN: That's great. And I would
12 also suggest, you know, up to the PPAC can serve a
13 very useful role in helping you, I think it's
14 probably your intention, to have us help you
15 provide comment. But we'll get to the RCE
16 hearings and round tables that we had recently
17 that we assisted on.

18 I think some public process like that,
19 that may be part of your vision anyway, but I
20 would just highly suggest that a public process
21 where you might actually, you know, in a year's
22 time or six month's time, or whatever the right

1 time is, think about that sort of on approach to
2 get public feedback about how the implementation
3 rules have been going for AIA, because I think
4 that would be very useful to get the public's
5 reactions as you move forward.

6 MS. GONGOLA: That's a terrific idea.
7 And as you know, transparency and public
8 participation have been two of the pillars that we
9 have employed throughout our implementation
10 activities, and certainly ones we would like to
11 carry forward. So thank you, and I trust that
12 PPAC will be supporting us in those efforts.

13 MR. FOREMAN: Thank you for your time,
14 Janet, we know you have a busy day today with AIA,
15 so thank you. And I'd like to welcome George
16 Elliott sitting in today to discuss the
17 legislative issues.

18 MR. ELLIOTT: Hi. And I just found out
19 I was sitting in about ten minutes ago, so this is
20 going to be a brief discussion, and please don't
21 ask any really detailed questions because you
22 won't be able to get answers.

1 Let me go through, this is just
2 basically going to go through what's going on
3 legislatively right now and what we're looking at
4 and following. Highlights, the first thing on
5 there is the SHIELD Act. The SHIELD Act basically
6 is a anti troll litigation mechanism that requires
7 loser pays, I believe, and it's written, I think,
8 fairly strictly. I believe it's also been
9 expanded, as I understand it, to cover all
10 technologies now, I think.

11 But we have been having a series of
12 hearings on software patents and we're looking at
13 a lot of different alternatives, so there are a
14 number of things coming down the pipe that are
15 looking at how the deal with the "troll" issue
16 with software patents. The Foreign Counterfeit
17 Merchandise Act, that is an Act that I didn't know
18 anything about until about two minutes ago.

19 It is basically allow border patrol
20 agents, I believe, to share information when they
21 have seize products that they think are
22 counterfeit with, I believe, the people who make

1 the real products. Currently, right now, they're
2 not allowed to share that kind of information, or
3 some information, and this will open that up a
4 little bit.

5 Seat Availability and Competition Act,
6 that's basically the anti Monsanto Act. It allows
7 the Department of Agriculture to set a fee that
8 would allow farmers who keep back seed that
9 they've bought from any company that's patented,
10 to keep it back and replant the next season, as
11 long as they notify the Department of Agriculture,
12 and then the Department of Agriculture would set a
13 fee for them to do that. Sounds a little like
14 compulsory licensing to me, or something bordering
15 on that. And pardon me for putting in my own
16 personal, I'm not necessarily giving patent office
17 opinion when I say things like that.

18 Preserve access to affordable generics,
19 that is the, it's an anti pay-to-delay measure.
20 This is the situation where, under paragraph 4 in
21 generics enter into lawsuits with the original
22 manufacturing company to put a generic on the

1 market to try and invalidate a patent. And those
2 cases have, in the past, sometimes been settled
3 with fairly significant payments going to the
4 generic manufacturer, and then time lines for when
5 the generic can start to produce.

6 The FTC has had that little bee under
7 their bonnet for a long, long time, and this is a
8 legislative approach to try to prevent that from
9 happening. Let's see, I'm going skip the Fair
10 Access to Science and Technology Research Act.
11 Cyber Security, this is apparently a very high
12 priority issue that was a Presidential, what do
13 they call those things, Executive Order, thank
14 you, recently.

15 And Congress has been very interested in
16 the cyber security issues, so we're expecting a
17 lot of action in this area during the 113th
18 Congress, both from the Administration and from
19 Congress. We'll be following that issue.

20 Funding. The bill has been introduced
21 to eliminate the pay adjustment for 2013 and
22 extend the pay freeze on federal employees. We

1 have a full-year CR that's passed in the House and
2 the Senate mark has been filed this week. I'm
3 going let Tony, I believe, Scardino is talking
4 later, and I think he can probably fill you in on
5 this information much, much better, as well as
6 hopefully where we are financially. I'm sure
7 he'll do that.

8 Draft legislation that's being
9 discussed, the Aaron's Law legislation, as I
10 understand it, is simply to prevent what are
11 considered to be rather draconian penalties being
12 applied in situations where people disregard or go
13 beyond the terms of their internet service
14 provider service. And this is in response to this
15 fellow Aaron Swartz who was hit with one of these
16 rather draconian penalties and then committed
17 suicide, created a big, a lot of publicity and a
18 lot of interest in Congress and trying to fix
19 that.

20 Online copyright protection, just
21 various proposals coming through, we've been, we
22 are in the process of working on a green paper

1 that will be coming out on copyright issues that
2 are going to deal with this in some detail. We'll
3 be looking at that. And the Protecting American
4 Trade Secrets and Innovation Act, creating a
5 federal civil private right of action for trade
6 secret theft.

7 And without really knowing much about
8 this, my understanding is, I think, currently,
9 right now, trade secret is almost entirely handled
10 under state laws, so I assume this is just going
11 to expand it to make it more available, and maybe
12 in situations where there are other countries
13 involved and various other cross state things.

14 Hearings. Actually, the reason I'm
15 sitting here right now is because Dana, my
16 counterpart -- you can blame everything on Dana,
17 by the way -- is up on the Hill, I think, right
18 now, getting ready to sit in or listen to the
19 hearing on abuse of litigation that's going on
20 before the Subcommittee on Courts and Intellectual
21 Property, or will be, actually, going on in a
22 little while.

1 Possible oversight hearings, things that
2 are coming up, there will be 2014 Appropriations
3 hearing. I know that Dana is thinking a lot about
4 that and planning on meeting with various members
5 of the Appropriations Committee, along with, I
6 believe, with Under Secretary Rae, Acting Under
7 Secretary Rae. USPTO oversight, that's not a
8 surprise, and the online copyright protection
9 related material, which is just going to be a
10 topic of interest.

11 Change in leadership. Actually, as of
12 right now, I don't know what the new leadership
13 is, so I'm hoping to get some of that information
14 fairly soon. I had a conversation with Dana a
15 couple of days ago, and we were wondering who the
16 new majority ranking member or minority ranking
17 member on the Foreign Services Committee was, or
18 Foreign Affairs Committee was, and I don't have
19 that information yet, so I'm hoping to get access
20 to that soon.

21 USPTO funding issues. Actually, other
22 than the fees, I'm not sure what that is.

1 Satellite offices, this is just information where
2 we're trying to make sure the people in the
3 satellite offices are introduced to and familiar
4 with their local congressional members, where the
5 satellite offices are, this is just a government
6 relations kind of activity that we're trying to
7 make sure is going smoothly.

8 These are other activities that the OGA
9 staff is going to be doing, the USPTO outreach,
10 and I'm not going to go through these. These are
11 things that Dana has been planning, and he knows
12 something about and I don't, so I haven't been in
13 the loop on this. And that's it.

14 MR. FOREMAN: Thank you, George.

15 MR. ELLIOTT: I'm sorry that that was so
16 --

17 MR. FOREMAN: No, we appreciate you
18 filling in for Dana and giving us an update. Do
19 we have any questions from members?

20 MR. THURLOW: Hey, George, thank you
21 very much for the update. Have you looked at that
22 SHIELD Act much, or can you give us a sense -- I

1 guess the feedback from industry is that's a very
2 important bill, and there's just a lot of
3 interest. I know it was previously introduced
4 maybe a year or so ago, they've made some updates,
5 now it's in the House. Unfortunately, the
6 meeting, because of the weather last week, the
7 hearing was canceled, so unfortunately, it
8 conflicts, but we're watching the web cast this
9 weekend.

10 Anyway, can you give us a sense of, kind
11 of, your background as Director of the Group Art
12 Unit 1600, I believe --

13 MR. ELLIOTT: Yes.

14 MR. THURLOW: -- now you're up and
15 trying to figure out everything going on in
16 Congress. How does it work, what your group does
17 with the House, would you share the committee, the
18 Senate, and kind of getting all this together, can
19 you just kind of give us your insight?

20 MR. ELLIOTT: I'm not entirely sure I
21 know what you mean by how does that work. I mean,
22 basically, the OGA shop is there to look at

1 technical aspects of bills, we're not going down
2 and actually recommending, I don't think. We do
3 have, in fact, in this particular area, we have
4 looked at a lot of different options, I think
5 we've had two open hearings or two round tables on
6 the software patenting issue.

7 And we're in discussions with the rest
8 of the administration on a number of approaches to
9 try to lessen some of the issues. So, as far as
10 on the SHIELD Act itself, I don't think we have a
11 position that I could give you as to whether we
12 feel it's the right thing or not.

13 MR. THURLOW: Right.

14 MR. ELLIOTT: But we are looking at a
15 number of different options.

16 MR. THURLOW: Let me redefine my
17 question, I guess, a little bit. I think people
18 on the outside, when I tell them about what all
19 the good things PPAC are doing, they're always
20 interested in Dana's position and realize, and
21 don't appreciate the amount of work that the PTO
22 does with Congress to try to craft IP laws that

1 make sense.

2 So maybe that's where I'm kind of coming
3 from. So, for this, it makes sense what you're
4 saying for the SHIELD Act, you really don't have a
5 position. Obviously, the AIA, the PTO had a
6 position, and so on. So that's why I asked that
7 question, we always hear about Dana, but maybe
8 I'll make the question more basic.

9 How big with the group of the Office of
10 the Governmental Affairs, is it -- I know you're
11 there just for a short period of time.

12 MR. ELLIOTT: I think total, they're
13 about six. Judy -- six?

14 MR. THURLOW: How does the House and the
15 Senate go?

16 MR. ELLIOTT: Really, there's Dana,
17 there are four, I believe, legislative advisers,
18 attorneys, and there are a couple of
19 correspondence people that handle a lot of
20 correspondence issues. There are, I believe,
21 under certain circumstances, we advise on
22 legislative language, but I don't think we

1 actually go in and propose specific bills.

2 We, as I said, we are looking at a
3 number of options, and I believe we may make those
4 public in a publication, in a paper of some kind,
5 I don't know, I'm not there yet.

6 MR. THURLOW: That's fine.

7 MR. ELLIOTT: But that's kind of, as I
8 understand it. Judy, do you want to add anything?

9 MR. THURLOW: Yeah, I can add some, too.
10 Dana's shop is used as, to be technical advisers
11 for various bills and legislations that are
12 pending. We, of course, obviously can't lobby,
13 and don't lobby, but we're often asked is this
14 workable, is there a problem with this, you know,
15 from the USPTO's perspective, what are some of the
16 issues that you see.

17 So the six or so people that George was
18 mentioning interface with others throughout the
19 USPTO, many in my area, in the Policy area, Patent
20 Examination Policy, often with the PTAB, et
21 cetera, to get more information about how we can
22 advise technically. You asked about the SHIELD

1 Act, and I believe the SHIELD Act was broadened
2 out to not only be limited to software. So it has
3 been reintroduced as a broader package that would
4 cover, try to isolate essentially not practicing
5 entities, but in any technology.

6 MR. FOREMAN: Yes, Robert?

7 MR. ELLIOTT: Just adding on to that, I
8 wanted to say that another thing that OGA is doing
9 that is working with us, obviously, as a federal
10 union, we have our own rights and abilities to
11 work with Congress, but we actually work, try and
12 work closely where we have mutual, you know,
13 interests. I meet with Dana every month, on a
14 monthly basis, and we talk about what's going on,
15 what bills are up there, and what we might do to
16 work together to try and promote things like that.

17 So I think that's a collaboration that
18 evolved out of patent reform work, and I think
19 continues to go forward.

20 MS. SHEPPARD: And, George, I have
21 the pleasure to say the PTO provides
22 technical expertise in the form of actual people.

1 So during AIA, the PTO's, George Elliott was with
2 Congress for what, two years?

3 MR. ELLIOTT: Two years.

4 MS. SHEPPARD: Two years to provide
5 technical expertise just on the facts and trying
6 to help to make sure the law made sense. So that
7 was very much appreciated. So that's another
8 thing that the PTO does to help. The other
9 question that I had that I'm sure no one here --
10 well, everyone here already knows, but I'm not
11 sure if the people in the public know, is that the
12 PTO also has jurisdiction or authority to comment
13 and provide expertise on copyright.

14 And there's a lot of interest right now,
15 surprisingly, in the DMCA and other copyright
16 laws, and hopefully, I'm assuming, Dana's not
17 here, that, because there was some bills dropped
18 yesterday or the day before that the PTO is
19 commenting on those provisions, both nationally
20 and internationally, and making sure that the
21 United States' position is being strongly pushed
22 forward not in the absence of this entity.

1 That's correct that the PTO also does
2 copyright, correct? And I'm just going to end
3 there, there's a couple other questions that I
4 don't think anyone's going to -- it's not your
5 fault, George, obviously, you're not going be able
6 to answer.

7 MR. THURLOW: Just a last quick point if
8 I can. There's a real interest in the SHIELD Act,
9 the SHIELD Bill, and many other provisions.
10 Anything the PTO and PPAC can do to provide that
11 information would be very helpful. And since PPAC
12 came into being, I guess in 1999, because of
13 Congressional legislation, we have, especially for
14 new PPAC members, a day in the life of the
15 examiner, to the extent, in the future, where we
16 can have a day in the life, see what goes on on
17 the Hill and understand how these things work to
18 the extent anyone's that's ever possible to figure
19 that out.

20 I would appreciate that, I would be
21 interested, personally.

22 MR. ELLIOTT: Let me talk to Dana about

1 that, I think he would be, that would be right in
2 his wheel house to try and do something like that.
3 So I'll mention that to him.

4 MR. THURLOW: Thank you.

5 MR. ELLIOTT: We do, actually, just
6 expanding a little bit, we do have a lot of
7 contact with staff, particularly, on the Hill, and
8 to some degree also with Congressional members,
9 and we try to -- I know one of the things that's
10 very important to Dana is to try to keep it,
11 maintain those relationships. Because questions
12 do come up when they're crafting legislation, and
13 there's a lot of work that goes into getting
14 language right, for example.

15 And frequently, if you don't really know
16 the inner workings of how we do things here, it's
17 easy to put language in that doesn't make sense,
18 ultimately. And so I know there's a lot of work
19 that goes on between Dana's shop and Hill
20 staffers, in terms of trying to get those sorts of
21 things correct, right.

22 MR. FOREMAN: George, thank you for

1 filling in, and at the very least, Dana owes you
2 lunch for putting you on the spot here.

3 We are right on time --

4 MR. ELLIOTT: I'll get Dana, don't
5 worry.

6 MR. FOREMAN: -- it's 10:15, and we're
7 going to take a 15-minute break, and we will pick
8 back up at 10:30.

9 (Recess)

10 MR. FOREMAN: Good morning, I want to
11 welcome everyone back to this session of the
12 Patent Public Advisory Committee. Just as a
13 general housekeeping note, I've been reminded that
14 if all members can speak into their microphone
15 while they're speaking, and when you're not
16 speaking, make sure your microphone is turned off.
17 This session is being recorded, so they want to
18 make sure they get good quality audio for the
19 session.

20 I'd also like to welcome Paul Jacobs, a
21 member of PPAC who is joining us internationally,
22 I believe he is on the phone now. So welcome,

1 Paul. And at this point, I'd like to turn the
2 floor over the Andy Faile, Deputy Commissioner for
3 Patent Operations, to give us an update on RCE.

4 MR. FAILE: Okay. Thank you, Louis.
5 So, for the next section of the meeting, we'll
6 discuss RCEs. As noted by both Terry and Valencia
7 in opening remarks and in the ops presentation,
8 RCEs continue to be an area of focus for us.
9 We'll kind of concentrate today on our latest
10 effort, which is our RCE outreach effort where
11 we've actually gone and conducted a number of
12 round tables and focus sessions throughout the
13 country.

14 And very big thanks to the PPAC members,
15 we've had a PPAC member in each one of those round
16 tables and focus sessions with us as we heard from
17 the public on the RCE issue. So we'll have kind
18 of two pieces to this, I'm going to ask Remy Yucel
19 from Director of the CRU from our team to led us
20 through a little bit of the presentation to give
21 some background and status update of where we are
22 so far.

1 And then I'm going to turn it over to
2 the PPAC members who were at the focus sessions to
3 get their initial operations as we start looking
4 at the RCE issue. So Remy?

5 MS. YUCEL: Thank you, Andy. Good
6 morning everybody, I'm glad to be here to give you
7 a progress update on our RCE outreach effort. As
8 you may remember, the RCE outreach is one of
9 several approaches the Office is taking to address
10 several facets of the RCE issue.

11 One of the main reasons we decided to
12 partner with PPAC to do this was to get at some
13 core understandings of some pressure points or
14 root causes for RCE feelings that would better
15 enable us to design, hopefully, programs or weeks
16 to our examination process so that we can, in the
17 future, hopefully obviate the need to file at
18 least some RCEs. We're not here to eliminate all
19 RCEs, but to at least alleviate some pressure
20 points.

21 So being able to go out on these round
22 tables and focus sessions have really enabled us

1 to get at some pressure points or root causes for
2 RCE feelings. As Andy mentioned, our progress to
3 date, we've completed round tables and focus
4 sessions in all the cities listed, Santa Clara,
5 Dallas, New York City and Chicago. Unfortunately,
6 our home base one that was scheduled for March 6th
7 in Alexandria was canceled because of a snow
8 event, so we are now looking to reschedule that,
9 it's looking like April 3rd will be the date for
10 that. So if you all could help us get the word
11 out and encourage others to attend, that would be
12 wonderful.

13 So we did go to each one of these
14 cities, and we had two sessions each, the morning
15 and the afternoon sessions. In addition to those
16 in-person sessions, we are collecting comments
17 from a variety of different sources, including
18 written responses to the Federal Register Notice,
19 the deadline of which closed this past Monday, we
20 have a lot of e-mail traffic on the RCE web page,
21 the final slide of this presentation does have a
22 link to that web page.

1 We have also on that web page Idea
2 Scale, which is a software application that allows
3 people to make comments and allows other people to
4 comment on these comments, we have running
5 commentary and a lot of good information input
6 from those sources. In addition, we have internal
7 and external blog postings, and, of course, as I
8 mentioned, the round table and focus session
9 information.

10 So the methodology here is to take all
11 of these comments and log them into our database
12 and categorize them in some fashion as to their
13 commonalities. So far, we are in the midst of
14 this process, we've logged in over 500 comments to
15 date to the database, and that work continues.
16 And we have a situation where we have a lot of
17 comments, but not every respondent maybe addressed
18 every question posed, and those questions were
19 found -- you can find those in the Federal
20 Register, and they are reproduced in the next
21 slide here.

22 So these were the conversation starter

1 questions that we used, not only in the Federal
2 Register Notice, but also in the focus sessions.
3 And these were high-level conversation starters,
4 and we covered a lot of good information using
5 these question, and that spurred additional
6 comment and thoughts and suggestions from the
7 attendants at those different sessions.

8 A quick look at the demographics of our
9 comments thus far, we have, if not a 360 degree
10 look at the RCE program, we do have a lot of
11 different segments of the stakeholder community
12 that are represented. We have organizations, we
13 also have corporate as well as law firm attorneys,
14 we have academics, examiners, and also a pro se
15 inventor thus far who have made comment in one
16 shape or another.

17 So the high level feedback that we've
18 gotten in terms of, at least from the written
19 comments, have really centered on a handful of
20 topics, including after final practice, overall
21 quality of office actions, final rejection
22 practice, management and supervisory oversight,

1 detective management system and production system.
2 So pretty much the comments that we have been
3 getting from all of these intake sources can fall
4 out into these buckets, if you will.

5 In addition, the team that went out on
6 to the RCE outreach road show, if you will, we had
7 additional high level impressions and feedback,
8 and those are captured here. These comments seem
9 to play out in at least two or more of the
10 different locations that we were holding the
11 events. And those included addressing the
12 submission of after final IDSs with increased
13 fees, or no certification, or some sort of
14 modified certification.

15 So this indicated a particular pressure
16 point that we might be able to explore further to
17 see if there's anything more that can be done
18 there. Another point that was raised was compact
19 prosecution of applications, with a sorter set
20 period of time with more interaction or give and
21 take between the examiner and applicant, with
22 perhaps the possibility of perhaps additional

1 action.

2 So the conclusion of the application
3 would occur sooner, even though there was more
4 touches in between and more give and take between
5 practitioner and examiner, this was another theme
6 that played out over and over and over again. And
7 I would say a sub point under this would be
8 interviews. In general, people were very happy
9 with the interview process for the most part, but
10 there was divergent opinions as to when the best
11 time to interview, at what juncture in the
12 prosecution was the best time. People had success
13 at different times during the prosecution process
14 for that.

15 Another theme that played out was that
16 many RCEs are filed because of expectation that
17 amendments required to advance prosecution would
18 not be entered by the examiner after final. And
19 then a final point that also resonated quite a bit
20 was what we could do to improve and/or increase
21 awareness of programs that are already existing
22 within the Office, such as the AFCP and the QPIDS

1 program. And it was not just the initial
2 advertising of these programs, but a sustained
3 reminder to everybody involved in prosecution, not
4 only on the outside, but on the inside that these
5 were options available to everybody. And
6 depending upon a particular application, that one
7 or more of these existing programs might be of
8 use.

9 So our next steps would be to complete
10 our data analysis, we still have data coming in,
11 and hopefully, we'll get to the development of
12 recommendations as soon as we finish the logging
13 in of the comments so we can start developing
14 various different recommendations based on those
15 comments. And I just wanted to share with you the
16 last slide which has the link to not only the RCE
17 outreach overall page, but then that second link
18 goes directly to Idea Scale.

19 So, please, I would encourage you, if
20 you know of people that would like to be involved
21 in this conversation to make them aware of these
22 two links so they can get in on the conversation.

1 Thank you.

2 MR. FAILE: Thank you, Remy. So we're
3 just kind of at the beginning, kind of at the end
4 of phase one of this process, which is going out
5 with the round tables and the focus sessions, and
6 then getting that input from the Federal Register
7 Notice and from the Idea Scale software on the
8 website. And we're just starting to develop some
9 of the themes that we've heard and trying to
10 capture and categorize those themes, so it will
11 take us some time to get all that data in a point
12 where we can develop some actionable items.

13 From the USPTO's perspective, again,
14 thanks very much to the PPAC members that were
15 there, it was very helpful to have the PPAC
16 members with us listening and adding their
17 comments, as well. For us, hearing a different
18 perspective was very valuable. We have a lot of
19 ability to mine data here, as you've seen from
20 this morning, and to look at that data, but it's
21 from generally a USPTO perspective. PPAC plays a
22 valuable role to us in giving that external

1 perspective, and then taking that a step further
2 and going out and doing the round tables and
3 hearing from inventors, practitioners, academics
4 in the community.

5 The IP community itself was very helpful
6 and gave us some kind of key takeaways, Remy had
7 mentioned one in the compact prosecution arena,
8 that maybe that's viewed differently than we may
9 view internally in the office, which was a very
10 big take away and kind of opens up a different
11 space to look at some potential solutions there.

12 We also, the second observation of the
13 round table that I was at in Santa Clara is, you
14 go out and you do a round table on RCEs, but the
15 conversation isn't limited to RCEs, obviously. We
16 heard a lot of kind of the root cause analysis
17 that we were looking for upstream, even of the
18 final rejection, which seemed to be a topic of
19 interest, at least at the focus session I was at.

20 And it was a lot of good comments and a
21 lot of good discussion about beginning even before
22 first action all the way through the first action,

1 the time rejection and through that after final
2 window, that's all important and certainly feeds
3 into RCEs. A good take away from us, and kind of
4 a refocusing as we look at some of the root causes
5 of RCE filings and things we can do here in the
6 office to address those.

7 So I'd like to turn it over to the PPAC
8 members who were at the round tables and focus
9 sessions to generate some discussion on what you
10 guys heard as we start to plan ways to go forward.
11 Clinton?

12 MR. HALLMAN: Thank you. I thought that
13 the workshop, the round table that took place in
14 Chicago was very much a success. We did not have
15 necessarily a room full of people, but I think
16 this is the kind of issue where the people who
17 showed up had quite a bit to say. I think there
18 was a lot of honest dialogue, a lot of honest
19 exchange, it was a good, open environment for
20 having a varied fulsome discussion about the
21 topic.

22 And, to your point, I think it was very

1 interesting how people actually felt like maybe
2 what sounds to the PTO like maybe more prosecution
3 would actually be better and actually help things
4 happen a little faster in terms of potentially an
5 additional office action that would take place
6 before a final. And, overall, I think this is a
7 very worthwhile under taking, I think there was a
8 lot of good feedback that came back.

9 One of the interesting things that came
10 out of it that wasn't necessarily pure RCE related
11 was, and this was a follow up question I asked of
12 some people, and I'll continue to talk to people
13 at the PTO about, how can the PTO essentially
14 market its programs like QPIDS, what kinds of
15 things can the PTO do to try to get these things
16 out there. And I think that is an interesting
17 topic, because, oddly, patent attorneys are
18 supposed to be, in therapy, very turned on and
19 very clued in to a lot of new things and a lot of
20 technology.

21 But it's odd that there would be kind of
22 a knowledge hole, if you will, about some of the

1 things that I think make a lot of sense that the
2 Patent and Trademark Office is trying to do. So I
3 think that was an interesting thing that came out
4 of this that wasn't necessarily RCE related. But
5 I thought it went very, very well, and it was very
6 worthwhile.

7 MR. SOBAN: Yeah, I would just second
8 that. And I think, as I mentioned to Janet
9 earlier, I think this kind of road show, reaching
10 out to the different communities is really an
11 exemplary process, I think it went very, very well
12 on that score, and I really highly recommend it
13 for other areas to have the engagement with the
14 user communities, I think beyond just the PPAC,
15 which we serve one sort of role that way, it
16 really gets you right to the cold fix with the
17 others who are dealing with this.

18 I would note kind of on the damper side
19 of things that, you know, we had the statistics
20 right that show, over the last, since 2008, 2009,
21 your primary backlog going from, what was it, 750
22 to 590 while monotonically, the RCE backlog, which

1 is, again, in the practitioner view, is itself a
2 new continuation education, no different than any
3 other application, has gone from 10 to 120s. So
4 if you add that, you have 710,000 backlog
5 currently.

6 And what we would consider to look at is
7 applications waiting first office action. And I
8 think one of the things that I thought we were
9 both there at the San Jose event that really
10 struck me was the personal testimony, and I forget
11 her name, Shirley --

12 MR. FAILLE: Michelle Fisher.

13 MR. SOBAN: Yeah, Michelle Fisher. Her
14 testimony as an entrepreneur starting a small
15 company in the silicon valley, and with quite some
16 anguish and a lot of facts and a lot of
17 information, and very well reasoned, her company
18 waiting and possibly failing because patents were
19 being delayed in prosecution, and the real world
20 effect that these RCEs had on her and her
21 employees, having to fire employees because the
22 patent did not get addressed yet, and her

1 financiers would not give further funding out.

2 That kind of thing really puts meat to
3 the bones of the comments made by the patent
4 office leadership office over the last four years
5 that what you do here has a real world effect, it
6 isn't just pieces of paper, it isn't just -- it
7 can be really obstructing. These are just large
8 companies, they just have throwaways, they have
9 portfolios, you have lots of attorneys.

10 She said even that some examiners were
11 struck, were surprised, even shocked that she
12 didn't have a flotilla of attorneys to deal with
13 this, it was just her coming to the patent office
14 to try to talk with an examiner who wasn't
15 prepared for the examination meeting. That
16 testimony was very, very impactful to me, and I
17 recommended that something like that, or even that
18 testimony might be good for required, you know,
19 computer based learning for examiners to listen,
20 to hear somebody talk who actually is a patent
21 owner and what -- this is not just a game, it's
22 not just a paper exercise, that has real world

1 effects and drives the formation of companies at
2 the smallest and biggest levels.

3 I think that was very powerful. I
4 wondered also, maybe it's coming, but on these
5 sites, is the testimony and that kind of video
6 going to be published, as well, that people can go
7 back and look and see this testimony in any
8 fashion? Can we do that, or is that available?
9 Because, in particular, I would love almost
10 everybody to see her testimony, if that came
11 across, because I was really, I've been struck as
12 I've never been struck in a long time by a single
13 person talking about how this is what we do as a
14 profession and you do as an agency, has such a
15 real world effect.

16 MR. FAILLE: For the prepared speakers,
17 we will have those remarks, at least in the form
18 of pulling out the comments. That one that you're
19 speaking of, Wayne, I agree, too, that was a very
20 powerful part of that round table. That would be
21 something we'd want to kind of present as it is as
22 opposed to trying to pull out data from there.

1 MR. THURLOW: So, I attended the RCE
2 round table in New York. Again, I echo Clinton
3 and Wayne's comments, as far as I believe it was a
4 huge success. It was a smaller turn out than we
5 hoped for, but I think in many ways, it actually
6 turned out to be much more positive because it was
7 very informal conversations. As Clinton
8 mentioned, the people that attended there came
9 with some real ideas, real experience.

10 And I thought both sessions, both in the
11 morning and in the afternoon were just really well
12 done and I can't say enough good things about it,
13 especially for the team of people that came up to
14 New York, it was just, they did a great job,
15 including, of course, Remy. Some comments, as
16 PPAC members, we've been discussing this issue
17 with the patent office, I can't say enough good
18 things about Andy Faile and all the people at the
19 patent office.

20 One of the issues, just to be aware of,
21 for people in the public is the after final
22 programs, it's been mentioned we need to continue,

1 the patent office, PPAC, whatever help we can
2 provide, to the AFCP, the After Final
3 Consideration Pilot, and also to the QPIDS. And
4 I'll note that my understanding is that they're
5 both pilot programs and they expire on March 19th.
6 I can't speak for all of PPAC, but definitely I
7 urge or recommend that the patent office extend
8 those and improve those to the extent it would be
9 beneficial. Remy mentioned a certification issue,
10 if they can look into that, that would be very
11 helpful.

12 The other area, one of the things, not a
13 criticism, but just a note, is kind of we're
14 focused on the RCE side where, when we get to a
15 fork in the road, we can either, applicants can
16 either choose an RCE or go into the appeal route.
17 One of the things the patent, we have asked for
18 statistics from the patent office and the patent
19 office has provided helpful statistics that we
20 requested, and we hope, once they're cleaned up a
21 little bit, are distributed to the public, made
22 available on the patent office website.

1 And they deal with the pre appeal stats
2 or the stats from the appeal. Many people don't
3 appreciate that when you go to the preappeal, the
4 appeal, when they're in the appeal conference, the
5 number is roughly, at this point, do not hold me
6 to these numbers, but roughly, in 30 to 40 percent
7 of the cases, if you do a pre appeal or a straight
8 appeal, those cases are reopened for prosecution.
9 Applicants may consider that a much more effective
10 approach than, unfortunately, going back to the
11 same examiner and having to wait in line a long
12 time.

13 The other issue of great interest is the
14 issue of getting a non final office action,
15 amending the claims, then the examiner is using a
16 new reference and making that office action final.
17 We believe that there's a lot of information there
18 working with Robert and the union to maybe that
19 second office action can be considered non final.
20 It needs to be some issues worked out in
21 productivity and account issues, and so on, but
22 that, to me, is a very common occurrence that we

1 recommend if that can be reviewed and changed,
2 that would be a great benefit.

3 And the last thing to show the PTO's, I
4 guess, focus on this issue, they're accepting
5 comments and they're working on things to change
6 in the future, but let it be known, I guess, that
7 there are changes that, hopefully, are coming up.
8 They're still in the works, but maybe Andy or
9 someone else can provide some feedback, but there
10 are plans for the IT system for the continuing
11 docket. At present, my understanding is that the
12 continuations and divisionals are being handled
13 based on their earliest effective filing date
14 while RCEs are being handled based on their filing
15 date, which means when the examiner picks up a
16 case on a docket, the RCE is always going to be
17 last in line.

18 And maybe one of the reasons that, since
19 2009, when the change was made, that the number of
20 RCEs have climbed from 30,000 to more than
21 110,000. So my understanding is maybe middle of
22 April, around that time frame, the PTO system is

1 going to make that change. If we can provide more
2 information or let the public know about that,
3 that could be very important and valuable
4 information. But, again, I give high grades to
5 what PTO is doing.

6 MR. FAILE: Sorry, Christal, just to
7 jump in, to add on to what Peter said; yes, he is
8 correct, we do have kind of a reprogramming change
9 in our work flow system that we've worked with the
10 union very cooperatively and agreed to, which we
11 will be reordering the RCEs the way they are acted
12 on by examiner by effective filing date, as
13 opposed to the date of the RCE filing itself.

14 As Peter said, we anticipate that change
15 to be programmed and ready in the April time
16 frame, so this will help us bring the old RCEs
17 that are maybe, that have been prioritized
18 underneath continuations or divisionals, to bring
19 those old RCEs to the top of the stack, so we're
20 working these in more of an older day order.
21 Which, from a lot of comments that I heard, is one
22 of the big, big issues.

1 It's not necessarily not only the size
2 of the inventor, but the age disparity within that
3 inventory. We think this is a good programming
4 fix, resequencing that work on the examiner's
5 docket to bring those old RCEs up for action
6 quicker.

7 MR. THURLOW: On that point, Andy, my
8 only request, I guess, is when the PTO does that,
9 and they do a good thing, it would be helpful
10 somehow, whether it's a Director's blog or
11 whatever information you can get out, to publicize
12 that. That could have, as Wayne stated very
13 eloquently, an important impact on someone that's
14 waiting and could bring them from, say, number 30
15 up to number 5.

16 Which could be the difference between
17 filing an expensive Track1 to go up in front of
18 the line or not. And if they do that, some way to
19 get that information out to the public would be
20 helpful.

21 MR. FAILE: Very good, and we certainly
22 will do that. Fits right with the theme that

1 we've heard that to the extent we can better
2 publicize the things we're doing, the programs and
3 the different changes that have an effect on this
4 issue, that's an overall plus for everyone. So,
5 certainly, we'll do that, thank you.

6 MS. SHEPPARD: Yes, I went to the Dallas
7 round table, and Clinton and Wayne and Peter spoke
8 very eloquently, so I will not talk about the
9 things that they've already talked about. The
10 resequencing is big, that was at the top of their
11 list, but there's another couple of things that I
12 did want to talk about.

13 The first thing is that, in Dallas, we
14 had a pretty good turnout, and what I brought away
15 from that was that it's very important to have
16 these workshops, not just on the coast. There are
17 patent examiners, patentees in other places than
18 D.C., New York and Santa Clara, so I think that
19 could have contributed to the turn out in Dallas.

20 One of the comments was, since we will
21 have satellite offices throughout the country,
22 just have them where the satellite offices are,

1 that would be very useful for many reasons. The
2 other comment that hasn't been stated yet is that
3 a lot of the people who came to the one in Dallas,
4 a lot of them were from larger companies, and they
5 did not see a problem with RCEs, they thought it
6 was a routine part of their practice, it was just
7 like another continuation.

8 It's good for examiners, because they
9 like the counts, it's good for the attorneys,
10 because it's more billing for them. Most
11 clients think it's just part of the routine
12 practice. The only downside comes when you're
13 talking about a foreign client who doesn't
14 understand. They see this final and they think,
15 oh, it's death, final means final. They don't
16 realize that final does not mean final here.

17 But the foreign clients are coming
18 around. The people who we didn't hear from in
19 Dallas that Wayne heard from is who it really
20 affects, the small clients. Those are the
21 people who I think we're mostly targeting at this
22 point. Because most of the comments that we heard

1 were directed towards either adding another round
2 of commentary for the office action, or doing more
3 interviews on the front end, which people thought
4 would be helpful.

5 Having a third office action, I know
6 it's going to be challenging from the union
7 perspective, but if there's a way, either through
8 interview, the interviewing process, to get people
9 on the same page earlier, that would be the
10 equivalent of having a third round. What we heard
11 was that, these days, because clients are not
12 willing to pay for the prior art searches, they're
13 using the patent office as their first art search.

14 So the first office action really is
15 what used to be what the attorneys did. So the
16 two office actions aren't enough. By the time you
17 get to the second one, you're already, that's when
18 you're going to get to the meat of it. If we
19 could do that earlier, it would be useful. There
20 was some talk, and I don't know if this was there
21 or I did it afterwards, about how the PCT process
22 works where there is a, where you end up with a

1 report saying these are the problems.

2 And maybe that's useful, that would be
3 useful to have in the United States also, and some
4 of the examiners are doing that already, because
5 this office is an international search authority.
6 So that's something else to think about.

7 MR. FAILE: Okay, thanks for that.
8 Again, very interesting for us, very helpful with
9 the definitely perspectives. And we kind of came
10 into this with a certain perspective, knowing full
11 well there's a lot different perspectives out
12 there, and this whole beginning part of this
13 process has been real helpful for us to kind of
14 refocus our efforts.

15 Again, we're kind of at the very
16 beginning of this, I would say end of phase one,
17 we've got most of the round tables done, we have
18 our last one scheduled now for April 3rd here in
19 Alexandria, which will be web cast in addition, as
20 well. We're going to continue to compile the data
21 and look for themes, I think Christal had a lot of
22 interesting themes that we see in the data.

1 The data will also give us a chance to
2 kind of gauge, maybe not statistically in a
3 perfect manner, but gauge the themes and how many
4 people have weighed in. If we hear a lot on a
5 certain theme, we might want to start there and
6 start seeing what different actionable items we
7 have within the office. Again, thanks very much
8 to the PPAC members that helped host the round
9 tables so far, and we'll look forward to, at least
10 by the next PPAC meeting with an update on the
11 data that we've cataloged so far.

12 MR. FOREMAN: Thank you, Andy. And
13 thank you to the USPTO, the user community really
14 appreciates when the office goes out and meets
15 with the stakeholders, these round tables have
16 proven to be incredibly effective. So, consistent
17 with the round tables for RCEs, I'd like to turn
18 the floor over to Drew Hirshfeld to talk about the
19 round tables that have been done in the software
20 industry.

21 MR. HIRSHFELD: Thank you, Louis, you
22 couldn't have given me a better intro with the

1 outreach and the collaboration, so thank you very
2 much for setting the stage.

3 It's my pleasure to talk about the
4 software round tables, the two round tables that
5 took place in February, the first one of which was
6 in Silicon Valley, the second one of which was in
7 New York. And this round table is exactly as
8 Louis stated, it is a way for the USPTO to just
9 better interface with the public, have a two-way
10 conversation, just really the sharing of
11 information and transparency was the driving force
12 behind the round tables.

13 And, hopefully, everybody either in the
14 room or on the web cast knows there's a number of
15 round tables that, or partnerships, rather, that
16 take place at the PTO, we have business methods,
17 biochem pharma, there's a new one on additive
18 manufacturing medical devices, to name a few. And
19 it's been, at least my view, that these get
20 praised as a great vehicle for sharing ideas and
21 insights. And the software round tables were
22 really joining the family of these other

1 partnership meetings.

2 So that being said, we had the two
3 initial software round tables, as I mentioned, we
4 had wonderful turn out with 26 speakers between
5 the two round tables, and 450 people total, if you
6 counted who was in the room and also who was on
7 the web cast. So, certainly, there's a great deal
8 of interest in these round tables, shown by the
9 number of people that came out to partake in the
10 discussion.

11 The meetings themselves in Silicon
12 Valley and in New York were both scheduled to be
13 the exact same format, given the large numbers of
14 people that we expected initially, and did show
15 up. We made them listening sessions so we could
16 hear from as many people as possible. And I do
17 think, again, speaking on the heels of the RCE
18 discussion, there's the potential for changing
19 that format in the future, maybe something similar
20 to RCE to have a true round table format.

21 But at least for the initial meetings,
22 the listening sessions were certainly the way to

1 go so we can hear from the many people that wanted
2 to speak. And we did have a great variety of
3 speakers, from law professors, patent
4 practitioners, corporate attorneys, developers, et
5 cetera. We heard from everybody and differing
6 views, so very, very productive for us to get that
7 feedback.

8 Now, both sessions that I mentioned were
9 the same format, and we had Federal Register
10 Notice directing what the questions should be,
11 what we wanted people to address. And, basically,
12 the main two topics of the meetings were, first,
13 the use of functional language and what can be
14 done to have functional language, or at least make
15 the use of functional language, the boundaries of
16 functional language clear so that patents at issue
17 are of clear and appropriate scope.

18 And this is an issue I will say, not
19 only in software patents, patents related to
20 software, but throughout everywhere at the USPTO.
21 But it certainly is an issue that is prevalent in
22 software related claims, as functional language is

1 often used to describe software, and it's very
2 difficult to recognize sometimes the meats and
3 bounds of what a software or what a functional
4 limitation has.

5 So one of the topics was directed to the
6 functional language, a second of the topics was
7 directed to potential changes or steps that
8 applicants could take when drafting their
9 applications to put the application in a form that
10 would facilitate the examination by the examiner.
11 And this, of course, is from the position that
12 quality is really a two-way street, that,
13 certainly, quality examination is important, and
14 improvement should always be made to examination.

15 We're always training and looking for
16 ways to improve quality, but we also feel that an
17 application that is written in a way to facilitate
18 the examination, I'm purposely not saying the same
19 quality, because I know it has different meanings
20 to different people, but if an application is
21 written in a way that facilitates the examination,
22 that would help the quality of the examination, as

1 it goes along. So, again, we had the two topics,
2 and they were set forth in the Federal Register
3 Notice.

4 Now, there were some common themes that
5 were discussed, and I highlighted just a few of
6 them. One of them was, there seemed to be a very
7 overwhelming support for the USPTO to use our
8 Clarity Statute 112 as a means for making sure
9 that claims are of the appropriate scope. And
10 what was interesting to me was, certainly, what
11 was being discussed was use of all avenues under
12 the statute, 112a, b, and also f. A being the most
13 interesting to me, because that's not typically
14 used as much in the computer software areas as
15 other areas. But certainly, we heard response on
16 all of those areas.

17 We also heard significant feedback about
18 making sure that the examiner and the applicant
19 were on the same page with regard to what the
20 claims meant and how limitations should be
21 interpreted. So I have that listed on the slide
22 as clarifying the record, and we heard that both

1 in New York and in Silicon Valley that we really
2 want to make sure we understand the examiner's
3 position. That way, we can agree or disagree, but
4 at least we won't continue through prosecution
5 without there being a meeting of the minds on what
6 the claims mean.

7 So that was certainly a theme that was
8 prevalent throughout. And I'm also going to
9 address interviews, because we heard a number of
10 people saying interviews are great, use
11 interviews, use interviews. I wish, Andy and I
12 were talking at the break that we didn't have the
13 interview stats with us, the first action
14 interview, the pilot program, the program that's
15 going on has a much higher allowance rate, less
16 actions per disposal. We don't have the numbers,
17 we will get that for a future meeting. But
18 interviews were certainly raised as one of those
19 ways to put the examiner and the applicant on the
20 same page.

21 So for next steps, I've had a lot of
22 inquiries about what some of our next steps are

1 for the software partnerships. I'll start out by
2 saying that the original comment period was March
3 15th, and I'm saying that in the past tense
4 because we have extended that. We've heard from
5 many people that they would like it to be
6 extended, especially with Saturday being that the
7 first-inventor-to-file provision is kicking in,
8 people certainly want to be able to devote
9 appropriate resources to both.

10 So we did extend the written comment
11 period from March 15th to April 15th. That is
12 listed on our website, the Federal Register
13 Notice, I believe, will be, has been signed and it
14 will be published tomorrow in the Federal
15 Register. We certainly will have additional
16 partnership meetings, those are being discussed
17 now in the initial stages.

18 I know that the various partnerships
19 throughout the PTO meet at variance cadences, I
20 suspect that we will be on the order of once a
21 quarter or so, I've been asked by others to do
22 once a year. We'll certainly be planning on more

1 than once a year, can't tell you exactly how much
2 they will be. I will say that, for the next
3 meetings, we're in the mode of at least seeing
4 what comments come back, evaluating the comments,
5 and letting that inform us with what some of the
6 next steps should be. Again, those comments were
7 April 15th.

8 I mentioned previously about the format,
9 that we may change the format. Again, these were
10 listening sessions. I've heard wonderful feedback
11 about the RCEs here and other places that I
12 received feedback, and that is certainly an option
13 that we're considering. But, again, we'll go
14 through the comments and see what the logical next
15 step would be.

16 And, finally, I just wanted to address
17 examiner training, because the whole idea of this
18 back and forth is to see where improvements can be
19 made. And, as I said previously, examiner
20 training is always a good thing, improving quality
21 is always a good thing, and some of the training
22 that we had in the works that is being worked on

1 was directed to specifically clarifying the
2 record. And I think that makes entire sense to
3 continue with that training and have it move
4 forward as it's certainly what we did here
5 throughout both round tables.

6 And additional training and changes,
7 really, will depend on the comments that we
8 receive come the 15th, and some of the next steps.
9 So in the big picture, I think there's steps we
10 can do now that we don't need to wait for the
11 comment period, and is there's certainly things,
12 like if there's changes with 112, for example, how
13 you would do that. We would, of course, want to
14 evaluate the comments before we take any next
15 steps.

16 And I'll end with saying that there is
17 on the USPTO website a page dedicated to the
18 software partnership. And on that, you can find
19 the two videos of each of the round tables, you
20 can also find the presentations that people gave.
21 Everyone who spoke did not give a formal
22 presentation in terms of PowerPoint or similar

1 other display, but those that did, we have put
2 those on our website, as well, and we will
3 continue to update that with the comments as they
4 come in.

5 There's no comments up there yet, we're
6 going to start putting those up right away, we've
7 received some. Again, I expect to receive most of
8 them closer to the April 15th time frame. But as
9 we get the comments, we will put them on our
10 website, as well. So I don't know if there's any
11 questions about the round tables, I'm happy to
12 answer any.

13 MR. THURLOW: Just a comment. I
14 attended the one in New York, and again, it was
15 really well received, it was packed, very
16 favorable comments to the PTO, especially Drew,
17 who does a great job. And there's really just
18 favorable feedback, and there's definitely a
19 different mix of people between IP professors,
20 practitioners, and programmers, some interesting
21 comments, but the outreach was great.

22 MR. HIRSHFELD: Thank you. And we

1 actually, in both New York and Silicon Valley had
2 to either rearrange the room or get another room
3 because the amount of people were signing up was
4 so significant.

5 MR. FOREMAN: Well, hopefully, that's a
6 trend that will continue, and we'll be able to
7 continue to bring the office outside of Alexandria
8 to the user community. Thank you, Drew.

9 At this point, I'd like to introduce
10 Marty Rater to give us an update on the quality
11 composite matrix.

12 MR. RATER: Good morning, everybody.
13 Valencia, during the operations update this
14 morning, showed you a chart with about 82
15 different numbers on it, probably, that
16 represented our quality matrix. So the purpose of
17 this presentation hopefully is to kind of walk you
18 through that a little bit, give you a little bit
19 of understanding what those numbers mean, what we
20 use to build those numbers, how to interpret those
21 numbers, and a little bit how we report those
22 numbers out and are using those.

1 It's good to actually follow Remy this
2 morning and then Drew on the software round table
3 because the patent quality composite is actually
4 an outcome of one these round table outreach
5 initiatives. We started it back in 2009 with the
6 PPAC as a primary partner in doing this. And
7 initially our goal was to identify, measure and
8 track meaningful examination quality.

9 And I equate that today, just like Drew
10 just mentioned, there's multiple definitions of
11 patent examination quality, and I've given this
12 presentation a couple of times, and I say it's
13 like defining the color medium blue. We're going
14 to ask 20 different people and we're going to get
15 20 different answers. So we did this outreach, we
16 had the benefit, because we had a specific topic,
17 and it was something that was measured elsewhere
18 in terms of we could go to the other IP offices,
19 ask them how they measure quality.

20 We could go to academia, we could go to
21 other agencies and say do you have quality
22 measures, how do you measure it, if you measure

1 it, how often do you measure it, how often do you
2 report it, how do you put it together, what do you
3 do. So we did this outreach, and we did a few
4 round tables on quality, we had some historic
5 customer external perception surveys, internal
6 surveys, we'd gathered quality data over the years
7 and quality comments, so we kind of had a general
8 idea of some of the hot topics.

9 We also went out there and did a Federal
10 Register Notice once we had an initial idea and
11 said, okay, now fill in the blanks. You say you
12 want something early prosecution, what
13 specifically do you want; you want something end
14 of prosecution, what do you want; you want to look
15 at application quality, what specifically do you
16 mean.

17 So when we took all that data and we
18 synthesized that, we really had three key themes
19 that came out of this. One was we wanted to
20 measure the entire examination process instead of
21 just the end point. At the time in 2009 when we
22 started this, we had an announce error rate, and

1 that was the most commonly reported quality matrix
2 in the office. We actually did do some quality
3 reviews with the Office of Patent Quality
4 Assurance that looked at non final actions.

5 So we were doing a little bit of pre
6 outcome, if you will, quality reviews, but that
7 number wasn't as sexy, it wasn't as high profile
8 as the announce error rate, so there was a general
9 perception that we just did not measure anything
10 until it was the end product. The same thing
11 there with providing a balance measure to address
12 errors of both announces and rejections.

13 Again, while we had done allowance
14 errors in the end results since the late '70s,
15 since about 2004, we had measured final
16 rejections, as well. We had looked at the
17 compliance with a final rejection again, it just
18 wasn't one of those well-published measures. So,
19 at a minimum, those round tables and this whole
20 effort gave us that ability to go out and
21 communicate what we have been doing. So a lot of
22 it was an education effort, and we made

1 significant advancements just from educating
2 folks.

3 But, in the end, we had those two
4 historic measures of patent quality we wanted to
5 keep, the allowance errors, it was an end product,
6 we looked at final rejections, it was an end
7 product, we had that covered. We looked at the
8 end process, we had some non final actions that we
9 were reviewing, so we kind of wanted to keep those
10 two historic measures.

11 So, one, we had a little bit of a larger
12 baseline, we knew we had some reliability in those
13 data, we had a core group of resources here at the
14 USPTO that was measuring these applications, it
15 was ingrained, and we used it in so much more than
16 just reporting out quality matrix. We used that
17 process, we wanted to keep those.

18 And we came up with five new quality
19 matrix, and we're going to get into the details of
20 those in a little bit. One of the things is,
21 obviously, you see seven measures. We have
22 actually seven matrix, and that's what Valencia

1 reported out to you this morning, showed you a
2 grid and said this is seven measures, and here's a
3 final number.

4 Why did we construct this in a composite
5 type manner? Well, one, it was we know there is
6 not one definition of patent quality. But what we
7 wanted to do was, when we communicated what the
8 office was doing in terms of quality, we wanted to
9 give you at least one number that you could sit
10 there and say, okay, this is where we're at. You
11 can dive into the sub components of that composite
12 to idea what specifically is improving that.

13 But if you go out to our data
14 visualization center today, you're going to look
15 at that and you're going to see 20 measures that
16 the USPTO has, and that's just what we've put on
17 the website. We weren't going to give anybody
18 anything of help if we went out there and just
19 gave them another seven measures for you the sit
20 there and interpret on your own.

21 So we took that one step and said, hey,
22 let us interpret this for you, but we're going

1 give you all the pieces so you can decide if
2 you've got a little bit of a differing opinion on
3 what this should be weighted versus this, we're
4 going to give that to you.

5 Again, so information overload. The
6 balanced perspective, and I think Wayne just hit
7 on this a little bit with the RCEs, we wanted to
8 provide multiple matrix, how they're happening at
9 the same time. I can go out there and tell you
10 how we're improving the backlog, but we're
11 ignoring the fact of what bubble what balloon
12 effect is happening elsewhere.

13 So what we wanted to do is say, well, if
14 we're fixing something early in the process, are
15 we breaking something father down the line. So
16 this gives us that, so we're going to see within
17 the matrix sometime, some things are improving,
18 some things are declining, some things are staying
19 the same. And what we're doing now is monitoring
20 those and trying to get an idea of what drives
21 what.

22 A lot of times, we can come up with

1 correlations, but we're not really quite sure what
2 the causal effect is on these items, so that was
3 very important for us to come up with a composite.
4 And then, with this composite, we also think it
5 provides us with a little bit of assistance in how
6 we allocate resources. If we see this item
7 driving the composite, and we've seen a sharp
8 reduction in that, maybe we can devote more
9 resources towards fixing that, or what item can we
10 fix.

11 And RCEs are actually one of those items
12 we know that we can look at and we can satisfy our
13 customers, we can increase compact prosecution.
14 So we get these one or two items that we know we
15 can affect multiple things, and this is kind of
16 what the composite has helped us do.

17 So this is the actual meat of the
18 composite, and we'll look at, there's some weights
19 over on the end, and we'll talk about those in a
20 little bit. But first of all, the final
21 disposition compliance rate, I'll give you a
22 little background on that. That is basically a

1 random review of applications, or work product
2 done by the examiner. And, in this, we're looking
3 at the random sample of about 3,000 final
4 rejections and allowances done by the examiners.

5 When the Office of Patent Quality
6 Assurance picks up these cases and they're
7 reviewed by a review quality assurance specialist,
8 these are applications as soon as they've mailed.
9 So what we do is, we acknowledge at that point the
10 examiner, the technology center, the SPE,
11 everybody involved in this application is given
12 their okay to go out the door, so it's fair game
13 for us to pick it up and say, okay, what was this.

14 So this is an outcome measure, it's a
15 pretty reliable measure, we've seen, we've been
16 able to track this pretty well, we have a large
17 degree of precision with this number. Same things
18 with the inprocess compliance rate, and this is
19 strictly non final actions, non finals. We looked
20 at about 3,000 of those, and again, we have this
21 sample, 3,000, 3,500 over the year, we distribute
22 this randomly across the entire patent corps to

1 make sure it's representative by technology
2 center.

3 Basically, it's representative to the
4 examiner level. Obviously, we don't sample every
5 examiner just because of randomness, but if an
6 examiner does ten times more non finals than their
7 neighboring examiner, they're ten times more
8 likely to be sampled in this. So we have a true
9 representative sample.

10 Quality index reporting, and this is a
11 wealth of information that happened to be being
12 built about the same time we started the round
13 tables and the discussion of the quality
14 composite. And this is basically palm data, this
15 is the examiner counts of things they do, how many
16 non finals they did by this week, how many RCEs
17 they did by this week, how many total disposals,
18 how many board actions there were, how many
19 appeals.

20 We track about 90 variables in this QIR
21 database, we track it at the examiner level and we
22 track it on a biweekly basis, and we roll it up to

1 a 12-month reporting period. And at the time, the
2 value of the QIR was, we were trying to identify
3 these clusters of examiners, what defined an
4 examiner that was having high production, high
5 quality. So we did a lot of cluster analysis and
6 synthesis of this data.

7 And at the same time we were doing the
8 round tables and such, people would come up and
9 say, hey, you know, one of the things for me for
10 quality is a second plus action non final. Well,
11 wow, we have that in QIR, so suddenly, QIR was
12 like, we have all this data. The beauty about QIR
13 is that it is not a sample, it is real data, it's
14 real time data, we can look at it, so there's no
15 sampling error, we have it for every examiner,
16 this is data that we can drill down to the
17 examiner, to the art unit level, what have you,
18 and identify outliers and try to correct it.

19 The bad news about QIR is that it has so
20 much data that it is a large ship, it's hard to
21 turn too quickly. So that's what we're kind of
22 dealing with right now, is a lot of root cause

1 analysis on that to realize how can we turn it a
2 little bit quicker this time.

3 Two new items that come out of our round
4 tables and the development of this composite, and
5 I mentioned earlier we wanted something earlier in
6 the prosecution of the application, and it became
7 kind of garbage in, garbage out. Bad first action
8 is ultimately going to catch us later on down the
9 road. We want to catch it early on. So we do a
10 more in-depth review of the search and the first
11 action on the merits.

12 And what we did with this, and I'll go
13 back to the final disposition, the inprocess
14 compliance rates. One of the faults of those
15 reviews is they are black and white. If we find
16 one error in that application, it gets parked in
17 this bucket as a bad application. It's got to be
18 100 percent correct or it doesn't pass that test,
19 so it's a very, very black and white, it's hard to
20 process. An application that has 15 errors in it
21 gets the same weight as an application that has
22 one minor error in it.

1 So what this first action review did in
2 the search and review, we did a more in-depth
3 review where we go into a lot of specific details,
4 and we ask our reviewers to actually rate these
5 items, so it's almost a report card for every
6 single application we do. Again, the downside on
7 this is it's a more intensive review, we have to
8 do a lot fewer reviews, we do this at the corps
9 level only, and we're currently doing about 800
10 reviews a year on this.

11 But, again, this is pretty early, we
12 didn't start this until FY 11, so, really, FY 12,
13 we started getting enough data to do root cause
14 analysis, we're really looking at that now. We
15 haven't seen much movement in this matrix simply
16 because we haven't been able to go back to the
17 technology centers or educate examiners or anybody
18 else what are we seeing that you're not doing, and
19 that's what the numbers are not moving, really, at
20 this point for.

21 The external quality survey, back in
22 2000, 2001, I was initially hired to come in and

1 work on the external customer survey. At that
2 time, some of you might have participated in it,
3 it was 200 questions and it asked you everything
4 from satisfaction with returning phone calls to
5 whether or not, you know, you're happy with this
6 initiative that the office put into place.

7 It did not get into the specifics of
8 quality. So what we decided in about 2006 and
9 even before we went to this quality composite, was
10 let's do a very, very detailed, let's ask about
11 quality only. We can measure phone calls and we
12 can do all this stuff on our own, let's ask them
13 about quality. Because we didn't want to burden
14 you a great deal, the public a great deal, and we
15 know that quality is such a finicky little thing,
16 we didn't want it to be biased based just on your
17 most recent result of an application.

18 Which is what we did in the interim, we
19 kind of did some transactional surveys, we sent
20 those out with final decisions, and you can just
21 guess how that tracked; got the application, we
22 loved your service, didn't get the application, we

1 hated it. So that just followed allowance rates,
2 to be honest with you. So what we did is, we
3 said, hey, let's identify our sampling frame of
4 frequent, our most frequent patent customers --
5 and, again, when we say most frequent, I think the
6 cut off last year was basically if you've got six
7 or more patent applications in front of the
8 office, you're in our sampling frame on this.

9 But these individuals in our discussions
10 kind of seemed to have enough interactions with
11 the office that they could measure changes in
12 quality on a semiannual basis. They could give us
13 a very fair perspective of whether or not, hey,
14 it's worse than it was three months ago, or it's
15 better than it was three months ago.

16 And what we asked them in this survey is
17 how well the examiners adhere to certain
18 restriction practices, rejection, specific
19 rejections. This is where we get into 101s, where
20 we get into 102s, 103s, and this is the type of
21 survey we'll use as we go forward with maybe any
22 changes in RCE, but definitely stuff like the AIA,

1 we'll start incorporating questions in there and
2 say, hey, did you see changes in quality, or how
3 well did we do this.

4 And this is our vehicle to kind of do
5 that. So -- yes?

6 MS. JENKINS: Can I ask a question?

7 MR. RATER: Sure.

8 MS. JENKINS: Just in the survey, how
9 many did you send out, because I don't see that in
10 there, maybe I missed it. And then what response
11 did you get back, and was that in your area, did
12 you think that was a good response, not a good
13 response?

14 MR. RATER: We mailed out about, we
15 sampled about 3,000 semiannually, so every six
16 months. And this is actually a wave design. So
17 of those 3,000, 1,500 of those potential
18 respondents were in the previous wave, and then we
19 just refresh 1,500 every time. So, that way, we
20 can kind of do a wave to wave change, if you will.
21 So we do about 3,000 total population.

22 Our response rates run anywhere from 40

1 to 50 percent, which, given our stakeholders, and
2 we know you're all busy, and we know that, if we
3 haven't -- quality is one of those things that
4 doesn't change overnight, we know that. And a lot
5 of people's first reaction is, well, if it
6 changes, I'll let you know, so what we have to do,
7 we have to have this survey approved by the Office
8 of Management and Budget.

9 OMB requires a clearance on this survey,
10 and they do dictate that we try to get to a 75
11 percent response rate. So what we can either do
12 is we can either call you 20 more times than what
13 we currently do about filling out this survey,
14 which we've opted not to do, we have a contractor
15 or a firm that does this, Westat actually conducts
16 this survey for us.

17 What we do is occasionally, and we'll
18 probably do it here within one of the next few
19 waves, is we'll do a nonresponse study on it. And
20 that way, we'll go out to all the individuals that
21 did not respond and say instead of answering these
22 20 questions, will you just answer us this one

1 question, and we have very good response when we
2 do that. And when we have done that, we find that
3 the results are a lot more positive than the folks
4 that spent the whole 20 questions.

5 We don't know if it's the fact that
6 because you answered all 20, it gave you some
7 thoughts and then you rated the overall worse, or
8 that was not why you responded. So we think in
9 the number we report, we're reporting the most
10 conservative under this approach. But we would
11 love, love more response rate, so everybody that
12 gets a survey, this is my beg for more response, I
13 love more data.

14 So in the external quality survey, that
15 kind of was really working well for us, one of the
16 other things that came up in the round tables and
17 as we were going along is, we really don't have a
18 quality matrix. And, again, it goes back to the
19 garbage in, garbage out of what kind of tools,
20 what is the quality of these applications we're
21 seeing. And when we kind of got started talking
22 about that, and we started talking to Robert, and

1 the union, and in some of the examiner input, it
2 was like well ask us about the resources we have,
3 and ask us about what we're presented before we do
4 our work.

5 And so our internal quality survey,
6 which we also do on a semiannual basis, we do a
7 random sample of examiners. For that one, again,
8 we don't want to burden all examiners, we would
9 love their input, and probably occasionally we
10 will do a census of all examiners. And at least
11 for this point, because we're doing a sample, we
12 limit our population to examiners that have at
13 least been on board a year, so they've at least
14 seen enough to maybe be able to feel that they're
15 providing that most valuable input.

16 We ask them about their training, what
17 access to training did you have. So the next
18 survey, we've actually got one in the field right
19 now, and we'll have these numbers updated at the
20 end of the second quarter, but probably the next
21 one, we'll ask them about their AIA training,
22 we'll ask them about anything with CPC training,

1 we'll ask them not only their access to the
2 training, but the effectiveness of that training.

3 At the same time we have the examiners
4 there, now we have to take the opportunity, we ask
5 them what are you seeing from the applicants.
6 Because they know that the applicants got a chance
7 to critique them in the external quality survey,
8 we give them the opportunity now to say what are
9 you seeing, what do you like about what the
10 applicants do, what do you not like what the
11 applicants do, what inhibits you to be able to
12 provide a high quality examination, what assists
13 you.

14 We were a little hesitant at first
15 because we didn't want this to get into a war of
16 this wave, the external customers, you know,
17 hammer at the examiners, the next one the
18 examiners hammer on the external customers. The
19 very first survey we did, it was we were kind of
20 like sitting there, and I'm going, is this my job,
21 because what number am I going to be reporting
22 here.

1 Surprisingly, at least to me, because,
2 again, this was the first time we asked the
3 examiners, satisfaction with the applicants and
4 the applications was significantly higher than the
5 satisfaction with the internal factors in the
6 office. So we thought we hit on something, there.
7 First of all, the examiners are going to answer
8 honestly, because they provided some variance in
9 their answers throughout this whole thing.

10 So, in turn, though, we're seeing pretty
11 much an even mix right now, but we still see some
12 very strong indications of examiner satisfaction
13 with the applicants, and just like we were seeing
14 in recent waves, the satisfaction of the
15 applicants with the examiners. And like Drew
16 mentioned, quality is a two-way street, and those
17 two surveys kind of help us measure that.

18 On the far right are how we weight these
19 things in the ultimate composite. Not going to
20 sugar coat this, when we first started it, the
21 weights were somewhat arbitrary, we had to throw
22 something out there. And what we used to kind of

1 establish the weights first was the reliability in
2 our data sets, how frequently we cover the data,
3 how much of a historic thing we have.

4 Now, we threw these weights out there
5 for the final comments when we threw the final
6 package out there for approval and final comments,
7 and these weights seem to stick. You know,
8 they're still a little bit arbitrary, but 35
9 percent of the top two consist of the top two
10 items, those are historic measures, we had that
11 great robust quality index data that's 20 percent.
12 Again, we didn't put that much weight of that in
13 the composite, but also our SPEs are rated on
14 that, there's a lot of people rated on that, and
15 we think that's going to drive that number without
16 having to put in that much weight. The surveys,
17 which get to be, some say, a little bit fuzzier
18 data, it's perception, it's a snapshot. I don't
19 care what it is about the examiners, we can ask
20 them tomorrow, I always use the example that you
21 never know on sampling examiners.

22 I'm going to ask them how his or her

1 work is doing that day, if they got a speeding
2 ticket on the way to work, they had an argument
3 with their spouse that morning, we have no idea,
4 they're angry at everything, we don't know. There
5 is a little bit more variance in that data, so we
6 gave that a little bit less weight.

7 I'm going to move on, here, because now,
8 just before lunch, I'll get you to move in --

9 MR. THURLOW: Hey, Marty, just a quick
10 question.

11 MR. RATER: Yes.

12 MR. THURLOW: During the PPAC meeting,
13 we always bring up the benefit of interviews and
14 so on, and we all agree it makes sense; is there
15 anything that you do to measure the quality of the
16 interview on both sides? Because I guess there's
17 a record of an interview summary, so it would be
18 easy to figure out both sides.

19 MR. RATER: Absolutely. And, actually,
20 in the FAOM, complete FAOM review, one of the
21 things, and it was an office initiative to
22 encourage examiner, examiner-initiated interview.

1 So what we did, and actually, we can share how
2 these things are actually constructed and what the
3 review form is, but on the FAOM review, we
4 actually give bonus points if an examiner
5 initiated an interview, and in addition to that,
6 how well was that interview conducted, and did it
7 result in additional things.

8 A lot of the FAOM review is based on
9 this is how many points this application, this
10 item is worth, and this is how many points the
11 examiner earned for this. We have a few things,
12 when it's an initiative related, which it was on
13 the examiner interview at the time,
14 examiner-initiated interview, we give them bonus
15 points.

16 MR. THURLOW: -- the compact prosecution
17 trying to move things up rather than waiting. So
18 you're saying you're doing the FAOM, maybe a
19 suggestion is to do it even earlier in the process
20 to engage earlier, and we could talk about that
21 for a while.

22 MR. RATER: Absolutely. And we'll add

1 another measure in there -- but that was part of
2 the --

3 MS. JENKINS: You can tell he's rubbing
4 his hands in glee.

5 MR. RATER: Well, yes.

6 MS. JENKINS: Both of you.

7 MR. RATER: But this is actually one of
8 the benefits of having some of this composite, and
9 within this questionnaire, we have the opportunity
10 to plug that in there without suddenly now
11 creating a whole new matrix for that one item that
12 we can sit there and say, okay, we did this today.

13 Now, my program might be stuck on
14 purpose if it's lunchtime, oh, I got it going now.
15 All right. Just the key concepts here for this
16 composite, because this is the number you see
17 reported. Obviously, we quantify, we summarize
18 everything here at USPTO, there's a hard number
19 associated with everything. What we wanted to do
20 with the composite is give a number that said we
21 were here, and this is where we're going.

22 We have to normalize everything, and

1 when we had this disparate external survey data
2 that was measured in satisfaction, we've got some
3 QIR data that's measured in actions per disposal,
4 and we had quality review data that was measured
5 in compliance and deficiency, we had all these
6 different measures. So what we did is we decided
7 let's normalize all of these data. We'll still
8 report them in their right matrix, but what we did
9 now was we wanted to say, okay, we're going take
10 it from a baseline, and we chose the baseline as
11 FY 09.

12 If we use a new matrix, we didn't
13 baseline it until its first year of existence, but
14 for the majority of these measures, we said where
15 were we at in FY 09, and we said okay, now let's
16 put a stretch goal out there. This is where we
17 want to go, looking at the data, what we think we
18 can move, and then Mr. Kappos was a big proponent
19 of this, let's move this things out here even a
20 little farther.

21 So we established a stretch goal, and we
22 set a stretch goal out there for all of these

1 items in FY 15. And you might ask why FY 09, FY
2 15; it mirrors our strategic plan. So, in theory,
3 new strategic plan, new composite, because you've
4 got a new baseline, where is this strategic plan
5 going to take us. It doesn't say that we can't
6 keep measuring where we were on this one, we might
7 be running two composites at that time, that next
8 composite might have different priorities, we
9 might replace a component, if you will.

10 That was somewhat of the thinking when
11 we built this composite. But, really, what
12 you're seeing when you see a measure of 70, it
13 means we're 70 percent of the way of where we were
14 from FY 09 to where we want to be in FY 15. So if
15 you see a drop in that number, we took a step
16 back, if we took a big jump forward -- we know
17 it's going to get tougher, we know that this is
18 going to get tougher as we get to that top.

19 And this is just an example for one of
20 these measures, and this actually happens to be
21 the final disposition compliance rate at the end
22 of the first quarter. You can see down here over

1 on the right, you've got a 94.4 percent
2 compliance, and that's where we were in FY 09, so
3 that was our base point. We set a stretch goal of
4 97 percent. And, again, one of the old things
5 with our compliance rate matrix was, everybody
6 assumed we were shooting for 100 percent.

7 Trust me, you don't want us to go to 100
8 percent unless you want us to bog down the entire
9 system for certain matrix. So we kind of came up
10 with these stretch goals, law of diminishing
11 returns, we're going to be wasted some significant
12 resources if we're working on this. So,
13 basically, having an entire distance we want to
14 travel, and all we're doing right now is measuring
15 how far we have gone there, and that's how we're
16 getting our percent.

17 It's a weighted matrix, I'm not going to
18 sit there and talk about weighted averages for
19 you, but we talked about this weight, not
20 everything is equal, there's reasons why our
21 things are not equal. The beauty of a composite,
22 though, as priorities change, and let's just say

1 we plug in this pre first action interview.
2 Suddenly, this pre, the first action where we're
3 measuring this, might have more priority.

4 We might want to change that from 10
5 percent to 15 percent so that the SPEs that are
6 rated on this element, or whoever else is rated on
7 this, puts the necessary focus on that. We have
8 to give that carrot out there. This is my web
9 reporting, so this is why you're going to be
10 thankful that you saw Valencia's report this
11 morning, because this is actually where we talk
12 about the weights -- and I'm in the wrong button.

13 All I wanted to do is point out here,
14 though, and this is where we currently are in the
15 raw number, but what this tells us over here is
16 this patent quality composite score, 70.6, and I
17 mention this was at the end of January, I think
18 you saw the end of February numbers this morning.
19 This tells us that we're 70 percent of the way.

20 Obviously, second quarter FY 13 right
21 now, technically, we're half way of our strategic
22 plan right now from FY 09 to FY 15, so we're right

1 at that midpoint, so we're actually probably doing
2 better than the raw actual number. But what the
3 composite does, it gives us the benefit to look at
4 these numbers over here on the right, and we can
5 see which items are doing well versus which ones
6 are not contributing their fair weight to the
7 composite.

8 So we can see that final disposition
9 compliance rate has got an 84.6, so we're 85
10 percent of the way there. That's logical, that's
11 a historic measure, we've been working on that a
12 while, it's going to be tough to get closer up
13 there. You can see the search review, the search
14 review, we've already made our stretch goal. Did
15 we make our stretch goal too low? Perhaps. But
16 the thing is, our search review form was designed,
17 that's designed to a checklist, it was did you do
18 this, did you do that, did you do this. That was
19 easy to communicate back to the patent operations
20 and say make sure your examiners are doing this
21 and documenting these things. So those were easy
22 fixes.

1 Now, the complete FAOM review I
2 mentioned earlier, this is new data, we haven't
3 really had that chance to get the root cause of
4 what's driving that number back to the operations
5 where they can make improvements yet. But this is
6 where numbers -- and, again, we're giving bonus
7 points, so if you want to get bonus points for
8 interviews, it's a quick way to raise these
9 scores.

10 The external quality survey, again, this
11 is a number that bounces around a little bit, but
12 you all came back on the last wave very, very
13 positive. We measure this as a ratio of happy to
14 sad. If you rate quality as good or excellent and
15 we divide that by the number for every single
16 person that rated us poor or very poor. Not that
17 those of you who rated us fair aren't important to
18 us, but in most of our customer satisfaction
19 research that we did, healthy environments have
20 ratios of five happy to one dissatisfied, again,
21 knowing that there's a neutral group.

22 But the idea is, if we can't move you

1 from very poor or poor up to excellent and good,
2 we at least want to move you into that fair range.
3 So that was part of it, we want to move you up the
4 scale. We don't expect to set the world on fire
5 tomorrow and suddenly have you come back and say
6 while quality is excellent, when you've been
7 getting three years of maybe subpar quality in
8 your mind, you're not going to give us a rating
9 excellent just because you happen to see three
10 consecutive applications come through the door,
11 you're going to say, hey, that's random luck.

12 And, finally, the internal quality
13 survey, again, we saw a big jump up in the recent
14 survey. Again, these two numbers, a little bit
15 volatile, because we're doing these ratios, we're
16 at our stretch goal right now, now the target and
17 the goal is to maintain these. Because, first of
18 all, we've got to figure out why we're at these
19 levels, and two, is then figure out how we're
20 going to maintain these.

21 And, finally, just to give you an idea,
22 these numbers mean something to us, that 70

1 percent, what this enables us to do is to give us
2 one matrix. Instead of going back to the office
3 and going to the SPEs and to all patents
4 management and say, well, this number has to be
5 this, and this number has to be this, this number
6 has to be this, and then you get into the
7 arguments of, well, I got four out of seven, do I
8 get 50 percent of it?

9 We get those arguments all the time,
10 well, I don't value that one, so I really was five
11 out of six. We get that, so we come up with one
12 number, and we set targets. And, again, we think
13 that there's some low hanging fruit that we need
14 to get, so we're going to see initial gains, and
15 that's what we saw initially. And I think you see
16 we see a little bit of that, what we saw last
17 year. We took a big jump up, we were a little bit
18 ahead of the progress we actually expected to be
19 at the end of the second year.

20 And as of right now, and I think the
21 number reported this morning was 68.6, probably.
22 So you can see, we've stepped back down a little

1 bit of the fiscal year. End of fiscal year, just
2 an interesting note about that, sometimes some of
3 our measures, they're a little bit, it requires
4 the full year to go through, especially on the
5 QIR. We need to see the disposals, we need to see
6 everything come through for some of these numbers
7 to be a little bit more responsive.

8 And you can see, we hope to make a lot
9 more gains by FY 14, and hopefully, in FY 15, it's
10 just doing that final weeks. We've got rid of all
11 that low hanging fruit, we've got a quality system
12 in place, it's just a matter of now attacking
13 those outliers, attacking those little issues,
14 looking at things that what's it going to take to
15 get us over this hump. So that's kind of how we
16 track this number, and really, to give you a
17 one-point number of how to evaluate where we're
18 at.

19 And, again, you've got the benefit of
20 looking at all the individual pieces. And this is
21 how we actually report it out to you, if you go
22 out to the USPTO website and the visualization

1 center, we have the quality composite score, which
2 is the percent progress dial rated, all the other
3 items are actually the true matrix how we're
4 rated. We'll probably eventually go, once we kind
5 of figure out how to report all those little
6 pieces a little bit better, provide that data
7 behind these dials.

8 But that's pretty much more than you
9 ever wanted to know about the quality composite,
10 but we don't get the opportunity to get out of the
11 quality shop very often.

12 MR. FOREMAN: Thank you, Marty. And
13 we're a little bit over our allotted time, but I
14 do want to make sure that we get comments from
15 PPAC members, so any comments at all? Yes.

16 MS. JENKINS: I can tell you love data,
17 just love it, love it, love it. I mean, the only
18 thing I would probably say, just with respect to
19 the user community, I would certainly want to see
20 a higher index rate for quality surveys, and more.
21 So, because it's based on customers, and we're the
22 customers, and you want to try to keep us happy,

1 bottom line. I mean, that's readily apparent.

2 And so if there's ways that PPAC can
3 help to try to get the message out to the better
4 survey results, we all have great ties to the IP
5 industry, so maybe we can help in some fashion,
6 there.

7 MR. FOREMAN: Well, thank you. It is
8 about a quarter to 12:00, so we're going to break
9 for lunch and we will resume on time at 12:40
10 p.m., and start with an open discussion on patent
11 quality.

12 (Recess)

13 MR. FOREMAN: I'd like to welcome
14 everyone back from our lunch break. We are going
15 to break from kind of local or recent tradition of
16 PPAC where we spend most of our time just
17 digesting information from the office, and use the
18 rest of the day today to really embark on an open
19 dialogue or discussion on topics that are of
20 particular interest, both to the office and to the
21 user community.

22 So the first session that we're going to

1 have this afternoon is an open discussion on
2 patent quality, and this will be led by Peter
3 Thurlow, a member of the PPAC community.

4 MR. THURLOW: Thank you very much,
5 Louis. So what I'd like to do is bring the people
6 here in the room today and people on the web cast
7 or listening just kind of up to date on what PPAC
8 is doing with the office to discuss patent
9 quality. My first PPAC meeting was in December of
10 last year, we went through statistics on quality,
11 some very helpful statistics at the Office of
12 Patent Quality Assurance provided to us.

13 But as we considered ways to improve, I
14 guess, the PPAC meetings, make them more informal,
15 maybe, and open to discussion, we came back to the
16 thought of having an open discussion of patent
17 quality.

18 So we all know, I mean, in particular,
19 for me, as I look at the patent system, some of
20 the top things that come to mind are the backlog
21 dependency, the quality examination. And that's
22 why we wanted to say, as PPAC, we should always

1 focus on patent quality, we should always have
2 some kind of discussion on what can be done to
3 improve quality. Many of you know, there's a
4 gentleman years ago, Mark Adler, who is a member
5 of PPAC, I think he started, really, a focus on
6 patent quality, and we would like to continue
7 doing that.

8 So, yesterday, we had a meeting to
9 discuss some issues with the patent office, I
10 should say Esther Kepplinger is the chair of the
11 committee, she's not here today, but she has been
12 corresponding with us on e-mail and so on about
13 some of these issues. So some of the things we
14 all discussed, Marty mentioned and Drew mentioned
15 is what really patent quality. For each of us, it
16 has a different meaning, and so on.

17 I believe some of the words that Drew
18 mentioned yesterday, clarity of record, just to
19 kind of, as the examiner is doing things and the
20 patent office is making the record clear whether
21 the rejections are sections 102, 103, the reasons
22 for the rejections, and so on. So that when an

1 applicant receives the office action, they
2 understand why it was rejected, and they can go
3 through analysis of it. So clarity of record is
4 one of the things that when we discussed yesterday
5 seemed to make a lot of sense.

6 We also had a quite lively, very
7 respectful and good dialogue, good discussion
8 about issues such as reasons for allowance. This
9 is something, as people know, that are familiar
10 with the process, reason for allowance at the end
11 of the application process, the examiners, right
12 now, if the file history is not clear why a
13 particular patent is issued, it's recommended that
14 they provide a reason for allowance in the
15 application. Quite often, we see that's kind of
16 too subjective an approach, so the thinking is to
17 require it or to at least encourage examiners to
18 do that more often.

19 We think there's benefits to doing that,
20 again, clarity of record, but one of the points we
21 discussed was, these days, especially with the AIA
22 and the focus on the new post grant proceedings

1 under the AIA, there's going to be a lot of more
2 of them, especially when the post grant comes into
3 place in a year or so, a year or two, when we
4 start getting applications at issue based on the
5 first inventor to file.

6 But the reasons for allowance, to give
7 you an example, if there's four or five features
8 in the patent and the examiner says, basically,
9 the prior art taught is suggested, three of the
10 five features but not the only two, and this is
11 the reason for allowance, then this is what we do.
12 Now, so that's very helpful, because when we go
13 through an IPR proceeding, PGR proceeding, and we
14 show the PTAB that there's new references that we
15 have that were not before the examiner.

16 They show that we can teach these
17 features and the art of record have taught the
18 other features as indicated by the reasons for
19 allowance. That's one of the things that just
20 makes kind of sense to do. And I mentioned
21 recently working on a case where I came across
22 that, it was very helpful, it was very effective,

1 and it's something, from a clarity of record
2 standpoint, that I recommend strongly.

3 Some other points that we discussed, and
4 I may ask Wayne to chime in a little bit, because
5 it's something that, shall I say, we're passionate
6 about. In the two PPAC meetings that I've been
7 at, there's always been a discussion of the
8 interview process. Everyone agrees that the
9 interview process is really the only benefit. So
10 traditional interview happens after the first non
11 final office action, and hopefully, more and more
12 happen after the final office action.

13 So the feeling and the basic principle
14 is, without adding more to the examiner load or
15 the applicant's workload is, if it's working at
16 the stage of non final, if it's working at the
17 stage of after final, if it's working, working,
18 working, and then, as I mentioned to Marty, maybe
19 push up the review from the quality stand point or
20 give bonus points earlier in the process.

21 It seems very basic to me, without
22 having to get into all the deliberations between

1 management and union that are perfectly fine and
2 understandable that, if I'm an examiner and I
3 review an application and I review the claims, I
4 don't see any reason why the examiner can't call
5 up or the applicant can't call up and say, before
6 you do the search, let's make sure there's an
7 understanding of the minds as far as the basics of
8 the application.

9 Again, if the, that connection, that
10 interchange of information is beneficial later on,
11 we sure think it's going to be beneficial early
12 on. So one of the things we'd like to follow up
13 at other PPAC meetings going forward is this basic
14 issue, because it just seems to make so much
15 sense. And whether, what we can recommend to the
16 PTO, to Peggy, to Terry, of course, and others is
17 that maybe consider using the pilot program if it
18 makes sense to do that, then let's do it. If it
19 does not make sense, then we say we tried and we
20 just didn't get the benefit out of it.

21 And I'll just say, objectively, in PPAC,
22 Robert Budens is a member of PPAC, and it's been a

1 pleasure working with him, because he always gives
2 us the examiner's point of view. And it's very
3 helpful to know. I mean, we discuss a lot of
4 issues. But, again, I think this is something,
5 what I try to do as a practitioner is try to make
6 the examiner's job easier to facilitate his
7 review, his or her review, and then, by doing so,
8 there's a likelihood that the prosecution will be
9 much more effective, lead to a patent, make my
10 clients happy, maybe the examiners happy, the
11 patent office decrease the backlog.

12 There's so many benefits, including the
13 post grant issues that that's something that it
14 just seems so basic that it makes sense. Now,
15 Wayne, to the extent that anyone deserves credit,
16 I mean, Wayne, very eloquently, much more so than
17 myself, we discussed this yesterday in a meeting,
18 and I ask him maybe to chime in and add to that at
19 one point.

20 MR. SOBAN: Sure, thanks, Peter. You
21 know, keying back off of the discussion that we
22 had about the RCE outreach programs and Ms.

1 Fisher's comment, I keep being reminded about
2 that, about her testimony, because I think she was
3 so eloquent and impassioned about this that I
4 think the interview process, I think, really does
5 deserve some more significant focus, because, even
6 for the applicant, especially for the smaller
7 entities, those like Ms. Fisher whose business
8 depends on this.

9 At the very least, I think they want to
10 feel like they've had their day in court, or
11 they've been heard. And more than just a paper
12 exchange, that they've actually met somebody from
13 the government whose handling this, who actually
14 in some sense has their business in their hands,
15 and that at least they can actually have their day
16 in court and express that with them.

17 But I think what we've been talking
18 about, and Andy and I have been, I think, from the
19 day I got on the PPAC, we've been having really
20 good conversations about a number of these things,
21 the RCE issue, as well as the interviewing issue,
22 I think, you know, it can help so many things.

1 Human relationships are critical in almost
2 everything, and the more we can actually get
3 people connected together and talking, it can
4 really sort of help these problems.

5 It's not trying to game the system, I
6 think it's just, you know, so often, when I was
7 practicing, actually drafting applications, I'm
8 more in management now, but I remember so many
9 times it wouldn't be until the second office
10 action that I finally, we finally had an interview
11 with the examiner. And we both said a-ha, the
12 examiner finally sort of saw what we were actually
13 trying to go for. We saw that the claims we
14 wrote, which we tried to get as expansive as
15 reasonably possible, we could see in somebody
16 else's eyes they interpreted a different way.

17 We finally got what it was, where the
18 hang ups were by having that conversation, and I
19 think having, my view would be having that as
20 early as possible. I would recommend we do a
21 pilot project and see how it goes. I would
22 recommend a pretty easy process, not a lot of

1 controls on it like you currently have, for pre
2 search conference where it's just the examiner and
3 the applicant, and maybe the inventor come and
4 they can explain what their invention is, what
5 they're trying to seek to protect, and the
6 examiner can, at that point, say I understand
7 that, but what you've written in the claims
8 doesn't quite apprehend what you just told me.

9 And you can have, then, those 112
10 discussions which we were talking about with the
11 software initiative, which I think actually apply
12 across the board in so many of the art units,
13 about getting better clarity in claim language. I
14 think it's one of the key things that's driving
15 the concerns about unfair litigation, that's
16 driving the issues around patents being expanded
17 beyond what their scope really should have been.

18 I think the more we can put that to the
19 fore front and have a clear discussion where the
20 examiner can say, I will search this, but how I'm
21 going to search these claims is based on what I
22 see right here. You might want to think about a

1 preliminary amendment before we waste an office
2 action to think through that. I think there's
3 lots of things, there's lots of opportunities,
4 here to do further engineering on the system to
5 get people connected without wasting time.

6 And I would posit, actually, that, in
7 the end, if this went right, you actually would
8 cut off an office action or two, you might very
9 much cut off a number of RCEs that doesn't need to
10 be filed, or appeals to the board, just to get the
11 attention of an examiner by just starting out well
12 with these kinds of more open discussion.

13 So that, I welcome Peter putting this on
14 to the agenda for us, because I think this is
15 really something that really could be, not
16 necessarily a game changer, but something that
17 really could move the ball down the field.

18 MR. HALLMAN: I wanted to talk about
19 this topic a little bit in the context of the
20 request for comments that the patent office sent
21 out about patent quality and some of the things
22 that they suggested. And, for me, it was very

1 interesting, because if you listen to the patent
2 bar talk about this, and if you look at what was
3 in that notice, I think you see two sides each
4 looking at the issue of patent quality from their
5 perspective and what they do.

6 And that kind of drives exactly what
7 they suggest in terms of what solutions they come
8 up with, and I think there's a very logical nature
9 about that. If you look at that notice, if
10 everybody were to do some of the things that were
11 in that notice, I'm sure people here at the patent
12 office would tell you that would make our job
13 easier and we would do a better job of examining
14 applications, and everybody would be happier.

15 And I think that, for the patent bar, it
16 was probably varying degrees of apoplectic
17 reaction to some of these suggestions, because
18 nobody -- one thing that's very interesting about
19 writing patent applications, I think, is that it's
20 not exactly like writing poems, but there is a lot
21 of room for individual expression. And I think
22 any time you do something, particularly to the

1 extent that some academics have recommended a
2 preset, preformatted claim format, nobody wants to
3 have their hands tied like that.

4 So I think the answer here has to do
5 with something that allows people on both sides of
6 the equation to get what they need in terms, in
7 order to do what it is they have to do. And,
8 again, that's why folks at the patent office would
9 love it if you would tell us every place for every
10 element in your claim, tell us exactly where it's
11 supported in the specification, because that would
12 make my job easier.

13 The patent bar would say, well, let me
14 come in and tell you what the invention is really
15 about, because that will, you know, in some
16 respect, make my job easier, because I don't have
17 to explain to you after our first office action
18 how you went down the wrong road. So I think what
19 we have to do is find some kind of ground that
20 enables both sides to be able to do what they do
21 in a more effective way.

22 Having listened to the conversation

1 yesterday and having thought about this a little
2 bit, I do think there is some merit in at least
3 thinking about and trying to consider a pilot,
4 assuming we have agreement with POPA, to see if we
5 can give one more look at a patent application
6 before we get to a final rejection. Because look
7 at the word final, it's a pretty aggressive word
8 in some sense, because it kind of indicates -- and
9 what's been interesting, I think, again, going
10 back to the RCE discussions, what I think has been
11 some interesting feedback to the office from
12 practitioners is that, you know what, if you let
13 us have another run at this, it wouldn't
14 necessarily make the whole process go a lot
15 longer, you may even find you save everybody some
16 time.

17 Again, of course, I wanted to say that I
18 do understand that there's consequences to that in
19 terms of workload for examiners. And we talked a
20 little bit yesterday about toothpasting -- and I
21 have to explain what that means, I'll go ahead and
22 explain what that means. The concept is that, if

1 you squeeze a tube of toothpaste at one end, all
2 the toothpaste squirts out the other, if you
3 squeeze it at the other end, it goes right back to
4 where you started.

5 So I get the impression sometimes that
6 we do, we're all trying to squish the tube in a
7 slightly different place, but we all want to get
8 at the same end point. And I think that end point
9 is, we want patents to grant, that at the end of
10 the day, we can all feel our valid and have had a
11 reasonable examination. And I think even the
12 people who want to get patents, if they're smart
13 and if they are honest, they really do want a
14 patent that's had a meaningful examination,
15 because that will be a patent that will be of much
16 more value to them.

17 So I guess one thing that's very
18 exciting for me is that we are having this
19 conversation, we're having it in a very reasoned,
20 genteel way, nobody's throwing anything across the
21 desk, and I hope that we are able to get to some
22 point that works for everybody at the end of the

1 day.

2 MS. SHEPPARD: I'm not on the
3 subcommittee, but I just want to make two
4 comments. One is, you were talking about the
5 interview pre search, and it would be interesting
6 to hear from the examiners and hear from the
7 public whether or not pre search would be useful
8 or it should be post search. Because, a lot of
9 times, the attorneys haven't done a search, so if
10 they walk into a room and have a conversation,
11 maybe the first thing they actually need is a
12 first search report.

13 So I'm not sure with the interview
14 before would be as useful as after they've
15 actually seen the first search report. That's
16 just something to put in your heads, I'm not on
17 the committee, but I wanted to bring that up. The
18 other thing was that, on patent quality, and this,
19 of course, we should always try to maximize
20 quality, and quality differs in the eyes of the
21 beholder.

22 I just, from being on the financial

1 subcommittee, I just worry that, in the past, when
2 there have been initiatives for quality, it means
3 a drastic decrease in application fees and in
4 maintenance fees. And we already see now, with
5 the courts getting involved with Mayo vs.
6 Prometheus and in Myriad case, that, already, our
7 applications are probably going to go down, and
8 the maintenance fees are already going to go down.

9 And I'm not saying we shouldn't try
10 to maximize quality, but upping quality necessarily
11 means, unless you're saying that there's a lot of
12 applications that should have been granted that
13 weren't, that probably a lot more were grants that
14 shouldn't have been. And this is part of the
15 calculus that should be taken into account when
16 we're having this discussion.

17 MR. SOBAN: I'll quickly respond to your
18 question, Christal. What I'm proposing, right
19 now, there already exists the ability to have a
20 pre, to have a pre first office action
21 examination, but it requires having done a search.
22 And, in fact, for most practitioners also doing so

1 much on the record about what each of the search
2 results mean in advance of even the examiner
3 having searched, practitioners don't want to use
4 it because of all the problems that engenders, and
5 I think it may be of less usefulness -- what I'm
6 suggesting, actually, is it's not going to be an
7 interview on the merits, it's not going to be
8 where we actually discuss whether any given claim
9 or claim terms are valid over prior art, it's only
10 in the sense we've discussed in the past, framed
11 it as sort of an orientation interview.

12 Where all we're doing is really having
13 an orientation for the examiner to what we are,
14 what the patent is about, because we talked about
15 yesterday, you know, we're doing a very sort of
16 arcane thing, we're transmuting things like
17 invisible strands of DNA or molecules, or three
18 dimensional structures, or electrical circuits
19 into English prose. It's a very strange artistic
20 and unnatural thing that this process is about.

21 And oftentimes, it may be literally on
22 the paper and you have described it enough for

1 someone skilled in the art to understand what
2 you've invented, but it really doesn't say the
3 invention in a way that can then inform the
4 examiner about where to search and what to do. So
5 the whole goal here is to maybe do a test run or a
6 pilot program is precisely this; which is, it's
7 before search and it's just to orient everybody to
8 what we're trying to do before things get
9 underway.

10 MS. SHEPPARD: Just a follow up to that.
11 There's been a proposal for this form where people
12 put in exactly what their claim is supposed to be
13 getting at, and I'm sure they talked about it at
14 the software round table. I didn't go to any of
15 those, but one of the proposals is for the patentee to
16 explain in different places what you think your patent
17 is to get people on the same page.

18 Is that something you were, would that
19 be useful?

20 MR. SOBAN: Possibly, although I'm a
21 little more skeptical about the Federal Register
22 Notice about those specific things.

1 MS. SHEPPARD: Right.

2 MR. SOBAN: I'm talking more about just
3 a more free form discussion, a one-hour discussion
4 at most where there can be free interchange about
5 invention and what the claims look like as just
6 shown on the page from sort of a 112 point of
7 view, and, you know, bring 112 up to the
8 foreground as to a really critical thing we should
9 be talking about first.

10 Are the claims specific enough that I
11 can even search? Because if they're not specific
12 enough to search, they're not going to be specific
13 enough for a really good process and they're not
14 going to be specific enough for eventual
15 litigation, as I think we're seeing in some cases.
16 So that's my only suggestion there.

17 MS. SHEPPARD: I get to comment, too.

18 MR. BUDENS: Time to chime in from the
19 other side. First of all, I've got to say, from
20 an examiner point of view, I think most examiners
21 are going to view this as somewhat of a waste of
22 time if I haven't had a chance to look at the

1 case, search the case and figure out what's going
2 on. That's a problem for us, because, you know,
3 number one, you can talk about an hour interview,
4 just an hour to explain to me what the invention
5 is.

6 But that's not what it's going to cost
7 me. It's going to cost me time to get ready for
8 that interviewing it's going to cost disruption to
9 my flow of work that day, and whatever. So it
10 becomes a very -- interviews in general are
11 somewhat disruptive to an examiner's time. That's
12 not to say that we're not willing to do it, but to
13 say that we would be doing it before we've had a
14 chance to look into the case, to search the prior
15 art, and at least start formulating some ideas is,
16 in my mind, somewhat premature.

17 I understand we've had these discussions
18 at length for probably several years now about
19 sometimes examiners don't understand what the
20 invention is, sometimes an inventor's attorney
21 doesn't understand what the invention is, and I've
22 had those experiences. To be a productive use of

1 the examiner's time, I think, from our point of
2 view, is going to be we need to have been looking
3 into the case.

4 And that was where our thinking was when
5 we worked with the agency several years ago when
6 this first started coming up, and we created the
7 first action interview pilot program, okay, think
8 that that was an opportunity for applicants to sit
9 there and get their early first action, examiner
10 not having invested actually into the case, but
11 having invested enough time to get work credit to
12 offset the time involved.

13 And yet, the actual utilization of that
14 pilot program has not been all that great, not
15 what I would have expected it to have been. I
16 understand that there's some concerns about some
17 of the requirements the program, and perhaps maybe
18 those need to be relooked at at some point. But I
19 have, I think, from an examiner's point of view,
20 we're going to have a distinct problem with saying
21 that we have to have an interview before we've
22 ever even picked up the case and started looking

1 at it.

2 That predisposes that I didn't figure
3 out, and you really don't know whether I didn't
4 understand the invention or not until you see what
5 I searched and what prior art I'm sending to you
6 in responses, or what rejections I'm making in
7 your case. So I think this become a very
8 problematic use of time, not just of resources,
9 but the examiner's time. I don't think it's the
10 best spent use of our time.

11 I think our time is better spent
12 looking, making sure we've looked at the situation
13 and can address when we interview with you all of
14 the issues that we see in the case, whether
15 they're 102, 103, 112, objections to whatever, so
16 that we have some kind of feel for where the
17 prosecution is going to need to go in order to be
18 productive for the applicant, and hopefully
19 reaching allowable subject matter. I'm sure there
20 will be many more comments as time goes on.

21 MS. JENKINS: Can I just chime in on
22 that? One thing that, sort of listening to the

1 conversation, that concerns a lot of our clients
2 is budget. So I think you sometimes need to hear,
3 though, that if we're recommending an interview,
4 we are on a budget, a client wants to know the
5 application is going to cost X amount of money,
6 because they need to put it in their budget.

7 And they need to have an expectation of
8 what all the patent prosecution is going to cost
9 them, and at the end of the day, what they get out
10 of it. So I've been practicing for a very long
11 time, I feel like, and interviews, I find, do help
12 move the case forward. You also have to justify
13 to the client why you're doing an interview,
14 because it's not, they don't see the piece of
15 paper, they're like how long did that take.

16 You had to prep for it, you had to meet
17 with the examiner, maybe do it by phone, maybe
18 come in person. So but I see it because I do both
19 patent and trademark, I see how beneficial it is.
20 I go back to the trademark side, and how we just
21 get things done so much quicker. I understand the
22 differences of dealing with patent examiners,

1 dealing with trademark examining attorneys, and I
2 think it's something the office really needs to
3 take a hold of and move forward on.

4 And I know, I hear your concerns, I feel
5 your pain, sort of -- I'm feeling it -- but I
6 think appreciate that there's also a cost, a very
7 large -- I heard you say cost -- there's a cost
8 factor on our side, too. And I certainly don't
9 want to waste anyone's time, I don't want to waste
10 the office's time, I don't want to waste the
11 client's time. And you're not going to interview
12 every case, so I think you have to keep that in
13 mind, too.

14 You're really going to take and pick
15 what cases you need to spend the time on to do the
16 interview, and not all your cases that the client
17 values or wants you -- sometimes you have clients
18 that are like they're in innovation and they need
19 that money for the start up, and they're like, you
20 have no idea the value in this patent, we must get
21 this patent.

22 So you hear that, and then you have

1 others that are like, you know what, I don't have
2 any time, I have to develop the product, I have to
3 go out and do marketing on it, I want it to sit in
4 the office, I don't want to do Track1. So I think
5 you have to appreciate that we're looking at it in
6 a lot of different levels.

7 MR. BUDENS: In response to that, I
8 understand that to some extent, but I also think
9 you've got, examiners have to be somewhat
10 judicious with where we put our efforts, also.
11 Right now, I mean, what I'm hearing from this
12 whole discussion is what applicants really want is
13 to be able to get access to me before I've ever
14 looked at the case, get access back to me after
15 I've sent out a first action so that they can come
16 back and talk to me about the rejections and
17 amendments and stuff, and then if I haven't still
18 got where you want me to be, you want to be able
19 to talk to me after final rejection and do that.

20 And I'm not necessarily saying,
21 objecting to the fact that sometimes it helps to
22 talk, but a lot of times, examiners find

1 themselves doing interviews when they've already
2 pretty much made it clear, you've got some serious
3 hurdles to overcome, and amendments aren't coming
4 close to overcoming those hurdles, so there's a
5 trade off on our side, too.

6 One of the questions I would have for
7 you, if somebody feels, if you all feel that this
8 interview before first action is so important,
9 what would happen if you had a right to an
10 interview and a case, but you could use that
11 interview wherever you wanted, okay. You often
12 would you put it before the examiner's ever picked
13 up the case to look at versus wanting to do it
14 after I've sent you a first action on the merits,
15 or sent you a final rejection?

16 MR. HALLMAN: It would depend on the
17 case, that would be something that was very highly
18 case-specific. I would dare say it would be many
19 cases where nobody would want to come in for an
20 interview, but there's probably, to Marylee's
21 comment, there are going to be a core of what are
22 very critical patent applications to certain

1 applicants where they are definitely want to give
2 it that attention.

3 I think you voiced some very real, very
4 reasonable concerns on the part of the examining
5 corps, and I don't know that I'm as sold as Wayne
6 is on a pre first office action interview, I think
7 I've still got to think about that. But whatever
8 kind of thing that we would do that might require
9 more examiner interaction and more, in theory, or
10 potential examiner time, I don't think that's
11 something that people are going to do in every
12 case, because it does cost money.

13 I mean, there's some cases I feel like
14 they're very important to interview, but I also
15 understand that that's going to cost me money.
16 And I don't think that would be every case.

17 MS. JENKINS: But I think it's my
18 choice, too. I want to have a choice. If I want
19 to interview early, I should have that choice, if
20 I want to interview later, I should have that
21 choice. Because, I mean, take this softly, I'm
22 paying for this. I mean, I can remember when I

1 first started out as a patent attorney, and the
2 office did everything.

3 The office did my claims for me, they
4 did all the changes to the SPECs, they did
5 everything for me. And over the period of time,
6 everything has been shifted and the burden is now
7 on us, as practitioners, to do a lot of that
8 lifting, we give you all the claims, we give you
9 SPECs. So I feel like, if we're trying to make a
10 better system, we need to work together.

11 And obviously, I appreciate -- you know
12 we've talked about this, the credits to the
13 examiner, and we need to better understand how we
14 work and what your limitations are, and that's
15 something we need to do a better job of getting
16 out to the user community.

17 MR. BUDENS: And, to make it clear,
18 Marylee, because I want to make sure that there's
19 not a misunderstanding going on in the previous
20 question I just asked. I was basically saying if
21 there's a choice, let's say, okay, you pay as part
22 of your filing fee for an interview in the case.

1 But you could have the choice of where you use
2 that interview.

3 If you use it before I've picked up case
4 to search, you feel like you need to do that,
5 that's fine, but then you lose the opportunity,
6 that's your interview in that case. So the
7 question is how much is it really worth to the
8 applicant community to want to go down that path,
9 because there's going to be costs to that path,
10 both in lost productivity and lost examiner time,
11 stuff that -- and I don't want to be speaking for
12 Peggy, because she's quite capable of speaking for
13 herself.

14 Just from a purity examiner point, I
15 don't see it as the most efficient use of my time,
16 in general. There may be rare occasions, and
17 there have been occasions where I've looked at a
18 case and said let's bring in, call for an
19 interview. I've also asked bring the inventor
20 with you, okay, and then we'll talk. And usually,
21 what happens then is the inventor and I are on the
22 same page and it was the attorney who didn't quite

1 understand where the inference really was.

2 I agree with Clinton, it depends on the
3 facts of the case. Yeah, ouch was right in
4 several of those instances, I agree. But the fact
5 of the matter is, it is a very fact-dependent type
6 of situation.

7 MR. FAILE: Just an observation, jumping
8 to a higher level based on Wayne and Peter's
9 initial thoughts about the interview. A couple
10 things run through my mind, one is, it's kind of
11 stitching together some of the themes that we're
12 hearing in the round tables we're doing, and just
13 at a high level, one of them is trying to connect
14 examiners and the applicant practitioner as early
15 as possible in the prosecution, putting them on
16 the same page saves us an enormous amount of
17 downstream work, whether it be RCEs or appeals, et
18 cetera.

19 So anything that puts both the examiners
20 and the applicants on the same page as early as we
21 can in the prosecution, to me, is a general help.
22 The fact that it works itself out in pilot A, B or

1 C, that's when we kind of dial in some of the
2 balance points that I think I hear today on
3 different sides of the equation. So, to me, that
4 would be kind of an important thing.

5 The second thing is the idea of testing
6 certain things. If we think that something
7 earlier in the prosecution would be a good idea,
8 to test, a limited test of that to kind of test
9 the proof of concept type of approach generally
10 would be pretty helpful and we can see are we
11 really going to get a bang for the buck and should
12 this be expanded.

13 And kind of a third point that I'm
14 hearing, and agree, is that I think this type of
15 approach would be very case-specific, as Clinton
16 points out, and as Robert is saying to some
17 degree, too. It would be potentially at the
18 option of either of the examiner/applicant. The
19 examiner may have questions, I know when I was an
20 examiner and had a docket, there was some cases
21 very early on that I think would have benefitted
22 from an early interaction with an

1 inventor/practitioner and making sure before I
2 even did the first search that I was searching in
3 the right, that we were on the same page and
4 searching the scope of the claim, or understood
5 the claims well enough to get into the search.

6 That's not going happen on every case,
7 but I can think of some cases where that would
8 have been really helpful.

9 MR. FOREMAN: So that was, I think, a
10 very healthy and spirited discussion, and, really,
11 what I think this forum is all about is trying to
12 just get different sides of the equation and
13 figure out how we arrive at a better outcome. At
14 the end of the day, that's all we're looking for.
15 So I'm not trying to choose sides, here, and I'm
16 glad that we got all sides here of the discussion,
17 but, Peter, thank you for organizing that update.

18 And now I'd like to turn the floor over
19 to Chief Judge Smith for an update on the PTAB.

20 MR. SMITH: Good afternoon, thank you
21 for having me and us for this session of the PPAC.
22 Open discussion, what would you like to hear?

1 MR. FOREMAN: Well, as you weren't in
2 the room when we were talking earlier, but what we
3 want to be able to do today is use this allotted
4 time to really allow members of PPAC to talk to
5 you to ask questions specifically about what is
6 happening, and maybe offer suggestions or feedback
7 that could be beneficial to you and to the office
8 and the community.

9 MR. SMITH: That would be great. Let me
10 just introduce your questions by a quick mini
11 survey of the exciting things going on at the
12 board. I think I can say as much this time as any
13 previous times visiting PPAC that we are in a very
14 exciting time at the board, and more exciting now
15 than ever before, even in comparison with even
16 months ago.

17 We continue to expand the board, we're
18 now at 168 judges on board, about 172 total when
19 all the judges in the queue come to us, we have
20 several additional candidates that we are prepared
21 to recommend to the Acting Secretary, we are
22 pushing towards the number 200, we have a round of

1 interviews scheduled for Colorado tomorrow, which
2 will happen here, and California for the week
3 after next, which will happen in California.

4 We continue to be tremendously excited
5 about the caliber of the candidates putting
6 themselves forward. To date, 1,500 applications,
7 450 or so have made it to the semifinalist stage,
8 and we've conducted 230 interviews so far,
9 including several at different locations,
10 including Detroit, where we had regional
11 interviews.

12 The PTO expansion to other locations is
13 moving forward, as you know, Detroit has been open
14 since July of last year, the temporary space in
15 Denver opened on the 2nd of January this year,
16 this coming Monday, four days, five days from now,
17 we will open temporary space in Dallas, we have a
18 handful of judges who are prepared to begin
19 sitting and are already on board. And we will
20 open in California with temporary space on Monday,
21 the 15th of April. We also have half a dozen
22 judges ready to sit in California, even in advance

1 of the next dozen or so interviews that we will
2 conduct out there.

3 As you probably know, the first round of
4 AIA decisions as to whether or not to institute
5 trials have gone out, I think we're somewhere
6 between -- we're above 20, I don't think we've
7 quite hit the 30 mark yet. There's been quite a
8 bit of public reaction to those decisions, mostly
9 favorable. We are not so much concerned about the
10 public reaction, per se, as we are the time and
11 attention we give to those decisions to make sure
12 that they are fair and balanced, which hopefully
13 will drive good public response.

14 In time, we will evolve the support
15 staff to accommodate the greater number of judges.
16 At some time earlier, two or three years ago, and
17 well prior to my time at the board, the staff size
18 was increased to accommodate what had hoped would
19 be judge expansion back then. That didn't happen,
20 which, among other things, drove our backlog
21 concerns. The good thing is, that since we have
22 that staff capacity in place, we think, for the

1 time being, the staff size will not need to grow
2 much to accommodate the already experienced and
3 still to be experienced expansion in the judge
4 corps.

5 We continue to work with the ex parte
6 appeal backlog. As an example, the type of
7 numbers we've seen in the last quarter or so,
8 quarter and a half, about 1,100 decisions in the
9 door in any given -- I'm sorry, 1,100 appeals in
10 the door in any given 30-day period and about
11 1,125 decisions out the door in any given 30-day
12 period, which has us decreasing the backlog, but
13 not at the pace we would like.

14 Of course, as the judge corps increases,
15 we'll have a better shot at reducing it at a
16 greater pace, as long as the inflow of appeals
17 does not grow too soon. We, of course, are trying
18 to tackle that while we're also trying to tackle
19 the AIA work, and we expect that that number will
20 continue to grow at the same pace it has been
21 growing.

22 Last, let me say, as a preliminary

1 remark that we have been looking at the board's
2 structure to make sure that the management of it
3 evolves with the size and complexity of the
4 mission. The mission, of course, being complex in
5 several ways, geographically is now five locations
6 instead of one, jurisdictionally, it now includes AIA in
7 addition to all the things we had before.

8 And AIA is itself multiple jurisdictions
9 under that umbrella, so there are several ways in
10 which we are evolving the administration of even
11 the hearings is more complex. Again, because we
12 are in many more places and have many different
13 types of proceedings, to accommodate this, we've
14 gone from seven lead judges to 14, and essentially
15 a lead judge presides over a group of about 15 or
16 so judges in a particular technical discipline or
17 jurisdiction type.

18 For example, AIA proceedings, or
19 mechanical, technology, depending in accordance
20 with how we have the different sections broken
21 out. In addition to look more carefully at our
22 administrative processes and the way the work of

1 the support staff is integrated with the work of
2 the judges, we've asked Glen Perry to serve as our
3 Acting Vice Chief Judge for Administration,
4 essentially.

5 Judge Tierney continues to lead one of
6 our trial sections, and we've also added Judge Tom
7 Giannetti as one of Judge Tierney's cohorts in the
8 leading of that work, and Judge Jeff Robertson.
9 That's the quick thumbnail sketch.

10 MR. FOREMAN: Thank you, Chief Judge,
11 and we appreciate your time and update that you've
12 provided to PPAC and the public. What I'd like to
13 do at this point is just open it up to members of
14 PPAC and the public to ask any questions or make
15 any comments.

16 MR. THURLOW: Judge Smith, thank you
17 very much for your presentation and the basics on
18 the latest developments. Can you just give us a
19 sense, the old regime I'm going to call it, the
20 old system was somewhat criticized because you had
21 the SNQ standard, and it seemed like, I believe,
22 the stats were 95 percent of all ex parte or inter

1 parte exams were pretty much granted.

2 So my understanding was that, under the
3 new system, they changed some standards, but they
4 also gave the patent owner the opportunity to
5 submit the patent owner's statement, the
6 preliminary response before the PTO gets it. In
7 the 20 or so cases that you've dealt with or
8 handed decisions out, can you give me a rough
9 number, or are all patent owners providing that
10 preliminary response that helps you kind of decide
11 whether to grant it or not?

12 MR. SMITH: In the majority of cases,
13 the patent owners are choosing to put in a
14 preliminary patent owner response. I don't
15 remember the number specifically, I will look to
16 Judge Tierney to let me know whether I'm misguided
17 in this response. I think of the first 20 cases,
18 in 17 of them, I believe, preliminary patent owner
19 responses were provided.

20 MR. TIERNEY: Yes, I actually have an
21 update now, and the update is -- sorry, my
22 eyesight is getting bad as I get older, apologies.

1 And, yes, I have a shock of white hair, according
2 to the Chief, to go with my poor eyesight.

3 Of the first 54 IPRs that were filed,
4 there were only 10 waivers, so the trend
5 continues. And the Chief is correct, out of about
6 23, the first 20 responded only through waivers.
7 So now we're at 10 waivers, 54 have filed. So out
8 of a total of 64, 10 waivers, so we're seeing,
9 what, about 15 percent waiver.

10 And the CBMs, there are 14 that filed
11 responses, only one waiver. So, yes,
12 predominantly people are responding with the
13 patent owner preliminary response.

14 MR. THURLOW: So that compared to the
15 old system where it really wasn't used, patent
16 owner statement, they really wanted to get rid of
17 that. That's the positive development, it seems
18 like it made sense from a systematic change that
19 would be good that the patent owners are
20 providing. Just a general feedback on that.

21 MR. SMITH: Well, here's my general
22 statement about what we've seen. The arguments

1 from the parties, both the petitioner and the
2 patent owners seem to be focused and specific for
3 the most part. In the cases where that has not
4 been so, I think the decisions have pointed that
5 out.

6 The rules were fairly clear that this
7 was not intended, we don't believe Congress to
8 have intended a regime under which petitioners
9 merely threw art on the wall and then expected an
10 examination or a reexamination of art where they
11 may have said all sorts of things about that art,
12 some of which they hope would be useful for an
13 argument.

14 The current regime calls for a specific
15 claim construction, it calls for specific
16 arguments for the formulation of specific
17 challenges directed to specific claims, and I
18 think the patent owners have responded in kind,
19 making the work of the board move forward in a
20 similarly focused way to deal with the issues and,
21 say where the standard, for example, an IPR, where
22 reasonable likelihood-has been met, at least as to

1 one claim.

2 I think, if you look at the overall
3 statistics as to grant of trial or not, what you
4 will see is, in the majority of cases the clear
5 majority, not unlike in a previous regime, grant of
6 trial, there is a grant of the trial. But I think
7 a more careful look at the numbers reveals that,
8 in many instances, several of the challenges
9 brought forward by petitioners are being denied
10 based on the review by the board of the challenges
11 and finding them wanting, and with the aid of the
12 patent owners who, in many instances, have pointed
13 out the deficiencies in the challenges brought
14 forward by the petitioners.

15 MR. THURLOW: Thank you very much, that
16 was a very helpful answer. Outside the patent
17 office, a great deal of interest is in discovery,
18 so I'm not sure where you're at on those, I
19 apologize if you described that. But it's just
20 there needs to be an appreciation, and I think the
21 outside community or stakeholder community is
22 learning more about that.

1 Have there been cases where you've
2 discussed discovery, is there -- where are we at
3 on that? I know it's limited discovery, can you
4 tell us where you're at on that?

5 MR. SMITH: Yes. As a general matter,
6 again, it is clear the congressional regime
7 intended here is one where discovery is not
8 intended to be the same as district court
9 discovery. The standard is very different, it's
10 an "interest of justice" standard to go beyond what
11 the federal rules provide, and not merely "likely to
12 lead to something relevant" standard. We have seen
13 parties, for the most part, stay true to that so
14 far. We're early in the process, so we don't
15 have, by any means, a full view of the situation.

16 We also have seen parties try to test
17 the limits and ask for more than we have believed
18 to be appropriate under the rules, and we have
19 indicated that to parties, and we've tried in the
20 rulings on those motions so far to make known, not
21 only to the parties, but others reading those
22 decisions that we intend to stick to the statute

1 and the rules, and require a clear showing in
2 accordance with the standard provided before we go
3 beyond the fairly narrow limits of discovery that
4 are intended for the AIA proceedings.

5 MR. HALLMAN: I had a quick question
6 relative to discovery. I don't think discovery is
7 something that the board has had to do a lot with
8 to this point, what steps and how have you gone
9 about training people on the board about what
10 discovery is and how to manage it? What steps are
11 you taking to administer discovery?

12 Because I don't think it's something
13 you've ever had to do before, correct?

14 MR. SMITH: Well, let me parse your
15 question in a couple of ways. I think there's a
16 premise there that maybe, quite respectfully,
17 doesn't necessarily follow. First, the board has
18 had some experience with discovery in contested
19 proceedings, including interferences before. But
20 setting aside interference and the substantial
21 experience that provided to many judges on the
22 board, I think that, while the board has not had

1 to deal with discovery before, as a board in the
2 AIA proceedings, that by no means is an indication
3 that judges on the board have not dealt with
4 discovery before.

5 We have, if you could have a dollar for
6 every year of discovery experience on the board
7 through its judges, you'd have a nice little chunk
8 of change. We have judges who have tried cases
9 for decades in every place where discovery is had,
10 and they bring that tremendous wealth of
11 experience. In fact, they have the advantage of
12 having not been the deciders of those discovery
13 issues, but the strategist themselves, perhaps
14 trying to push the rules to their limits so they
15 can recognize when other folks are now trying to
16 do that.

17 So we are very comfortable with the
18 level of experience on the board in the area of
19 discovery.

20 MS. SHEPPARD: You talked about
21 substantial experience and tremendous wealth of
22 knowledge. My understanding is, maybe I have a

1 misplaced concern, and hopefully you will put my
2 mind at ease. Some of the hiring for the local
3 offices are from people who haven't come up
4 through the Patent Office, have not been judges
5 and may never spend any time in D.C., so I'm
6 somewhat concerned that you're going to end up
7 with almost regional circuits of judges who three
8 of them sit on a panel, but they think alike.

9 Are you going to have, because you have
10 a video conference capability, maybe an
11 experienced judge from here sitting with two
12 people from there? I just see a problem that can
13 be easily fixed.

14 MR. SMITH: The problem does not require
15 fixing, because it has not come about. And let me
16 address it in a few ways, if you look at the
17 selections of judges in these other offices, take
18 Detroit, for example, we have some number of those
19 judges who were, in fact, patent examiners for
20 years. They did not come to the board directly
21 from the patent corps but were in practice in
22 places such as Detroit before coming to the board,

1 and were very excited that they had the
2 opportunity to come back to the Office because the
3 Office is now where they are.

4 So I think, if you look across all the
5 offices, and now we have judges for each of those
6 offices, again, you'd have a very substantial
7 chunk of change if you had a dollar for each year
8 of patent examining experience represented in
9 those offices. In addition, with regard to
10 paneling cases, we have no instance in which all
11 the judges on a particular panel are from any one
12 office.

13 That flows from two things we're doing.
14 One, all the judges in these new offices are new
15 judges, and we don't have three panels of any new
16 judges anywhere, including no three new judges in
17 Alexandria. We have a very, I'll put it this way,
18 sophisticated protocol for paneling cases that
19 insures certainly a limited number of new judge
20 representation, no more than one new judge on a
21 panel.

22 And we also arrange the panels to take

1 advantage of some technology breadth, for example,
2 geographical breadth, and to insure that every
3 panel has at least one judge who has had a
4 substantial amount of time at the board already.
5 As the new judges are longer in the job, it will
6 be easier to relax the paneling protocol and do it
7 more free form.

8 From the outset, we have committed to
9 make sure that no regional identity develops on
10 any panel any time. It should be one board, and
11 we're driving that very, very intentionally.

12 MS. SHEPPARD: Thank you for clarifying
13 that point.

14 MR. SOBAN: I have a couple of related
15 questions, actually. On the training for all
16 these new judges, is some of that actually in
17 written and/or PowerPoint materials? Because it
18 would be interesting, actually, if you could
19 publish those things, any actual framework you're
20 choosing. So we, as practitioners can actually
21 see how they are being reared so we can understand
22 your own internal perspectives on what's

1 important, if that exists.

2 Related to that, I'll just state all my
3 questions, and you can respond to whichever you
4 think are appropriate. I looked at the list of
5 things, I think it's very salutary that you have
6 your list of representative orders, which I think
7 is something to really keep up. I didn't see yet
8 any of these discovery orders, I would imagine you
9 probably are going to be publishing those. I
10 think that's also a very good education effect for
11 the practitioners about representative orders.

12 Related to that, my other question is,
13 it's very early days, but obviously, we were very
14 concerned at the PPAC in our fee setting about the
15 interaction between your discovery regime and the
16 rules and potential costs for a litigant, for the
17 participants. And it might be something that
18 either the office itself, or maybe in conjunction
19 with organizations like AIA or others might do
20 some sort of survey of contestants in these
21 contested cases after the fact about how much they
22 spent on these cases as we go forward to see what

1 the kind of real world cost effects are of some of
2 these cases.

3 Those are some of my main questions.

4 MR. SMITH: Training materials, they
5 exist, it is a somewhat, it strikes me sort of
6 newly here the idea of actually sharing those
7 outside the board. I would like to think that the
8 best evidence of, at least the existence of good
9 training would be the decisions we issue
10 themselves. But maybe there is desire for more
11 transparency than that.

12 Representative orders, we continue to
13 post those in the informative section of decisions
14 on our website. Those have not included, to date,
15 many discovery orders, because there haven't been
16 that many of them. You will begin to see those
17 shortly, I think two of them went out last week,
18 they may or may not already be posted on the site.

19 Certainly, on the course over the next
20 three to four weeks, we are likely to issue more
21 and to designate most of them as informative. Judge
22 Tierney has tried to skew us in favor of over

1 designating as informative first decisions having to do
2 with things such as discovery, rather than falling
3 short in terms of doing that. At this early
4 stage, review is beneficial to make sure that
5 we provide as much visibility to those first set
6 of orders as we can for the public benefit.

7 With regard to fees and overall cost of
8 discovery, again, a fundamental for us has been
9 making sure that discovery is not so long or so
10 involved that it endangers the mission of
11 completing the trials in a year. But we think
12 that overlaps entirely with the standard by which
13 the discovery would come to be had anyway, namely,
14 the Interest of Justice Standard, where the rules,
15 again, provide for certain basic discovery that
16 every party must provide, that each party must
17 provide, rather.

18 And that discovery that's called for by
19 the rules is aligned with the determinations to be
20 made. And if that turns out not to be so, and
21 more is needed, that following the Interest of
22 Justice Standard, we would not oversize the

1 discovery so as to make it unduly expensive and to
2 undercut the very purpose of the proceeding.

3 MR. SOBAN: Thank you, Judge, that's
4 great.

5 MR. FOREMAN: Thank you for your time
6 this afternoon, we sincerely appreciate the
7 update.

8 MR. SMITH: Thank you.

9 MR. FOREMAN: So, needless to say, it's
10 an exciting time to be a chief financial officer
11 in a government agency, so we're lucky to have
12 Tony Scardino here this afternoon to give us an
13 update on how it's impacting the USPTO. Tony?

14 MR. SCARDINO: Thank you, Louis. You
15 stole my line, this is a very exciting time. If you
16 think James is excited, can you imagine our lives?
17 You know, this year has been exciting for any
18 federal agency, of course, due to sequestration,
19 and we've been operating under a 6-month CR,
20 continuing resolution, of course.

21 There's additional complexity, of
22 course, because new fees go into effect next week,

1 March 19th, on top of that, first inventor to file
2 goes into effect in a couple days. So we have
3 been challenged by a great level of uncertainty
4 trying to estimate how many fees we're going to
5 collect this year. And, right now, we're in the
6 midst of where we thought we would be just about,
7 in terms of we call it a bubble.

8 There's a lot of folks that are paying
9 ahead of the new fees going into effect, because
10 most fees are going up. So, unfortunately, what
11 comes with the bubble comes what we call a trough,
12 after March 19th, we're expecting a drop off.
13 Take those folks who paid in advance, maintenance
14 fees, you know there's a window, they pay before
15 March 19th, that means all those fees that we
16 would normally collect later in the year won't be
17 coming in, and they would actually be higher after
18 March 19th, if you do the math, because the fees
19 are higher.

20 So we are trying to manage revenue and
21 expenditures, of course, to the point where we
22 don't over spend, of course. And 2013 is still in

1 flux, the 6-month CR expires on March 27th, and
2 then something has to happen, either an
3 appropriation has to be enacted for each
4 Congressional agency or they'll do what's called a
5 full year continuing resolution, and it's
6 looking like that's what they're going to do.

7 The House passed their version of a CR
8 last week, the Senate passed their version this
9 week, and next week they'll go to conference. So
10 let me give you a little background on what those
11 two versions are, because, unfortunately, they're
12 different, so conference is very important.

13 The House, pretty much across the board,
14 with some exceptions, of course, put everyone,
15 every agency at last year's funding level. That's
16 a true continuing resolution, they say operate in
17 2013 at your funding levels for 2012. For the
18 USPTO, that would be \$2.76 billion. That is less
19 than we think we're going to collect this year,
20 and it's also less than we think we're going to
21 spend this year.

22 And I use the word "think" because,

1 of course, no one knows what we're going to
2 collect, and we only spend what we collect. So
3 the Senate, thankfully, they put us in for what's
4 called an anomaly. They took us, looked at us and
5 said, hey, you guys are different, your funding
6 level should be different in 2013, so they've put
7 us closer to the President's budget request level
8 of \$2.9 billion.

9 That's a much better number, we don't
10 envision collecting that much money, we certainly
11 won't spend that much money. So next week's
12 conference is very important for us, and again, we
13 don't cost the taxpayer a dime, it's offset in
14 collections, so we don't see why Congress should
15 have a problem with giving us the anomaly and
16 appropriate rating an amount that would make more
17 sense for us to operate.

18 So that's kind of where we are. There's
19 still a lot of indecision in terms of what we're
20 going to be appropriated, and there's certainly a
21 lot of indecision as to what's going to happen
22 after new fees go into place. So, with that as a

1 backdrop, I just want everyone to know -- the exciting
2 part of this is trying to operate an organization
3 is that still growing and still doing some great
4 things, as we've heard all day today.

5 So we are actually still hiring, we have
6 just pulled back on hiring, we're not hiring 1,500
7 examiners this year, we're probably not going to
8 hire 1,000 examiners this year. If I had to guess,
9 the number will be somewhere, if I had to
10 guess, somewhere between 500 and 1,000, whatever
11 that number is going to be. We keep saying we're
12 going to hire up to a 1,000, because if money does
13 come in, I know Peggy and Andy would love for us
14 to hire those additional examiners, because that's
15 the path that we planned on being.

16 So production and hitting our pendency
17 goals, that's where we were. Now, of course,
18 we've had some good news in terms of attrition.
19 Retention's been higher than we thought it was
20 going to be, the more you retain in terms of
21 experienced examiners, the better it is for
22 productivity. So things are going well in that

1 vein, and I'm sure you've heard about that
2 already today.

3 But we are trying to, in the midst of
4 all this, we're trying to build a budget for 2014.
5 You have the draft budget we've submitted to you,
6 we need comments by next week, please. The
7 President has decided to delay submitting a budget
8 to Congress. Normally, it would be the first
9 Monday in February, then it was going to be late
10 March, now the latest date we're hearing is
11 probably April 8th.

12 And, again, this all makes sense with
13 sequestration still going on, with the CR, it's
14 hard to build a budget for '14 when you don't know
15 what your '13 funding levels are going to be. So every
16 agency has been challenged by this, and we're not
17 immune to it. Sequestration did affect us off the
18 President's budget level, but we think the CR will
19 then kind of go in and hopefully correct that.

20 So that's, in essence, where we are with
21 '13 and '14, some things are still in flux, but
22 we're trying to manage it each and every day. Any

1 questions or thoughts?

2 MR. THURLOW: Just a general. I guess
3 there's still a concern in the IP stakeholder
4 community about what happens if your funding is
5 below what you take in and what happens. I know
6 the AIA put provisions in there, but the way the
7 economy is and so on, it is a concern.

8 MR. SCARDINO: Sure. Let me walk
9 through that. I mean, I know we all know in
10 theory how it was constructed, what happens is,
11 any year that we collect more than Congress
12 appropriates, so let's say that we do have a full
13 year of CR and it's \$2.7 billion, and we collect
14 \$2.75 billion--, \$50 million extra--, that money is
15 supposed to go into what's called the patent reserve --
16 Fee Reserve Fund -- sorry.

17 What would happen is, under
18 sequestration, we couldn't access that money this
19 year, fiscal year 2013. But October 1st is fiscal
20 year 2014, so we would have to do what's called a
21 reprogramming, and reprogramming is basically a
22 letter to the congressional committee saying

1 here's how we would spend our money, and then they
2 would make it available.

3 So it doesn't take an act of Congress in
4 terms of a law, but it does take an act of
5 Congress in terms of the committee's approving it.
6 And that was the compromise to us not being a
7 revolving fund or whatever we could have been. But
8 it's never been tested, it was enacted 18 months
9 ago, but we've never collected more than we were
10 appropriated, this would be the first year if
11 it did happen.

12 MR. THURLOW: Who makes that decision,
13 Congress or --

14 MR. SCARDINO: The appropriations
15 committees. I mean, sometimes they may -- we
16 don't know, they may confer with the authorizers,
17 we're not entirely sure, but you wouldn't need the
18 whole Congress to act, no. It's usually just a
19 letter from the two chairs of the appropriations
20 committee, Senate and House.

21 MR. THURLOW: Thank you.

22 MR. SCARDINO: Sure.

1 MR. FOREMAN: Other questions for Tony
2 before we let him back to his job?

3 MR. SCARDINO: The exciting one that it
4 is.

5 MR. FOREMAN: Thank you, Tony.

6 MR. SCARDINO: Thank you.

7 MR. FOREMAN: We are getting to the end,
8 here, so we always save our best for last. I'd
9 like to introduce our Commissioner for Patents,
10 Peggy Focarino, to give us her closing remarks.

11 MS. FOCARINO: Wow, that's going to be
12 tough now, after all the lively conversation we've
13 just had after lunch, but thank you, Louis. And I
14 also want to follow on Terry's remarks in welcoming
15 Marylee, who is our newest PPAC member, so we
16 really are fortunate to have you, and we look
17 forward to working closely with you.

18 MS. JENKINS: Are you sure?

19 MS. FOCARINO: I'm very positive, I
20 think we have a great group, and we know we have a
21 lot of challenges, but I think we're all focused
22 on the same goals, to improve the system. So,

1 this morning, I think we had some great
2 discussions on the RCE issue, the round table
3 efforts, and you'll be hearing more and more about
4 some of our effort to reduce that backlog, perhaps
5 in the next meeting. And also, the software
6 partnership effort is up and running, and I know
7 we'll continue with that, and we'll get a lot of
8 really great input, as we've seen so far, and
9 we'll continue to get as we go through the
10 comments that are coming in in the comment period
11 that will help us internally really address the
12 challenges that we're facing.

13 So I appreciate everybody's input on
14 that, and encourage the public to continue to
15 submit your feedback. As you've heard, April 3rd
16 is the date for the rescheduled RCE round table
17 here in Alexandria, so there's still an
18 opportunity to come in and share your thoughts
19 with us. So I encourage everybody to do that.
20 And I really enjoyed the open discussions this
21 afternoon, so I hope we continue that kind of
22 dialogue, because I thought it was very good, very

1 transparent to everyone, and as you can see, we're
2 all focused on making improvements. So great
3 discussions.

4 I just wanted to, before I turn it back
5 over to Louis to adjourn, I just wanted to briefly
6 give you some more updates on the satellite
7 offices, in case you're wondering. Timing, I know
8 the Chief Judge touched a little bit on that, but
9 the Detroit office, as you know, has been up and
10 running since last July, so coming up on the
11 one-year mark, we have 62 examiners there, we have
12 12 APJs there, and we are hiring another 13
13 examiners that will come on board later in this
14 month.

15 But the examiners are off to a good
16 start, they've issued over 1,000 office actions,
17 and they have been involved in outreach in the
18 Detroit area, so they're participated in over 30
19 outreach events. So what we've been finding is
20 the people in Detroit love having the USPTO out
21 there and they're really developing quite a great
22 relationship with us and all of our staff there.

1 And the examiners there are also
2 planning on starting a Kids in Chemistry program,
3 which we have here in Alexandria, which they'll go
4 out into the community and local schools and help
5 children with experiments, so that really supports
6 the stem efforts. And it's great that they're
7 doing that, because they're having their own
8 little community there.

9 So, talking about the Denver site, the
10 final site selected for the Denver satellite
11 offices, the Byron Rogers Federal Office building,
12 and the plan is to open there in early 2014, and
13 we'll occupy two floors in that building, it's all
14 newly modernized, renovated building. We plan on
15 housing about 100 examiners there, the Chief Judge
16 will have about 20 APJs there, there will be
17 conference facilities, public search facility, and
18 also a hearing room there. So they will have
19 other venues for you to go to have hearings.

20 And we opened a temporary space in the
21 Denver Federal Center, that's in Lakewood,
22 Colorado, and that was on January 2nd, so we've

1 been up and running for more than a few months.
2 And we have a dozen administrative judges there,
3 so they are up and running and fully functional.
4 So we will be in that space until we occupy the
5 permanent space in Denver.

6 And then we have Dallas, which I know is
7 where Christal had her RCE outreach round table.
8 So the site selected for the Dallas satellite
9 office is the Terminal at Annex Federal building,
10 and that should be ready for occupancy in late
11 2014. So we will be in under the wire for our
12 commitment specifies in the AIA. So the first
13 floor of that building will house the PTO's
14 public, really, services, the reception area,
15 hearing, another hearing room, conference room,
16 training facilities, and also a public search
17 facility. And we will be on the 5th floor of that
18 building.

19 So we will be in Denver opening
20 temporary space until that permanent space is
21 available, and the temporary space will be housing
22 the APJs, so the Chief has judges all over the

1 country now, working, and as you heard, he's got a
2 great staff of people. But we won't have
3 examiners in those spaces until we have permanent
4 facilities.

5 And then last but not least, we have
6 Silicon Valley, and we've just recently announced
7 the location of our temporary office that will be
8 in Menlo Park, California. And the GSA who
9 controls our space and leasing was able to supply
10 us with temporary office space in Menlo Park, so
11 we will be occupying that. We will have the
12 ability to do outreach out there, and it's
13 ongoing, as I'm sure you know, Michelle Lee was
14 hired in November to be the Director of the
15 Silicon Valley office, and she's been hitting the
16 ground running, and we're very fortunate to have
17 her as a colleague.

18 She's been involved with Drew Hirshfeld
19 in the software round table efforts, so Michelle
20 is a very busy person, even though we don't have a
21 temporary space even, yet. So a lot of people
22 have asked about the permanent location in that

1 area, in the Silicon Valley area, so there has not
2 been any selection yet, but just to give you a
3 sense of where, the areas under consideration
4 include San Jose, Santa Clara, Sunnyvale and the
5 Mountain View area, so a very defined area.

6 So just a little bit of information on
7 what the criteria is, so we looked at that area of
8 considering things such as the number of patent
9 agents and attorneys listed in each area, the
10 distribution of applicants, patent holders, small
11 entities throughout the region, and various other
12 operational factors, such as availability of
13 viable leasing options, transportation and access
14 to airport facilities. So all of those things go
15 into consideration.

16 And GSA, as I said, manages the lease
17 acquisition and plans to award a lease in the
18 Silicon Valley area for the final site in the
19 summer, so this summer, you will hear where the
20 final site will be, and then construction will
21 follow. So this facility will be about 40,000
22 square feet, again, we'll have public services,

1 we'll have a hearing room, conference room,
2 training facilities, public search facility, as
3 well as space for about 100 examiners and 20
4 Administrative Patent Judges, so we're really
5 looking forward to having that up and running,
6 along with the other offices.

7 And the USPTO plans on occupying this
8 final space in Silicon Valley, our permanent
9 location, in about the middle of 2014. So our
10 team that's working on these different satellite
11 offices has really got their hands full, so they
12 will have an opening of a permanent satellite
13 office literally every few months in the 2014 time
14 frame, so very busy people.

15 So when we were talking earlier here
16 about bringing the office out of the Alexandria
17 area through these different round tables, having
18 these different satellite offices really brings a
19 whole new meaning to that, I think, and we're all
20 really excited about. So I just wanted to share
21 with you the timing of the different locations,
22 where we are temporarily, as well as permanently,

1 and I think, given our experience in Detroit,
2 things are happening in these satellite areas that
3 we never even envisioned.

4 It's not just moving some personnel out
5 there, examiners and judges, all kinds of
6 relationships are developing with the communities,
7 which has been a great experience for us and the
8 community out there. So, again, thank you for
9 your input today, love the discussion this
10 afternoon, gives us a lot to really think about
11 and start looking at seriously, and we're really
12 looking for toward to working with all of you in
13 the second half of the year. So thank you.

14 MR. FOREMAN: Thank you, Peggy. And I
15 want to thank the staff of the USPTO who
16 participated and provided such valuable input this
17 afternoon. Also to the members of PPAC who we all
18 have real jobs, and we take time out to be a
19 resource to the patent office. And finally, to
20 those members of the public who dialed in or
21 logged in today, hopefully, we'll see those
22 numbers grow and we'll be able to use this as a

1 forum to really bring topics of relevance to the
2 office and make sure that this is an open and
3 collaborative endeavor.

4 Just a reminder, our next PPAC meeting
5 is on May 16th, so just a short time away, and I'm
6 sure we'll have plenty of new issues to discuss
7 and look forward to expanding on this
8 collaborative approach that we've embarked on. So
9 if I could get a motion to adjourn, we are
10 adjourned, thank you.

11 (Whereupon, at 2:00 p.m. the
12 PROCEEDINGS were adjourned.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 COMMONWEALTH OF VIRGINIA

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

17

18 (Signature and Seal on File)

19 Notary Public, in and for the Commonwealth of
20 Virginia

21 My Commission Expires: July 31, 2015

22 Notary Public Number 258192

