

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Thursday, August 15, 2013

1 PARTICIPANTS:

2 PPAC Members:

3 LOUIS J. FOREMAN

4 CLINTON HALLMAN

5 PAUL JACOBS

6 MARYLEE JENKINS

7 ESTHER KEPPLINGER

8 VALERIE McDEVITT

9 CHRISTAL SHEPPARD

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13 PEGGY FOCARINO

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15 JIM DWYER

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21 DAVID LANDRITH

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3 ROBERT D. BUDENS

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6 REMY YUCEL

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

2 (9:30 a.m.)

3 MR. FOREMAN: Good morning, everyone.

4 I'd like to call this meeting to order. This is
5 the third quarterly meeting of the Patent Public
6 Advisory Committee here in Alexandria, Virginia.
7 This has been an interesting year for PPAC and for
8 the USPTO. Although this is our third quarterly
9 meeting, it's our last meeting for the fiscal year
10 for the USPTO. And it's been a year that has had
11 some challenges. It's had some obstacles. But
12 it's had some amazing achievements, as well.

13 And I think before we get started with
14 the meeting, it's important to recognize and
15 applaud the great work that's been done by the
16 leadership of the PPAC, management of the PPAC,
17 I'm sorry, of the USPTO, although PPAC had a lot
18 to do with it in a small, small way.

19 So let's go back. Small applaud for
20 PPAC. Big applause for those at the USPTO who
21 guided the office through some turmoil, but some
22 opportunities and the final implementation of AIA.

1 PPAC was established in 1999 to really
2 provide some guidance and support to the USPTO.
3 And over the years we've had a very diverse group
4 of individuals who have represented PPAC. We have
5 a great group today. And so I'd like to take this
6 opportunity to recognize those members of PPAC and
7 those from the USPTO and begin this meeting. So
8 if we can start to my right.

9 MS. FOCARINO: Peggy Focarino,
10 Commissioner for Patents.

11 MR. SOBON: Wayne Sobon, PPAC.

12 MS. JENKINS: Marylee Jenkins, PPAC.

13 MR. JACOBS: Paul Jacobs, PPAC.

14 MS. McDEVITT: Valerie McDevitt, PPAC.

15 MR. BUDENS: Robert Budens, PPAC.

16 MS. FAINT: Catherine Faint, PPAC.

17 MR. DWYER: Jim Dwyer, Patents.

18 MR. FAILE: Andy Faile, USPTO.

19 MR. HIRSHFELD: Drew Hirshfeld, USPTO.

20 MR. KISLIUK: Bruce Kisliuk, USPTO.

21 MS. SHEPPARD: Christal Sheppard, PPAC.

22 MR. THURLOW: Peter Thurlow, PPAC.

1 MS. KEPPLINGER: Esther Kepplinger, Vice
2 Chair of PPAC.

3 MR. HALLMAN: Clinton Hallman, PPAC.

4 MS. REA: Teri Rhea, USPTO.

5 MR. FOREMAN: And I'm Louis Foreman,
6 Chairman of PPAC. This morning we've got some
7 distinguished speakers from the USPTO to give us
8 an update on operations, on legislation, on
9 different matters related to the user community.
10 But we'd like to start this morning with Acting
11 Director Rea to kick off this meeting.

12 MS. REA: Thank you so much, Louis.
13 It's always a pleasure to be here and to actually
14 interact with the PPAC members both before and
15 after these sessions. I want to applaud the
16 individual efforts of each and every one of the
17 PPAC members. You spent a lot of time. I'm sure
18 you go through a lot of heart felt angst. And in
19 your off hours, I am certain that you're always
20 thinking about how to improve what we do here at
21 the USPTO so to better serve our user community,
22 as well as the American people. So I want to take

1 the moment for just a brief applause for each one
2 of you right now.

3 (Applause)

4 MS. REA: And in particular, I want to
5 thank Louis Foreman for being so gracious, for
6 being Chair of the PPAC this year. He has spent
7 an enumerable number of years as a PPAC member and
8 trying to corral the USPTO, PPAC, the user
9 community in the myriad number of issues that we
10 are all confronted with in Patents right now.

11 So the Trademark side of the shop tends
12 to be a little bit different today as PPAC, the
13 Patent side of the shop. This seems to be where
14 there's a lot of additional stresses on our
15 system, including, but not limited to the fact
16 that funding has now become a very big issue for
17 us. I would also like to thank Esther Kepplinger
18 for being the Vice Chair of PPAC. Now, that
19 position, Esther was established in the AIA
20 Technical Corrections Act just December, so thank
21 you so much for being so gracious in accepting
22 that position.

1 As you will recall at our last PPAC
2 meeting in May, that was actually a virtual
3 meeting. I think it turned out extremely well.
4 We are still working with the logistics in the
5 idea of doing more interactive virtual type
6 activities. So those of you who are watching us
7 right now over the internet, through your
8 computer, you know that the technology has
9 improved significantly.

10 I am not certain how we will modify our
11 behavior with PPAC. But I think that to take
12 advantage of these new systems and capabilities to
13 make us even more efficient is what we plan on
14 doing in the future.

15 Now, let's see, since our last meeting,
16 we have been extremely busy. We have actually
17 focused our continuing efforts on lowering the
18 backlog of patent applications. We developed
19 strategies for reducing the RCE backlogs, as well.
20 We have trained most, if not all of our examiners
21 on the first inventor to file provisions of the
22 America Invents Act.

1 And we've been working recently on the
2 announced White House Legislative Priorities and
3 Executive Actions, which are designed to protect
4 innovators from frivolous litigation and ensure
5 the highest quality patents in our system. And,
6 of course, we've been busy reviewing the Supreme
7 Court decision in association for molecular
8 pathology versus myriad genetics. And we're in
9 the process of providing additional guidance to
10 our examiners and our patent examining core on
11 additional training guidance with respect to that
12 decision.

13 Now, we've also made very steady
14 progress on our backlog of patent applications.
15 So while I don't want to set out a lot of numbers,
16 I would like to provide a few for you right now.

17 As of today, the backlog is 590,668, and
18 that backlog is actually down considerably from
19 May. So we're at 590,668 right now, and in May we
20 were 597,696. And that's with actually an
21 increase in filings. So, to me, our patent
22 examining core is doing a great job at working on

1 the backlog.

2 But as you know, as we're continuing on
3 the backlog, we're also looking at the RCE
4 backlog. We have a number of policies and
5 activities, including improving the count system
6 for our examiner. We have made tremendous efforts
7 and tremendous achievements that way also.

8 Right now with RCE's, what it was back
9 last May, RCE's were 110,023. That's RCE
10 applications that have not yet received a first
11 office action. So that was 110,023. Today we're
12 at 96,431. And we hope that the trend with RCE's
13 is going to continue trending downward. RCE is
14 going to give you -- or Andy Faile rather will
15 give you a lot more detail on the RCE backlog,
16 what we're doing, and where we expect to be. But
17 first, Assistant Deputy Commissioner for Patent
18 Operations, Jim Dwyer, is going to provide a
19 detailed discussion of our patent operations
20 statistics, initiatives, and results as we move
21 through the fourth quarter of fiscal year 2013.

22 Also today you're going to get updates

1 on our Patent Trial and Appeal Board by Chief
2 Judge Smith, a patent quality discussion from the
3 Deputy Commissioner for Patent Examination
4 Quality, Drew Hirshfeld. Dana Colarulli will be
5 with us. He will give us some highlights of
6 legislative issues from our Director of the Office
7 of Governmental Affairs and Budget and Finances.
8 Once again, we'll have a presentation by our Chief
9 Financial Officer, Tony Scardino.

10 You'll also get an update on IT
11 activities from our Chief Information Officer,
12 John Owens, and the latest on patents end to end
13 from Portfolio Manager, David Landrith. Mark
14 Guetlich is also going to provide some background
15 on international initiatives. He's with the
16 Office of Policy and External Affairs. We'll also
17 get a quick call center update.

18 And finally, you'll hear from Peggy
19 Focarino with some closing remarks. So we look
20 forward to all of your thoughts right now. We
21 thank you once again for joining us and allowing
22 us to interact with you this way. Each one of the

1 PPAC members, we hope that you will be open,
2 forthright. We will have a very nice discussion.
3 We will each have an opportunity to learn from
4 each other. And ideally the PTO, we are able to
5 improve our policies and what we're doing and our
6 procedures to give our user community the very
7 best service possible.

8 So, of course, what we care about most
9 of all is encouraging business to actually build
10 new businesses, create new businesses, build a
11 building, hire new people. It's all about jobs
12 and improving the economy. And we take our role
13 in that very seriously. So thank you so much for
14 all of you being here today. Thank you, Louis.

15 MR. FOREMAN: Thank you, Director Rea.
16 And I'd like to welcome all of those who are here
17 from the public and those who have dialed in or
18 logged in to participate. We want this to be an
19 interactive discussion. And so what I really
20 encourage is questions not only from those who are
21 here in the public, but also those who are
22 monitoring this proceeding either online or over

1 the phone.

2 So we're going to start off this morning
3 with an update on patent operations from Jim
4 Dwyer, Assistant Deputy Commissioner for Patent
5 Operations, and moderated by Clinton, who will
6 help in the questions and answers.

7 MR. DWYER: Good morning. We're going
8 to spend the next 20 minutes looking at some data
9 from Patent Operations. This is our total
10 serialized on RCE filings. The far right is our
11 actual, which is almost 485,000 filings so far
12 this year. The expectation is a 7 percent
13 increase over 2012. In the mix, the blue is the
14 RCE and the red is the total serialized filings.
15 And that mix last year was about 30.3 percent of
16 RCE filings. This year we're predicting it to be
17 28.6. So that's good progress in reducing the RCE
18 filings.

19 The next slide shows our backlog of
20 unexamined patent applications from FY 2008 to
21 date. You can see it's been progressing downward
22 with the increase in our fire power through hiring

1 and initiatives. The slight bump you see there in
2 quarter two was the bubble filings from AIA.

3 The next slide shows the excess in
4 optimal unexamined patent application inventory.
5 The blue basically shows our fire power and the
6 amount of inventory that would be to get to us to
7 10 months. So when the red and the blue merge,
8 that's where we'll be where we have the correct
9 amount of staff on to get us to 10 months filing.

10 You can see the blue, it kind of tailed
11 off at the very end issue and that was stop of
12 hiring versus attrition. However, the good news
13 is that we next month should be getting about 170
14 new patent examiners and that would, again,
15 increase our fire power to move that blue upward.

16 This slide shows our RCE backlog. As
17 you can see, it's been progressing upward almost 2
18 to 3,000 applications a month throughout the
19 years. However, this year with a lot of the
20 initiatives on our RCE's and RCE backlogs, and
21 that will be addressed by Andy Faile later this
22 morning. This slide shows the first action and

1 total pendency. Total pendency is the top and
2 it's showing that we eclipsed our goal. And
3 currently the total pendency is at 30.1 months.
4 The bottom line, the green, we're getting
5 extremely close to meeting our expected goal and
6 it is at 18.4 months.

7 This is a new slide for PPAC and
8 basically this is our forward looking first action
9 pendency. So this is based upon modeling. The
10 modeling has a lot of assumptions in there with
11 respect to filing growth, our attrition rate, how
12 many hirers and so forth.

13 So if you look at the purple line, this
14 is a line that was based upon a model of us hiring
15 1,500 examiners this year and how it would
16 progress based upon other assumptions and our
17 backlog and months.

18 So if you follow that purple line to
19 2013, it was showing us below -- had we hired the
20 1,500, we would have been in a position to be
21 under 12 months on average pendency. However,
22 that didn't happen. We reduced our planned hiring

1 from 1,500 to 1,000, and that's that green line on
2 the left. As you can see, this is a predictive
3 model. So if you have less folks on board, your
4 ability to reduce the backlog is hampered to some
5 degree. So if you follow the green line down to
6 April of '13, that's when, with respect to budget
7 and so forth, our thought was -- is not to make
8 offers to some of the examiner candidates that we
9 had in mind, waiting to see how AIA fees came in.
10 So if you take that line and play it out, it's the
11 blue line at the very top, and it would show the
12 months in pendency getting us down to 12 months
13 somewhere in the 2017 timeframe.

14 So the other line issue is the red arrow
15 on the right side. This is the increase, where we
16 did have the money to continue to hire throughout
17 the summer, and again, noting the 170 examiners
18 that are coming in in September. Modeling that
19 into our model, those numbers, you can see the red
20 line, and that does get us to 10 months in 2017.

21 Now, you might ask, what is it in those
22 out years, what's our prediction? And the thing

1 that's currently in our model is a 7 percent
2 growth for this year, a 7 percent growth for next
3 year, 6 percent in '15, 4 and a half percent
4 attrition throughout the out years, and the hiring
5 at 750 next year, 715 in '15, 500 in '16, and
6 basically replacement hiring thereafter.

7 This slide shows our attrition, total
8 attrition, others less transfers and retirees.
9 And what we've played out in that oval is to
10 expand the months, the last 12 months, so that we
11 can kind of see how our attrition is going in more
12 finer detail. You can see it's kind of somewhat
13 ticked up in the last few reports. One of the
14 things that this -- you can relate some of that
15 increase, if not all of it is, is that all the
16 hiring we did last year was mostly 1,000 of those
17 folks were last summer, and we're getting into
18 that probationary period issue. And typically in
19 the first year, the office has been attriting
20 about 10 to 15 percent. So if you add that into
21 the total of our base of examiners, you can
22 understand that that may be more of a seasonal

1 increase.

2 Track one statistics, this has got a lot
3 of numbers. Some positive things to take off of
4 this slide is in the numbers in FY '13, they seem
5 to be, you know, we had the issue at AIA where we
6 had 1,000 during that timeframe, and then the
7 troth after 400. But beyond that issue, it looks
8 like we're progressing in the mid 500's per month,
9 which again is substantially more than last year's
10 filings.

11 Some other things to note from this is,
12 47 percent of the filings come from small
13 entities. Since we really don't have a working
14 base to know percentages, but we know we did have
15 105 filings for micro entities.

16 Another thing to take out from this, we
17 nearly have 3,000 allowances from track one
18 filings. Another statistic to take from here is
19 that more than half of these track ones had an
20 interview, and that's about 20 percent higher than
21 our normal serial filing with respect to
22 interviews. So a lot of good news out of this

1 track one.

2 The next slide shows, on the timeliness
3 aspect, the left shows our average time in a
4 regular case, sitting, you know, at 22 months in
5 which the time awaiting first action, about 7
6 months. The prosecution time with applicant and
7 the shaded area is prosecution time with the
8 office of 3 months. And if you look to the right
9 there, you have the track one, and you can see a
10 substantial decrease in the total time.

11 Specifically, though, the huge one obviously being
12 the time to first action being down to 3.8 months
13 for a track one case. So this is very attractive
14 for an applicant wanting to get to a first office
15 action averaging 3.8.

16 The prosecution time with the applicant
17 is even lower also, as well as prosecution time
18 with the office. So it appears track one is doing
19 what it was intended for, was to get examination
20 and get into a final disposition quickly.

21 The next slide here shows our third
22 party prior art submissions. We're now starting

1 to get a substantial number of cases and a
2 substantial number of those cases are now in
3 examination with the hope this fall to do a very
4 fine study to see what the third party submission
5 prior art looks like, how its examiner used it,
6 why did they use it, why they didn't use it. So
7 we're going to do a study this fall on that.

8 Right now, 14.6 percent of the cases
9 that have had examination have used the third
10 party art, which again, that's a substantial
11 number if that was important art in determining
12 patentability. And this is where the submissions
13 are coming in, you know, in cases where they're
14 filed. You can see there are 3,700, which is the
15 mechanical and biomedical technology art. It
16 seems it is driving the highest number of
17 submissions.

18 One thing that's a little peculiar is in
19 the electrical area where a lot of the software
20 is, we're not getting the submissions that we
21 thought. And one of the questions out there would
22 be -- is, you know, is there a pattern, is there

1 reasons why the submissions in certain
2 technologies are lower than others? It's
3 information we'd be interested in.

4 And the last slide is a quality
5 composite. The design of this was, we went out to
6 do a stretch goal for FY '15. And meaning FY '15
7 means we would hit 100 percent of our composite
8 target. So each of the years we're progressing
9 towards that FY '15.

10 In FY '13, as of June, we were hoping to
11 be in the range of 65 to 73 percent and we're just
12 below that range. There are two things that are
13 big drivers for this, is the external and internal
14 surveys that are due in September, and that would
15 be a big factor in us either exceeding the 65 to
16 73 percent goal. The internal one last spring was
17 lower, and we think we had some reasons why the
18 internal was low at the time. And just as a
19 reminder, that internal survey, we asked our
20 examiners is the tools that we provide for
21 examination, the training that we provide for
22 examination, is it helpful in doing a quality job.

1 So we know we've done a lot of training this
2 spring in AIA and other areas and we think that
3 benefit is going to show up in our internal
4 survey. So with that, open for questions.

5 MR. FOREMAN: Thank you, Jim.

6 MR. HALLMAN: Could we go back to slide
7 10? I had one question. The 12 month average
8 through July, that particular bar graph, it shows
9 prosecution time with the office as being what I
10 guess is 3.1 months. Is that correct?

11 MR. DWYER: Yes.

12 MR. HALLMAN: I'm just wondering, you
13 know, given the RCE backlog and the fact that some
14 of those RCE's, you know, have been with the
15 office for a very, very long time, in some cases
16 for years, I'm just curious, as those get worked
17 through the system, is that 3.1 month average
18 going to increase? I mean does this include
19 applications or matters that have had RCE filings?
20 I'm assuming this number is things that have gone
21 to grant, right?

22 MR. DWYER: That's correct, yes. Yes,

1 those are very vulnerable numbers with respect to
2 when you start doing -- like if you change
3 behavior, for instance, and what Andy is going to
4 talk about is processes that we're putting in
5 place to reduce RCE backlogs, those can cause
6 those numbers to move.

7 MR. HALLMAN: Okay.

8 MS. KEPPLINGER: But just a clarifying
9 statement, with respect to pendency numbers that
10 are tracked, an RCE, when it's finally allowed,
11 does not figure into your pendency calculations
12 because, as I understand it, the pendency numbers
13 stop when the first case is abandoned, correct?

14 MR. DWYER: Yes, in traditional
15 pendency.

16 MS. KEPPLINGER: I mean you have on your
17 dashboard, you do have an --

18 MR. DWYER: The total.

19 MS. KEPPLINGER: -- additional number
20 that includes --

21 MR. DWYER: The total RCE, that's
22 correct.

1 MS. KEPPLINGER: -- the total pendency
2 if RCE's are included, so you have that somewhere.
3 But the number that's normally reported and
4 tracked does not include RCE's?

5 MR. DWYER: Yes.

6 MS. KEPPLINGER: Right. And
7 additionally, any of the cases sitting on the
8 shelf, the backlog, of course, numbers don't count
9 in pendency until they're actually done, so all of
10 those cases sitting there aren't being tracked in
11 any of these numbers, except that they're a number
12 in the backlog?

13 MR. DWYER: Right. One thing that's
14 happened over -- now we do more cases in that are
15 coming -- that number of actual pendency and
16 predicted pendency are coming closer together
17 because your in and out is the same. When you
18 start -- yeah, I agree, when you start putting
19 stuff on the shelf, then the shelf -- what you
20 report is what you dispose of, and if that's a lot
21 less than what's coming in, that number will be
22 distorted.

1 MR. THURLOW: Jim, this is Peter. Thank
2 you very much. The information is very helpful.
3 I have two areas, just quick comments. One I
4 mentioned to Andy yesterday with respect to track
5 one. Maybe we can follow up at the next meeting.
6 But I've clearly been trying to push this. I
7 think we're always mystified at why more people
8 don't take advantage of it.

9 But one of the things I've learned from
10 the procedure is that really to follow a track one
11 request, it has to be submitted with the filing.
12 And one of the considerations we discussed
13 yesterday was maybe allow a person that submits a
14 new application, before an office action issues or
15 within a certain period of time, maybe one year,
16 to file a request without the need to have in the
17 file a continuation application. It just seems
18 like a procedural matter that's really not
19 necessary.

20 So if the PTO can consider that one
21 minor change in the procedure, that may be one
22 thing that will even further encourage the use of

1 track one, which based on all the statistics that
2 you provided, clearly, to all of us, is a great
3 program, something we should encourage more of.
4 The second question I have is with respect to the
5 prior art submissions. My comment is, I look
6 forward to the study that you're going to do. I
7 think the study is going to be extremely
8 worthwhile.

9 Outside this area, I guess outside the
10 PTO, the considerations we have with third party
11 prior art submissions is whether we submit it
12 while the application is pending if we feel
13 confident or not that the examiner is going to
14 review it, or, quite frankly, whether we wait and
15 let the patent issue and then do a re-exam.

16 So we're trying to weigh that. And
17 since this is like all the other AIA proceedings,
18 they're new, and we're trying to figure out how
19 they're being utilized. I think your study is
20 going to shed some really helpful light on it.

21 My last quick question I guess is, why
22 are so many, based on what's up on the board, why

1 are so many improper? Is that --

2 MR. DWYER: Some of those improper are,
3 you know, there's the window period of time.

4 MR. THURLOW: Oh, okay.

5 MR. DWYER: So they're outside the
6 window. I believe that's the number reason
7 because there's not much else beyond the filing.

8 MR. THURLOW: Okay. And then just my
9 last point --

10 MR. DWYER: And statement of relevance
11 is --

12 MR. THURLOW: Statement of relevance?
13 Is that it?

14 MR. DWYER: Yeah.

15 MR. THURLOW: So statement of relevance?
16 Does it need to be very detailed I guess, is that
17 the issue, or --

18 MS. FOCARINO: Some of them actually are
19 too detailed.

20 MR. THURLOW: Too detailed, really?

21 MS. FOCARINO: In drawing legal
22 conclusions. I think that's part of the --

1 MR. THURLOW: Oh, okay.

2 MR. DWYER: Yeah. What we're seeing is,
3 people engaging in -- trying to engage in the
4 prosecution through their third party submission.

5 MR. THURLOW: Okay. And then just the
6 last comment. Does the PTO attract what
7 percentage are anonymous and what are being
8 submitted with, you know, because that's an
9 interesting area for practitioners, so do you
10 track that?

11 MR. DWYER: Yeah. I'm not sure if we do
12 or not, but it is something that we should add to
13 it.

14 MR. THURLOW: Yeah. Can we maybe for
15 the next meeting follow up on that? Thank you.

16 MS. KEPPLINGER: I had one follow-up
17 question to Peter's good remarks and that was with
18 respect to the study. As Peter was indicating, I
19 think practitioners are weighing whether or not
20 the prior art gets used against whether to hold
21 off. So while 14.6 percent of the total is
22 references that were used in rejections is a good

1 number, I guess the question is, are you going to
2 look at all sort of -- at some sort of a survey of
3 some random number of them to see from a quality
4 perspective whether or not there should have been
5 a rejection made?

6 Because if, in fact, you can show that
7 this is the correct number, then people will feel
8 more confident about using the process. If the
9 reverse is true, then I think you could have the
10 process tailing off, where people aren't confident
11 that the office will do the right thing with the
12 art.

13 MR. DWYER: Yeah, that's a very good
14 point.

15 MR. FOREMAN: And a final question from
16 Wayne.

17 MR. SOBON: Just a real quick
18 suggestion. I know we're going to be talking more
19 later on about anniversary, look backs, and
20 further assistance on AIA implementation. I think
21 you may be already thinking about this. But it
22 would be good maybe somewhere clear where you give

1 feedback back to the public about what those
2 improper rejections are, what the primary reasons
3 why they're being rejected, and tips for people to
4 avoid, you know, blowing it. So --

5 MR. FOREMAN: Thank you, Jim. We
6 appreciate your time this morning. That was a
7 wonderful presentation, very encouraging
8 information for operations. I'd like to welcome
9 Chief Judge Smith who will be joining us this
10 morning and also Peter Thurlow who will be
11 engaging in an interactive discussion. Good
12 morning.

13 MR. SMITH: Good morning. Thank you for
14 having us again. Being distributed to the PPAC
15 members right now are two sets of materials which
16 are now available on the web site. They were not
17 part of the submission for this session. Our
18 development of them arose actually this week in
19 response to some comments and requests from Mr.
20 Thurlow, having provided them to him yesterday and
21 discussed those with him, and since they're on the
22 web site, but not part of the slide submission, we

1 thought we would provide copies to you this
2 morning. And they certainly can comprise part of
3 what we address this morning if that's your wish.
4 Maybe I can speak to them just briefly as a way of
5 starting this morning.

6 In particular here we focus on the trial
7 portion of our operations, and specifically those
8 proceedings arising from the America Invents Act.
9 And we provide quarterly assessments of the number
10 of filings in the different categories, the number
11 of trials instituted, the number of trials not
12 instituted, and the termination of proceedings.
13 Also we indicate final decisions and the number of
14 trials pending. In the very last sheet of the
15 three sheet submission, we also have pendency
16 times indicated. Of course, these are preliminary
17 pendency times because we are not yet a full year
18 in the AIA realm and so will not have seen
19 proceedings, any great number of proceedings
20 through to their conclusion. The statistics will
21 be more meaningful probably after we reach the
22 first year point.

1 There are some key numbers to point out,
2 however, and some qualifications about the
3 information that may be useful. For example, a
4 caution arises when looking at the number of
5 trials instituted as against the trials not
6 instituted. And here we have not included
7 decisions included in the number, instances where
8 there have been petitions, but not yet a decision.

9 So one is seeing that among the -- this
10 is the first page, the left most column. The
11 number of decisions rendered would be 141 in the
12 inter parte's review area. And one will see that
13 126 resulted in the institution of a trial and 15
14 did not.

15 We would caution against drawing any
16 conclusions from that number, those numbers taken
17 by themselves, because even in the several cases,
18 the more than 100 where a trial has been
19 instituted, there are several grounds put forward
20 by the parties which have not formed the basis of
21 the trial going forward, which is to say those
22 grounds have been rejected. So one needs to think

1 of those decisions along with the instances in
2 which the trials have been instituted or not
3 instituted and the grounds there rejected in total
4 to have a more complete picture of the number of
5 instances in which trials are, or rather in which
6 grounds are being moved forward and grounds are
7 not being moved forward. So that's just one
8 example of some further granularity to what you
9 are seeing there.

10 Another very important point to make
11 here with these numbers also involves the number
12 126 for inter parte's review and actually probably
13 better made looking at that number and the number
14 in the column just to the right of it, the 12
15 instituted covered business method trials. Adding
16 those numbers together, of course, one ends up
17 with 138.

18 Last year looking at all the federal
19 district courts in the United States, there were
20 139 patent trials, which is to say our partial
21 year number, because we still have 2 months worth
22 of data to add here, our partial number for this

1 year has the PTAB holding as many trials as all
2 the federal district courts held in the entire
3 United States last year. And again, this is by no
4 means a total number, which represents, we
5 believe, something of a significant change in the
6 patent landscape.

7 And there are one or two slides in the
8 set which also go to this. They're not on the
9 screen. But let me point you to what I believe is
10 slide number, it's about 18. Let's see, I can get
11 to it here. I'm not sure this is working. I
12 think we're there. Am I moving the slides or are
13 you? Very good. Okay. Looking at this slide,
14 you will see some numbers we have put together
15 which provide some assessment of where we are in
16 the transformation of the PTAB.

17 Many of the slides that precede this one
18 speak to subjects we've talked about before, the
19 rate of expansion, number of new judges, where
20 judges are coming from, all those sorts of things.
21 These are slides we have not shared before but
22 which go to the types of things I was speaking to

1 just now with the distributed hard copy slides.

2 One will observe that in the Eastern
3 District of Texas for 2012, the court had before
4 it 1,266 patent disputes. And it led the country
5 in the number of patent disputes before it.
6 Looking at that number, that doesn't necessarily
7 mean there were really 1,266 individual disputes
8 because there's some consolidation of that number
9 that is possible because of multiple defendants
10 and actions that would be joined or handled
11 together. But essentially, at least as to
12 filings, there were some 1,200 plus of them. And
13 it led the United States, in terms of district
14 courts, with matters filed before it.

15 Coming in second in the United States
16 was the District of Delaware with 995 filings.
17 Next, the Central District of California with 514.
18 Currently, partial year numbers for the PTAB for
19 2013, we have roughly 430 matters already filed.
20 Again, that's a partial year number, which means
21 we are almost certain to pass the Central District
22 of California, at least based on the number of

1 filings it had last year, which would put us
2 behind only two federal district courts in terms
3 of number of patent disputes that we are facing,
4 which aligns with the number I was giving you
5 earlier.

6 It is the case, however, that our
7 proceedings are much more likely to result in a
8 trial because the nature of the proceeding is very
9 different. Rather than notice pleading, as in
10 federal district court, the petitioner non- patent
11 owner must come forward with a showing to initiate
12 the trial and effectively get past summary
13 judgment in order for the proceeding to begin
14 anyway.

15 And the number of filings, for example,
16 if we were to have 600, and if only 300 of those
17 filings resulted in a trial, we would,
18 nonetheless, have more trials than all of the
19 federal district court combined, as I mentioned,
20 because the settlement rate, for example, in the
21 Eastern District of Texas, or rather, let me put
22 it the other way, the number of cases which result

1 in trials, typically not more than 5 to 10 percent
2 of the total number of actions filed, it's
3 probably the inverse for the PTAB.

4 So that's very relevant information to
5 where we are. I don't think -- the remote control
6 is still challenged. Let me take another step
7 back to just speak about our transformation. Nine
8 months ago, as you see from the chart, we had 17
9 filings for a partial quarter. I think on a
10 monthly basis we were having about 10 filings per
11 month in the first couple of months. In July, in
12 June rather, we had 75 filings and about that
13 number also in -- well, in June we had that
14 number.

15 In July we had about the same number,
16 which means we're on -- not only are the number of
17 filings increasing, but the rate at which the
18 increase is happening is also going up. So it's
19 accelerating at a tremendous rate. We have four
20 times as many filings last month as we had five
21 months ago.

22 Let me as initial remarks just leave it

1 there and allow whatever dialogue you would permit
2 on whatever portion of the materials you think
3 best to spend the time on.

4 MR. FOREMAN: Thank you, Chief Judge
5 Smith. And I want to apologize for the technical
6 challenges that we're facing this morning,
7 especially for those who are observing this online
8 and who have dialed in. The documents that Chief
9 Judge Smith referenced that were not online as
10 part of this presentation will be posted later
11 this morning. So everyone will have the
12 opportunity to see the information that was
13 posted.

14 MR. SMITH: Posted already.

15 MR. FOREMAN: Excellent. That's speedy
16 resolution. Peter Thurlow.

17 MR. THURLOW: So a quick comment I guess
18 before I have just a few questions to follow up.
19 Yesterday we met for several -- for more than an
20 hour I had the pleasure of meeting with Chief
21 Judge Smith and then Judges Tierney, Horner, and
22 Boalick. I sent them a list of questions early

1 yesterday morning, and by the time we met at 1:00,
2 they had most of, if not all the responses. So
3 transparency and willingness to work with PPAC are
4 greatly appreciated and sharing the information.

5 As I mentioned to Chief Judge Smith
6 yesterday, I think the public is getting more and
7 more comfortable with the filings, with the
8 procedures. But there's still so many unanswered
9 questions and things that we, quite frankly, need
10 PTAB's assistance on going forward.

11 Mainly my hope from a PPAC perspective
12 is to make information more readily available and
13 statistics. The example I provided yesterday was,
14 we quite often use the statistics available in
15 Central Examination Unit web site when we're
16 making decisions for filings. To the extent PTAB
17 can make anymore statistics or information
18 available would be greatly appreciated.

19 The issues that are still going to be
20 daunting as a procedure is new. Of course,
21 estoppel weighs greatly in many peoples' minds.
22 The settlement, we've seen some settlement so far.

1 That's going to be significant. Real party in
2 interest is particularly important. I think the
3 White House, it was one of the things in their
4 initiatives. Discovery, I learned yesterday, and
5 that continues to be a developing area. I believe
6 Judge Horner mentioned there are some cases that
7 were put in the PTAB web site dealing specifically
8 with that.

9 And then one thing I didn't discuss
10 enough yesterday was a best practices kind of
11 guide. It's something that was available I think
12 on the Central Examination Unit web site. And I'm
13 hoping that, you know, I guess my general point
14 is, 80 percent I think Judge Boalick mentioned of
15 the patents that are before PTAB right now are in
16 corresponding litigation. So these patents matter
17 a great deal. And the work that you're doing is
18 very significant.

19 So maybe just discuss in general ways
20 that we can increase the flow of communication to
21 the public, whether by providing the statistics
22 that you gave us this morning or by making more

1 information available on PTAB so that the public
2 has that information when making their decisions
3 about whether to file an IPR or not.

4 MR. SMITH: Well, we are very grateful
5 for the questions you posed and the suggestions as
6 to additional information that we might post. We
7 were very glad to be responsive to that. And I
8 want to thank the three judges you mentioned,
9 Tierney, Boalick, and Horner for their very quick
10 work on gathering the information and for the
11 other staff people at the Board who were quick to
12 that. We think, as you do, that this will be
13 helpful for the public and the users of the system
14 to understand where we are and what we are doing.

15 Judge Horner also serves as the
16 Chairperson of our Published Opinions Committee.
17 And that Committee has been very focused with the
18 trial sections in looking at decisions which are
19 representative, informative, or presidential, and
20 those are posted as such on our web site. And we
21 think the collection of those materials, those
22 decisions, will help the people who are interested

1 to get some sense of what eventually may comprise
2 part of a best practices description for
3 practitioners.

4 Again, we're early in the process, so we
5 see every week and maybe even every day new issues
6 and cases which, when confronted, help us put
7 together a more total picture of what some of the
8 best practices as we see them would be for the
9 participants.

10 So maybe a little early to hone a
11 complete version of that, but certainly the
12 ingredients of such a document or a collection of
13 advice, those ingredients are taking shape in the
14 form of those representative and informative
15 decisions. And we would recommend that any
16 interested practitioner give some amount of focus
17 to those decisions.

18 MR. SOBON: Chief Judge, thank you very
19 much. And I found especially your comparison to
20 the district courts evocative and interesting. I
21 think that, as you develop it, both highlights the
22 magnitude of what you're facing and what you're

1 working to achieve, as well as it is a very
2 interesting comparison to the other available
3 routes for patent adjudication. So those are
4 interesting slides.

5 I think it highlights, though, a concern
6 that I think a lot of people have and it will
7 probably be a theme of today's discussions, which
8 is the effect of the sequester and the reduction
9 in the use of receipts by the office based on the
10 interpretation by OMB of the sequestral laws on
11 your ability to hire the judges indicated by your
12 prudence, as well as by being able to meet the
13 demands of the AIA to achieve this goal of
14 providing a more effective adjudication route.

15 So I think the user community is very
16 concerned. And maybe you could comment a little
17 bit more. I know it's a little early in the day
18 again still in terms of statistics, but if you
19 could comment a bit about your ability to meet
20 demand, because I look at your statistics and a
21 lot is flowing in, and to be able to meet the 12
22 or 18 month deadlines are difficult.

1 MR. SMITH: I can tell you we are no
2 less concerned than the user community. We see
3 the work accelerating. And, of course, doing the
4 work requires resources. This morning so far
5 we've really talked only about AIA trials. That's
6 our new and less substantial jurisdiction. We
7 bypassed the slides that show the still 26,000 ex
8 parte appeals awaiting us. Let me make a note
9 about that portion of our jurisdiction for which
10 we also need at least adequate resources just to
11 hold our own and more than barely adequate
12 resources to make any real gain, notwithstanding
13 the tremendous upswing in AIA work. The hard work
14 of the judges and others at the Board still leave
15 us in a situation where we were able to bring the
16 backlog below 27,000.

17 If you look at one of the slides which
18 shows the numbers with some more granularity, we
19 actually took the number below 26,000 for the
20 first time in 18 months. It's a significant dip
21 of some 1,100 cases in the backlog which we feel
22 very good about. The number is now slightly above

1 26,000, but looking at our last 30 day report,
2 which we take every 7 days, it will drop below
3 26,000 again in the very near future.

4 How do we continue to work on that and a
5 tremendous amount of new AIA work without
6 resources to keep the expansion of the Board
7 moving forward? Well, it would not be possible.
8 The resources are vital. Anything that our user
9 community can do to help those people who decide
10 issues like sequestration decide it in favor of
11 our remaining empowered to do the work we would
12 very much appreciate. Just another word about the
13 challenge on the AIA side, this year we kind of
14 have it easy in this sense. And you will see the
15 slide, it's the one that appears in the slide set
16 right before the one I showed with those numbers
17 from those other district -- from those district
18 courts.

19 Our pipeline is filling with AIA cases
20 now, initial determinations to make and being
21 made. Beginning October or November of this year,
22 we not only will have to deal with the inflow of

1 new petitions, but we'll have to deal with all the
2 trials and final hearings and final dispositions
3 that come about from all the filings that began
4 last fall, which means we will be double tracking
5 with new and existing AIA work with no delay
6 because, of course, the statute requires us to
7 complete the proceedings in a year.

8 We will be in a situation of even more
9 inundation than we are in now. It is vital for us
10 to continue to be able to expand with more judges
11 and to use the full footprint of the office in its
12 several branches in order to achieve that
13 expansion, an expansion which is more difficult
14 now than it was say a year ago because we have
15 substantially tapped the supply of highly skilled
16 patent attorneys who could serve as judges and who
17 are willing to accept government wages. So the
18 amount of effort required in making the next set
19 of judge acquisitions is substantially more effort
20 than before.

21 MR. SOBON: The follow up I have to that
22 is, I'm sorry, one second, that with less judges,

1 it's still early days, but I've had a number of
2 people comment to me who are facing trials right
3 now at the Board that some of the things we were
4 concerned about during the implementation of the
5 rules and procedures for the Board are coming
6 possibly to fruition. The patentees in particular
7 are feeling they are not getting enough or fair
8 discovery to have fair adjudications in their
9 trials.

10 And I have a concern, a continuing
11 concern, and I'll begin to monitor this, that
12 because -- it increased not only because of the
13 rules that were put into place, but also now
14 because of shortages, it may be an impact on the
15 ability to even allow reasonable discovery for
16 patentees to have their fair day in court. Can
17 you comment on that?

18 MR. SMITH: Yes. At this stage, I don't
19 think any constraint on judge resources is
20 impacting our discovery decisions. I think what
21 parties are finding is that discovery before the
22 PTAB is different than it is before district

1 courts. That's not a function in either the
2 constraint of judge resources at the Board or I
3 think a failure on the part of the Board to give
4 those parties seeking discovery what they're due.

5 I think it is something of a revelation
6 to participants in the system that the statute
7 specifically designs discovery to be different
8 here. The standard for getting discovery is much
9 higher and there's a fundamental principal with
10 regard to the discovery that I think parties are
11 only now really coming to appreciate fully, namely
12 that the discovery is overall constrained by the
13 need to complete a complete trial from institution
14 to final decision in a year, which means that
15 parties were not intended to get an won't get the
16 free ranging discovery that's available in
17 district court.

18 I don't think we have made it that way.
19 And at any point -- well, we will be in a
20 difficult situation when judge resources in any
21 way impact the discovery decisions. We haven't
22 seen that yet and we will scream loud and hard for

1 the resources before we ever reach a situation
2 where any such decision is impacted by the amount
3 of judge resource available.

4 MR. FOREMAN: And a final question from
5 Marylee.

6 MS. JENKINS: Just real quick with
7 respect to judge resources and because I am on
8 PPAC and people tend to talk to me, I have been
9 told that you cannot hotel as far as being a judge
10 on the court, so that is something you might want
11 to reconsider, that they could hotel just like the
12 examiners, because then that might give you more
13 options for judge resourcing.

14 MR. SMITH: I will say this, we have
15 considered and reconsidered that matter a great
16 deal. At this point, I think we are fairly
17 definitive, at least for our new judges, no
18 hoteling and no telework. The judges are new, the
19 work is new to them. None of them have been
20 administrative patent judges before. And in
21 keeping with the policies of the agency generally,
22 we want new probationary employees to spend time

1 here and with us before we allow them to hotel or
2 telework, which we do envision them doing at some
3 point, but not initially.

4 We feel it even more important in the
5 context of the PTAB to do that, because by
6 statute, all our decisions are three judges at a
7 minimum. We want to make sure that we put a very
8 concerted effort to developing a oneness of
9 thought, a consistency, a collaboration, a
10 collegiality at the Board so that when judges do,
11 in time, hotel or telework, they will be one with
12 the PTAB even if they're off by themselves.

13 MR. FOREMAN: A final comment from
14 Christal Sheppard.

15 MS. SHEPPARD: I'll make this very quick
16 because we're running over. So I thought it would
17 be essential to put on the record that given what
18 you've just said, that there are proposals on the
19 Hill and a lot of conversations about expanding
20 the covered business method program. What would
21 that do to your division?

22 MR. SMITH: It would give us a lot more

1 work. We hope that Congress will see the wisdom
2 of more resources to do more work, that to use
3 ancient analogies, if you're going to ask more
4 bricks of us, please give us more straw.

5 MR. FOREMAN: Thank you, Chief Judge
6 Smith. Thank you for your presentation and for
7 the great work that you and your team is doing.
8 We have a few minutes for a break here, six
9 minutes to be precise. So if everyone wants to
10 stand up, stretch, we welcome the public to do the
11 same. And we will pick back up at 10:40 with Andy
12 Faile, Deputy Commissioner for Patent Operations,
13 in a discussion on RCE outreach. Thank you.

14 (Recess)

15 MR. FOREMAN: We'd like to welcome
16 everyone back. At this point, I'd like to turn
17 the floor over to Andrew Faile, Deputy
18 Commissioner for Patent Operations, to discuss RCE
19 outreach. Andy.

20 MR. FAILE: Thank you, Louis. Good
21 morning. So we've got a lot to talk about today
22 with respect to RCE's. First of all, I would like

1 to continue my thanks to PPAC, in particular Wayne
2 and Esther for their leadership on our
3 subcommittee in RCE's. We've had a monumental
4 effort so far. We've uncovered a lot. And we
5 have a lot of different plans to share with you
6 today on RCE's. So hopefully we'll have a very
7 good discussion.

8 Just by way of background, to kind of
9 set up the rest of the presentation, the RCE issue
10 we kind of look at in two big pieces. One piece
11 is the backlog itself and a way to move cases in
12 the backlog most efficiently within certain time
13 frames. There's a whole effort going on in that
14 respect. We heard a lot from our RCE roundtables,
15 the five roundtables we did through the country,
16 and comments back from our Federal Register notice
17 about different concerns about the backlog and the
18 age of the backlog.

19 So as a quick update on that large
20 piece, we are currently working with Robert in the
21 Patent Examiner's Union POPA. We think we have a
22 pretty fruitful path going forward. And what

1 we're seeing is kind of a steady state RCE
2 situation that allows us to bring the backlog
3 down, cage in those timeframes, help us conform
4 more to 1444436 statutory timeframes for PTA.

5 It largely consists of two pieces.
6 We're looking at the work credit given to
7 examiners for moving that work. And we're also
8 looking at our work flow or docket management
9 system. So we have a series of initiatives that
10 we're working with the Union very productively now
11 to try to get a steady state backlog for RCE's.
12 So that's kind of large piece number one,
13 concerning with the RCE backlog and the age of
14 that backlog.

15 Large piece number two which we're going
16 to focus on today are ways to reduce RCE filings
17 at the beginning, making prosecution more
18 efficient. In looking at the data, our 1,100 or
19 so comments, we've kind of drawn up a number of
20 themes. We're going to focus today on four of the
21 main themes. And the data repeats itself a number
22 of times in comments on these themes. We think

1 there's some actionable items in each one of these
2 themes. You're going to actually see a demo
3 today, a real tangible, concrete, first delivery
4 for one of the themes in the education part of it
5 that we think will be helpful for applicants on
6 the outside. So we're going to move through the
7 themes from very concrete and tangible all the way
8 to a very high level discussion on what we're kind
9 of characterizing as prosecution flexibilities.

10 So we hope to have a pretty good robust
11 discussion on some things that had been mentioned
12 directly in the roundtables and in our comments
13 from the Federal Register notice on different
14 things the office should be focusing in on within
15 the prosecution pipe for applications.

16 So we've got four different themes. I'm
17 going to turn it over to Remy Yucel to go through
18 the different themes and to start the discussion.
19 Remy Yucel and Kathy Matecki have been the two
20 leading directors here from the office working on
21 this initiative, and quite frankly, doing all the
22 work in conjunction with PPAC and getting us to

1 where we are today.

2 MS. YUCEL: Good morning. So what we
3 are going to go through are some four high level
4 themes that really speak to not so much the
5 backlog that we currently have, which is the piece
6 that Andy mentioned earlier that the Union is
7 working very closely with us on, but this is
8 really looking forward into the future to come up
9 with ways to obviate the need to file a certain
10 percentage of RCE's.

11 Clearly, with 1,100 comments, it's very
12 clear to everybody that there's no one specific
13 reason for the need to file an RCE. So there's
14 going to be various different pieces of this. And
15 for certain applications, certain pieces are going
16 to be more appropriate and for others, others. So
17 there is no silver bullet. We're approaching this
18 in hopefully as much of a 360 degree approach as
19 we possibly can.

20 So there's four of these high level
21 themes, the first one of which is the quickest
22 deliverable that we're going to be able to do.

1 And the basic general theme is, there's a lot of
2 initiatives out there. It's not really clear how
3 they work. We're busy. You know, the office does
4 a great job announcing them, but then doesn't do a
5 sustained effort for education and outreach in
6 terms of what is available, how it's to be used.
7 And there's, you know, confusion on the outside
8 about what programs are in effect and how best to
9 use them.

10 Because not only is it an issue to get
11 people to use the initiatives to their fullest
12 extent, which you can see right now, we're not
13 getting full participation as we would hope in
14 many of these. But also, we want to have a higher
15 degree of success in that the appropriate
16 applications are being put into the appropriate
17 initiatives, right. So the initiative could be
18 good, but maybe the fact pattern of that
19 particular case doesn't lend itself well to a
20 particular initiative.

21 So we're trying to do a better job of
22 getting people to understand that, both internally

1 with our examiners so they can make appropriate
2 suggestions, only suggestions, as well as the
3 attorneys so they can make appropriate decisions
4 about what initiatives to use when.

5 So this is a joint effort between
6 certainly Kathy Matecki, but also Bonnie Eyler,
7 who's been working on a quality committee with a
8 number of other outside groups. And, you know,
9 her notes pretty much mirrored everything that we
10 heard on this. So we've kind of team upped to
11 kind of put together this educational outreach
12 effort.

13 It's going to have several components of
14 it. We're going to do a quick demo. Let's see,
15 next slide. And there's no mouse. There's no
16 curser. Okay. So we have a number of ways we're
17 presenting the material. This will be the first
18 page that people will see. What it does is, it
19 clearly has a horizontal timeline, if you will, of
20 prosecution, right. So you've got the salmon
21 color that goes prior examination, during
22 examination, and after close of prosecution. And

1 so underneath each one of those stations, if you
2 will, and prosecution, you can see all the various
3 different initiatives that are available during
4 that period of time. So if, for example, you want
5 more information about track one, all you have to
6 do is click on that box and you go directly to the
7 track one page. Could you go back?

8 And you can see that we have good
9 information about when to use the ombudsman
10 program. It became very clear to us in many of
11 our outreach sessions that people kind of
12 understood that there was an ombudsman, but they
13 felt that they couldn't call them until a whole
14 bunch of stuff had happened, and that's not true.
15 So what we're really trying to do is raise
16 awareness of what is available all during
17 prosecution. So this is the first page.

18 Now, if you can click the salmon arrow
19 that says "prior to examination", please. Top --
20 there. All right. So here is an initiatives
21 matrix. Again, different people take in
22 information in different ways. And this is

1 showing this information in more of a table
2 format.

3 Again, along the top we have the color
4 coding. So if you hit the upper right hand
5 corner, "during examination", you'll get to the
6 green portion. And then if you hit the "after
7 close or prosecution" over there, you'll get to
8 the blue portion. So again, it carries the
9 timeline through. Is this working? No. Okay.
10 If we could go back to the pink, please. Here we
11 have a thumbnail description of the particular
12 initiative. And then there's a scroll bar where
13 you can kind of -- to the right. And you can see
14 whether you need a petition, if there's a fee, all
15 sorts of quick hit information on the particular
16 initiative.

17 If you hit the link at the top of the
18 column, for example, track one, it'll take you
19 back to the in-depth page for that particular
20 initiative. So you get quick hit information, you
21 get timeline information, and you also get a quick
22 way to get to the track one, because another one

1 of the comments was, well, we know there's
2 information on the web site, but it's really hard
3 to navigate. So this is kind of an overall portal
4 to all of this information, putting it all into
5 one piece.

6 Bonnie and I and another team are
7 working together to put together an interactive
8 workshop that we can present at outside meetings
9 and any bar group meeting. We plan to have these
10 at our partnership meetings, as well, to get the
11 word out. We hope to be able to go live with this
12 sometime in September. So we appreciate any help
13 we can get in getting the word out. We'll have a
14 one-page flier. If you all could distribute that
15 and help us raise awareness of the workshop. So
16 this is step one.

17 We plan on building more off of this,
18 maybe have particular sites for paralegals, for
19 information that is pertinent to their jobs, and
20 just keep building on this. And hopefully this is
21 an iterative process. As more people use it, they
22 can tell us what is helpful about it and what we

1 can improve so we can keep changing this and
2 improving it so it becomes as user friendly as
3 possible.

4 So this is our first deliverable out of
5 this in terms of addressing the big general theme
6 of, there's a lot of initiatives out there and we
7 really don't know when to use which initiative.
8 So any questions on the demo before we move on?
9 Okay.

10 MR. FAILE: So what we're trying to do
11 with this one and all of these different
12 initiatives is, have a direction connection to
13 what we heard in our RCE roundtables. So this one
14 satisfies some of the questions of, it's very
15 difficult for me to find information about
16 programs on the web site, number one. Number two,
17 it's difficult to know what programs are out there
18 and available. Number three, I'm not quite sure
19 at what part of the prosecution pipeline a program
20 may be beneficial. So this has a map and a visual
21 of that.

22 And then kind of number four, the second

1 kind of in-depth part of the web site is a compare
2 and contrast with the matrix of all the programs,
3 all the requirements, and all the things that the
4 program was designed for. So it gives applicants
5 a chance to kind of look at a number of programs
6 side by side and do some comparing and contrasting
7 of the features of that program and what one might
8 be available or best for an applicant at any given
9 point.

10 MS. YUCEL: All right. So the second
11 high level theme that we came up with or that
12 emerged from all the 1,100 comments, as well as
13 the focus sessions was the IDS consideration
14 issue. By applicant's own estimations, between 15
15 and 20 percent of the time they file an RCE is to
16 have an IDS considered.

17 So you may remember that we have
18 launched this pilot called Quick Path IDS QPIDS.
19 And admittedly, this is helping one particular
20 pressure point in this IDS consideration puzzle.
21 And namely, it alleviates the pressure point for
22 IDS' that become available to applicant within a

1 certain period of time for which they can do a 197
2 E certification, but it comes from a foreign file.
3 So that's what the rule allows applicant, to go
4 ahead and file their QPID's fee, their IDS fee, as
5 well as a conditional RCE fee. If nothing in the
6 IDS changes, the patentability, then the case is
7 returned back to the publication cycle and the RCE
8 fee is refunded.

9 So that is working very well. But it is
10 admittedly, for a very small percentage of the
11 cases, namely for those IDS' for which -- that
12 come from a foreign filing. So a bigger universe
13 of IDS consideration cases come from IDS' that are
14 from domestic violence. And right now there's no
15 rules or regulations on the books that allow for
16 any kind of Quick Path IDS type, you know,
17 initiative for that. So we are looking into, you
18 know, what the ramifications could be if we were
19 to make a rule change and see if we could modify
20 197 E. Would there be a fee involved or not?
21 Because now we're talking about many more
22 references than what you're likely to get from a

1 foreign application after allowance. We have to
2 be fair and equitable. And really, you know, the
3 IDS or the information disclosure really stresses
4 to get that information in front of the examiner
5 as early on in the application prosecution process
6 as possible.

7 So we want to be able to guard against
8 those few bad actors out there that will go
9 through the entire prosecution and then flood
10 right at the time of allowance. So there's a lot
11 of considerations that we need to take into
12 account while we're looking at this. But this is
13 one possible avenue that we can explore.

14 There's also an IT component of this
15 where it would be -- try to make it a lot easier
16 for both examiners, as well as practitioners to
17 see all the IDS' that are filed for a patent
18 family. Because many times these applications are
19 handled by different firms. One firm will have
20 three or four of the family, another firm will
21 have the others. And, you know, there isn't a lot
22 of good coordination as to what information

1 disclosure statements have been filed. So if we
2 could have them all in one place, the examiners
3 would have access to it, as well as the
4 practitioners. And then from there, there could
5 be hopefully a judicious, and I really do stress
6 the word "judicious" selection of which IDS' would
7 be transferred from one case to another. So these
8 are all very high level concepts. We need to see
9 what the feasibility is for the IT business. And
10 certainly there's fairly large ramifications
11 rule-wise. But we're starting the initial
12 feasibility research on that aspect of it. So
13 that is a direct response to the second group of
14 very high level comments that we received from the
15 outreach initiative.

16 The third grouping here is a big
17 umbrella term and it's really training. There was
18 a lot of different components to this. Some
19 people felt we needed better after final training.
20 Some people felt we needed better clean
21 construction training. We needed better training
22 of our supervisors on how to be effective in terms

1 of reviewing cases and giving good guidance for
2 their examiners on how to best proceed with a
3 case.

4 So these were -- I don't want to say
5 they were miscellaneous. They certainly had a
6 very common thread in the need for more advanced
7 training and more sustained training. But there's
8 a wide variety of modules that we can and will be
9 doing on this. So this is a big component. We're
10 putting together a director and a speed team to
11 further flush out what these modules would look
12 like. And certainly we want to take it beyond
13 what people learn at the Patent Academy and build
14 upon that knowledge and really have it be
15 sustained, and not only have it be for the
16 examiners, but be also for the supervisors. So
17 everybody is being as efficient and as effective
18 as they can be in the roles during patent
19 prosecution.

20 So we have a number of high level
21 topics. I went through some of them, like how to
22 effectively review a case, how to better and more

1 quickly identify allowable subject matter and
2 relate that to the attorneys after final compact
3 prosecution practice, broadest reasonable
4 interpretation. A lot of these we can also do
5 mirror modules for the outside, if you all would
6 be interested in that. And certainly if there's
7 any other topics that you'd like for us to
8 continue working on, please, we need your input on
9 that, as well. So the sustained training will be
10 another big pillar of this entire effort.

11 MR. FAILE: So just to jump in real
12 quick on the training part, we're kind of looking
13 at this in a couple different ways. There's a
14 couple different themes, sub themes within the
15 training theme, and one is training on patent
16 practice and procedure. Remy noted a number of
17 the different courses that we're thinking about,
18 after final practice, better identifying allowable
19 subject matter early. Broadest reasonable
20 interpretation claim interpretation is at the
21 heart of a lot of this. Drew Hirshfeld will get
22 into that in the second top, the topic after this

1 topic. The other thing we're looking at is also,
2 once the training is out, examiners have been
3 trained, and we're actually doing the review of
4 the work, mainly for the junior examiners, there's
5 a big component there and a lot of different
6 comments that were, or threads of comments that
7 loosely kind of go into the oversight, management,
8 supervision, the reviewing of the work, things of
9 that nature. We had a very good discussion
10 yesterday on this kind of high level part.

11 So the training has both the courses,
12 the education of examiners on patent prosecution.
13 The second part of that is the follow through, the
14 oversight, reviewing of the work, a little bit
15 more nebulous than actually putting the training
16 classes. But there were a number of different
17 comments that added into that execution of the
18 examination once the training has been out there,
19 taken root, et cetera. So that's another theme,
20 kind of a sub theme that we're looking at under
21 the training theme and starting to kind of develop
22 some action items around that.

1 So any discussion or input on the
2 training? I think this would be a good time while
3 they're working on getting the slides back up,
4 which they look like they are now. This would be
5 a good time to break for that if you guys had some
6 input on that theme.

7 MS. KEPPLINGER: Well, just in general.
8 Thank you, Andy, Remy, and Kathy Matecki, the
9 whole RCE team because this has been very
10 impressive. I mean you have taken a proactive
11 approach. You openly listened in a number of
12 public forums. And you've really taken it to
13 heart and developed some great initiatives. The
14 PPAC was really pleased to participate in those
15 public events. And I, and I think the whole PPAC,
16 is impressed with the results and the ideas that
17 you've come up with so far.

18 That timeline that Remy showed I think
19 is excellent. I think that's going to be a great
20 addition to the web site, because I do think that
21 people don't know all of the things that are
22 available. People are busy and they miss the

1 announcements and things. So I think that is
2 going to really be embraced. And, you know, we
3 just look forward to working with you on all of
4 these.

5 I think the training part is a good
6 approach. But as we talked about yesterday, I
7 think the proof is in the pudding of actually how
8 it gets implemented if the examiners and the fees
9 actually change behavior. I mean there are many,
10 many, many good examiners and they understand all
11 of these concepts. But there are still a number
12 that this training could help. So thank you.

13 Oh, and one more thing. I also want to
14 thank Robert and the Union for working proactively
15 with the PTO to address all of these issues, so
16 thank you.

17 MS. SOBON: I want to second everything
18 Esther said. And as Andy, Remy and the team know,
19 we've been on you about this for a couple of years
20 because, you know, given just the statistics and
21 looking at the backlog of the RCE's, and as a
22 major pain point for the user community, and I

1 think you're really taken everything to heart.
2 It's really, really -- I think it's been a great
3 partnership for us to work with you and I'm really
4 pleased with all the efforts you're coming back
5 with.

6 Obviously, you know, in our fee setting
7 report this past year as part of the AIA, we had
8 rather tart comments about, you know, the issues
9 with RCE's and the effect on the fee setting and
10 the potential moral hazards for the organization
11 to, you know, that it continue to ramp out, and I
12 think you're demonstrating exactly the right level
13 of taking it by the horns and trying to get that
14 back into shape.

15 And one thing that struck me was, I love
16 the matrix thing. I think it's a really great
17 tool. And it struck me also on the ombudsman side
18 of this, that's a complete black hole to me. I
19 have no idea how that even works. I think you
20 could do a lot more outreach and training for the
21 user community about how that works.

22 And one thing that struck me was, just

1 like they were showing sort of the director's
2 blog, you could have an ombudsman blog or
3 something that shows, you know, maybe anonymized
4 like little vignettes or recent things where they
5 resolve the problem in showing how it worked, even
6 some video interviews of folks or something like
7 that to make it more real. Because I think most
8 people would be scared to use it, distrust it,
9 don't know what that means. And I think putting a
10 human face to that would be very valuable as a way
11 of resolving these problems informally. So that's
12 one thing that occurred to me.

13 MR. FAILE: Thanks for that, Wayne.
14 That would be a good addition to have. Again, the
15 general theme of trying to present the multitude
16 of programs and the multitude of different kind of
17 help centers to some degree that we have at the
18 office where one can navigate through that as
19 easily as possible, it's right along the same
20 theme we're thinking.

21 MR. HALLMAN: I was sitting here trying
22 to think of something pithy to say. And the one

1 thing that comes to mind is, an occurring comment
2 I hear from practitioners when I talk to them
3 about RCE's, and one thing I would want everybody
4 to keep in mind is that -- one of the concerns I
5 hear expressed is that, for those people who
6 represent smaller companies that don't have a lot
7 of resources, anything you can do to prevent a
8 filing of an RCE really makes a significant
9 financial difference to some small companies.

10 I work for a large organization.
11 Everybody -- the PTO, by definition, works for a
12 large organization. And you think about these
13 numbers sometimes as being kind of abstract. But
14 I can tell you, for a small company, it's real
15 money and it has real consequences. So anything
16 that you can do to prevent the filing of an RCE
17 can sometimes have a significant financial stake.

18 I think the things that the team has
19 been doing on RCE's has been very creative. I
20 think there's been a real effort to, you know,
21 really come up with some ideas that are going to
22 try to help push against this issue.

1 This is not to say that we on PPAC are
2 probably going to go away. I think we will
3 continue to be like hopefully big bees buzzing
4 around this whole issue. But I do want to say
5 that, you know, some of the things that people do
6 really do have significant financial impacts for
7 small companies.

8 MS. KEPPLINGER: Just to reemphasize
9 that, one of the things that I have realized over
10 the last few years is the significant difference
11 that it can make with the track that the
12 examination takes based on the examiner. Because
13 one examiner could be very efficient and
14 understand all the arguments and get to allowance
15 quickly, where another can be not quite getting
16 the invention, not willing to accept the arguments
17 or take the, at least from our perspective, the
18 correct legal approach. And it is dramatically
19 different outcomes in terms of economics, which I
20 represent mostly start-up companies, and that is a
21 significant difference and one that's outside the
22 control of applicants. So anything that you can

1 do to address a more even prosecution within the
2 office such as some third party arbitration, other
3 than having to go to the board, would be great.
4 Thanks.

5 MR. SOBON: Yes. Clinton said something
6 that really struck me again that I actually want
7 to emphasize as a suggestion. I think a number of
8 you were at the outreach in Silicon Valley where
9 we had a very, very persuasive, impassioned
10 business woman who starts up companies who
11 explained how the failure of getting grants on her
12 patents and actually delays into RCE, and actually
13 even some rather strong, callous comments that
14 were given to her by one of the examining core
15 when she came to try to get relief really was
16 effective and highlighted the real world personal
17 dimension of the work the office does.

18 And it may not be that person, but when
19 you're thinking about training for the examiner
20 core, in a similar way, making a human face to the
21 face of the applicants who are actually filing for
22 cases, and maybe having some filmed vignettes with

1 some small business people of how important
2 getting patents efficiently and effectively and
3 quickly is to their ability to get funding. In
4 her case, it made a difference. She had to fire
5 people because the funders would not give her
6 further bridge financing because she couldn't get
7 patents issued that demonstrated she had a viable
8 technology. This has a real world effect on real
9 people, because I think it can be -- on both
10 dimensions it becomes more of a paperwork and
11 exercise. But there are real people below the
12 surface of this. And I think conveying that to
13 the examiner core in an effective way, I think it
14 could be very powerful that they remember that.
15 Maybe that already have that opportunity, but that
16 would be very useful.

17 MR. FOREMAN: And I'll just jump on top
18 of what Wayne just said and relate it back to what
19 Acting Director Rea said. This office is really
20 the engine of job creation. It's a catalyst for
21 business creation. And so anything that can be
22 done that enables inventors to get their patents

1 sooner will have a profound impact on the economy
2 and on that job creation.

3 MR. FAILE: To jump in real quick, to
4 both of your points, one of the things that we
5 have done, and I think this falls right in -- your
6 comments fall into kind of expanding this even
7 more, is in the Patent Training Academy. When we
8 first on board examiners, that's an excellent
9 opportunity to instill in them the importance of
10 the job, both in economic, and also the individual
11 importance to people that use the patent system
12 when they file applications.

13 We have had different training classes
14 come in -- different trainers come into the PTA
15 training classes, attorneys showing how they write
16 claims to give an appreciation for the claim
17 drafting part of the job, and I think building in
18 some of the points that Louis and Wayne make on
19 the importance of patents, even to the extent of
20 having maybe some independent inventors come in
21 and talk about the importance that underscores.

22 And as an examiner starts to learn their

1 job, the hope would be that they have a good
2 appreciation of the actual work they do and how it
3 reverberates out into the community. It's an
4 excellent suggestion.

5 MR. FOREMAN: I think it's important
6 that the community also sees the great work that
7 you're doing. I mean I thought the presentation
8 today was exceptional. And the resources that
9 you're putting together are really top notch. So
10 I want to applaud you for that.

11 MR. BUDENS: I can't let this
12 conversation go by. I must be tart and pithy. I
13 got you both. A couple points. One is, you know,
14 Remy made the comment that we can make this, you
15 know, these kinds of training things available to
16 both sides. And I hope like the dickens that all
17 of you on the outside will take advantage of doing
18 that training, too. Because I sit here and I hear
19 all your comments and stuff and I know, you know,
20 from many years of experience in this job that
21 there's problems on both sides of the table.
22 There's attorneys who don't know how to argue.

1 There's attorneys who don't know the science.
2 There's attorneys who couldn't, you know, argue
3 their way out of a biotech case because they were
4 trained in electrical engineering, whatever. I've
5 seen that kind of stuff, too. So I think training
6 is good. I think it's much needed. I agree on
7 that point. I hope it goes on both sides of the
8 table.

9 Another point I would make, and I
10 appreciate very much what Wayne was saying about
11 the lady, the applicant out in the Silicon Valley
12 meeting, California. And I think that's a good
13 thing for all of us to remember. Yes, there are
14 people on the other side. But also we have to
15 keep in mind that, as examiners, we can't let that
16 influence our decisions.

17 Our decisions are based on the statutes,
18 and, you know, none of the 1012, 3, or 12, you
19 know, stayed. And don't forget that there's, you
20 know, people on the other side of that coin.
21 We're all interested in wanting to stimulate the
22 economy the best we can by getting patents out as

1 fast as we can and getting to allowable subject
2 matter, but we also can't lose sight of the fact
3 that, you know, our position as examiners is, we
4 have no vested interest, you know, pro or con to
5 the issuance of a patent.

6 If we can find allowable subject matter,
7 we want to get it allowed, and if there's not
8 allowable subject matter in there, then we have to
9 reject. And, you know, we have to apply the
10 statutes.

11 MS. JENKINS: Wayne took some of my
12 comments already. And I just want to say this is
13 great. I'm amazed at how many people still don't
14 understand accelerated, first track, fast track,
15 whatever you like to call it. Even the examiners
16 don't know about the pilot after final. So again,
17 the education is so important. If we can help in
18 any way as PPAC members to make introductions to
19 bar associations, I've mentioned this to you,
20 please don't hesitate to reach out. I think it's
21 really important.

22 Also, too, I go back to something,

1 again, you need to use email more just to get the
2 message out, particularly when you do an
3 initiative like this. This is really a nice tool.
4 And I don't find that the office gets the message
5 out when you institute new tools for the user
6 community. I think that's so important. Don't
7 hesitate. Again, as I said last time, I would not
8 use the Federal Register as a mechanism, I would
9 use email. Thanks.

10 MR. THURLOW: So again, I echo all the
11 comments that were made -- I think the success is
12 in the numbers, from 110,000 to 96,000. It's
13 clearly a significant drop. I'll just follow up
14 on one main point that we discussed yesterday that
15 Marylee mentioned. The after final pilot program,
16 I think it's been a success overall. But the
17 feedback that we're getting from the field is
18 still that people on both sides, as rather
19 correctly said, aren't familiar enough with the
20 program. And then the feedback we're getting from
21 examiners is that three hours is not enough. So
22 as the PTO reviews the program, considers changes

1 with the Union, maybe upping that three hours, if
2 possible, I'll let you deal with those specifics,
3 to more time, whether it be, four, five, or six, I
4 don't know what it is, I think that would be
5 really beneficial for the examiners to use the
6 program because we are finding that, in many
7 instances, that three hours is not enough.

8 And then as part of the whole training
9 that we discussed and more, I'm going to emphasize
10 the applicant side. There's still too many people
11 out there, or applicants, that once you get a
12 final office action think, the need to file an RCE
13 to get things going.

14 And I think what we're trying to do here
15 is get out the word that just because you're after
16 final doesn't mean that you need to file the RCE.
17 There's programs in place and things that you can
18 do rather than just filing that RCE that's been so
19 common in the past. So part of that training is
20 continued. Because I think, and correct me, Andy,
21 I think the numbers are still high from that
22 perspective and we need to continue to work on

1 that.

2 MR. FOREMAN: Esther?

3 MS. KEPPLINGER: Just one final comment.
4 The goal of working the 14 months for the RCE's is
5 an excellent one, and hopefully you can get
6 something accomplished there. One concern I have
7 is the tail of RCE's. As an average, you could
8 still have significant numbers of cases that are
9 far older than that and that's a concern. Thanks.

10 MR. FAILE: That's obviously a good
11 point. We didn't get into the discussion today a
12 lot about our steady state type of solutions. One
13 of the things working with Robert and the Union
14 with very closely are those types of issues.

15 MR. BUDENS: Following along on that, I
16 agree, and that is one area of this problem that
17 both the agency and POPA agree we need to address
18 and are working to address, to try and, you know,
19 change some internal processes and work on stuff
20 so that people need to -- they need to work off of
21 their oldest, you know, RCE's.

22 MS. SHEPPARD: I just hope there's

1 enough time to go over your last slide. One of
2 the things is about the PCT style search. We
3 talked about that last time. And I'm wondering
4 how you're going to implement that.

5 MR. FAILE: Okay. An excellent segue.
6 So we'll hit the last slide, and again, going from
7 kind of concrete to a little bit more nebulous,
8 our last slide. We're contemplating some what
9 we're calling prosecution flexibilities, different
10 ways to prosecute in direct response to the
11 comments we had. So I'll have Remy go over a
12 couple ideas. And we'd like to get some input
13 from everyone on those, as well.

14 MS. YUCEL: Okay. Thanks, Andy. All
15 right. So here, going back to the fourth high
16 level theme, again, this had -- it's kind of an
17 umbrella type of -- well, the theme is concrete,
18 but there was a lot of different approaches to --
19 I'm going to just go ahead and give Jerry Lorengo
20 his props. They're Lego pieces, you know, so
21 there you go, Jerry.

22 So what we mean by Lego pieces is that

1 there is an understanding or a perception, a
2 feeling, whatever you want to call it that for
3 certain applications, not all of them, but for
4 some of them, there needs to be some increased
5 flexibilities in order to get both the applicant
6 and the examiner on the same page earlier on in
7 prosecution so you don't get to that final before
8 all the issues have been fully developed.

9 So there's a number of different
10 approaches that we can take. Many of these came
11 through the comments that we received. We have a
12 very large director team, almost all the directors
13 are involved on one of these types of initiatives.
14 And, you know, we took some of those comments and
15 then we also riffed off of those.

16 And there's a number of difference
17 pieces. We're really not sure how they can all
18 fit together. So we're really looking for input
19 from you all on this. But some of the high level
20 concepts in order to increase flexibility, and
21 again, some will be better for certain cases and
22 others will be better for others. For example,

1 we'll start with the one that Christal brought up.
2 This was in Dallas, but it played out in other
3 venues, as well. And the comment was, well,
4 sometimes we write out cases or our claims, excuse
5 me, kind of in the dark because we don't have the
6 benefit of a search report before we file the
7 case.

8 Now, this is not true for all the
9 applications that we get, but this is true for
10 some certain percentage of them, right. So for
11 that group of practitioners, they felt that being
12 able to get a quick hit PCT style search on at
13 least that initial set of claims would be very
14 valuable because then they could actually see what
15 was out there, and then they know what they would
16 like to claim, and then they would come in with a
17 more meaningful claim set, and then we could start
18 the prosecution really in earnest.

19 So all of a sudden there's a better
20 synchronization closer to the beginning of the
21 process as opposed to now you're at final and, oh,
22 now this is what you're claiming and this is what

1 you really want. So this is one avenue.

2 You could take it all the way to the
3 beginning. And sorry, Robert, I'm going to give
4 Wayne his little spiel here, okay. That's why I'm
5 sitting over here. So Wayne has been after us to
6 have what he would call an orientation type
7 interview. This is even before the examination of
8 any application starts. And I'm hoping, Wayne,
9 that you don't envision this for every single
10 application, but for those that the applicant and
11 inventor feel that they need it for, this would be
12 a possibility that would be available to them.

13 You could call it an orientation
14 interview. You could call it a diagnostic
15 interview. But really I think the purpose of that
16 would be really to help the partnership between
17 the examiner and the attorney, right.

18 So it's not necessarily always, in my
19 mind, the attorney coming and telling the
20 examiner, well, this is what it is, this is what
21 it is, it could also be a two-way conversation,
22 well, I see these claims at a very high level, I

1 see what you're trying to claim, but this is
2 really not saying what you intend for it to say,
3 you know, let's start from there.

4 So this would become an
5 orientation/diagnostic type interview before the
6 true examination starts so that everybody has a
7 better idea as to what the end point or the goal
8 is. Now, whether or not it meets the statutes or
9 whether or not there's art that's standing in the
10 way of that, you know, that's to be played out,
11 but at least everybody kind of understands what is
12 being pursued.

13 Additional concepts would be maybe
14 another additional short form action, not a full
15 blown action. That way we are conserving and
16 we're being as efficient as we possibly can with
17 our examiner resources, but yet giving applicants
18 the level of information they need to make the
19 next important decision on whatever amendment that
20 they might do to really push the prosecution
21 forward in a meaningful sort of way.

22 Another possibility, and this goes to

1 one of the points that Peter made, was that I
2 think at 55 percent of the time, applicants go
3 directly from a final rejection to an RCE. So
4 maybe another component of this would be, well,
5 try the after final first because we've got good
6 data to show that those after finals, at least a
7 third of the time, are either allowed, and then
8 another 4 or 5 percent of the time prosecution
9 gets reopened. So that's a very high percentage.

10 In fact, one of the high filers of the
11 RCE's in that situation actually came up to us
12 afterwards and said that they're going to go back
13 and redo their calculus on this because they
14 didn't realize it was such a high percentage that
15 was actually being considered, right, so they're
16 going to go back and figure out which ones they
17 should be doing the after final amendments on.

18 So this would be another way to kind of
19 break out of that habit cycle, right. So you get
20 a final, oh my gosh, the only thing open to me now
21 is an RCE. So maybe have a concept in there where
22 you can file your RCE, nobody is saying you can't,

1 but give that after final amendment a try and work
2 very closely with the examiner on how it's to be
3 crafted so when it comes in, there's no big
4 surprises on either side. So those are a lot of
5 Legos, Tinker toys, whatever you're, you know, set
6 from your childhood was your favorite.

7 There's a lot of different ways to put
8 these things together. And we are really looking
9 to see if there's any other pieces or, you know,
10 ideas, more ideas from you all as to which ones of
11 these we can pursue because there's an awful lot
12 of them. And we look forward to working very
13 closely with Robert and our partners at POPA to
14 see if there is a way forward at least on some of
15 these. So thank you very much.

16 MR. FOREMAN: Thank you, Remy. Thank
17 you, Andy. And I think this is a great example of
18 the collaboration that occurs within the office,
19 within the Union, with PPAC. And I certainly
20 encourage more of this type of interaction in
21 future PPAC meetings.

22 I'd like to turn the floor over now to

1 Drew Hirshfeld, Deputy Commissioner for Patent
2 Examination Policy, and Janet Gongola, Associate
3 Commissioner for Patent Examination Policy, to
4 give us an update on patent quality and the AIA
5 training update.

6 MR. HIRSHFELD: Thank you, Louis. So
7 I'm going to start with the software. May I have
8 that clicker? I'm going to start with the
9 software partnership roundtables, and get into
10 some other quality initiatives that we have going
11 on, and then Janet will end up with a discussion
12 of the AIA training, specifically some of the
13 first to file training that has been going on at
14 the office. As you all know, we had two software
15 partnership roundtables back earlier in the year.
16 And we are planning two additional roundtables to
17 be in the near future. Both of those look like
18 they will be in the October timeframe.

19 The first meeting looks like it will be
20 in mid October. It looks like October 17th is the
21 date we have slated for that, and we'll be in
22 Silicon Valley. The second one will be here in

1 Alexandria, and it looks like it will be on
2 October 28th. We are still finalizing the plans
3 for those, but there should be notice out at least
4 for the October 17th one in Silicon Valley very
5 shortly -- partnership meeting, we will plan on
6 discussing some of the White House initiatives.
7 I'm going to get into some of that here today,
8 specifically the tightening or the scrutiny of
9 functional claims. And we'll get into the rest of
10 the White House initiatives, as well. We'll also
11 give some feedback from the prior roundtables,
12 themes that we heard, what we are doing to address
13 that. And incidentally, the White House
14 initiatives mesh very well with what we heard from
15 the public, much about tightening functional --
16 excuse me, scrutiny of functional language with
17 the use of 112, et cetera; all avenues of 112. So
18 we will address those at the Silicon Valley
19 roundtable. And then, we'll get into a discussion
20 of the potential use of glossaries in prosecution.
21 That's something that the White House specifically
22 mentioned in the executive action items that came

1 out from the President. And I will talk more
2 about the glossaries in a couple of minutes.

3 Turning to the Alexandria roundtable,
4 unlike the first two roundtables we had from the
5 software partnership, we will not do these two
6 exactly the same. The first two were carbon
7 copies of each other and more of a listening
8 session. These will be different. The one in
9 Alexandria will be more focused on Prior Art,
10 searching techniques, access to Prior Art, et
11 cetera. And this flows from the first two
12 roundtables where another theme we heard was we
13 need to make sure that examiners have the right
14 access to Prior Art, specifically in the software
15 space, but not necessarily limited to that. And
16 we plan on having a significant discussion at the
17 Alexandria roundtable focused primarily on Prior
18 Art access and searching.

19 Okay. I'm going to turn to one of the
20 executive action items from the President's
21 statement, and this is to tighten the scrutiny of
22 functional claims. And I've talked about this

1 with PPAC many times. Actually, functional
2 language was, even before the White House
3 statement was -- it's one of the topics of the
4 original roundtables, and we envision in the big
5 picture, training to be ongoing and continuous as
6 it always should be. But we envision, with regard
7 to functional language, a whole number of training
8 modules that will come out over the course of time
9 that will address all aspects of functional
10 language.

11 It will get into all avenues of 112,
12 (a), (b) and (f). It will get into when you have
13 functional language where 112 (f) is not invoked,
14 for example. It will be very comprehensive,
15 ongoing. We've started that with 112 (f)
16 training, which has been underway for some time
17 now. We've just completed training for all
18 examiners on 112 (f), specifically identifying
19 when you have a 112 (f) limitation, and then a
20 second training module on steps examiners can take
21 to clarify the record regarding whether they've
22 determined you have a 112 (f) limitation or not.

1 I'm going to pause and hesitate on the
2 clarifying the record issue, because that's a
3 theme that we want to work into all of the
4 training. The clarifying of the record is very
5 critical, very important. And actually, we've
6 created to the theme of jointly working with
7 Robert and his folks -- we've created a team of
8 management and POPA members to exactly address
9 this issue. Where can we best clarify the record?
10 How can we do it? How can we be most effective?
11 If you take into consideration some of the ideas
12 Remy was considering with the shorter office
13 actions; how do we be efficient in doing this?
14 Those are all issues that we're considering.

15 I also would like to make it clear that
16 all of our training materials, we are posting on
17 the web. And so, what we have done for the 112
18 (f) for the two modules that are out there is
19 created Computer Based Training modules. Those
20 went to all examiners, and one of the reasons for
21 doing so is the consistency issue we've heard here
22 today and elsewhere. We want examiners working

1 from the same materials, obviously, though
2 tailoring examples for their technologies, but the
3 same basic materials are going to everybody. And
4 all of those are available right on the USPTO web
5 site.

6 We've added a link right to the USPTO
7 main page called Examiner Training and Guidance,
8 so just -- you go to uspto.gov main page, right on
9 the left side, you'll see a link, Examiner
10 Training and Guidance. Click on that and it takes
11 you to all the training. Right now, you'll see
12 the two modules on 112 (f) that will be there.

13 Okay. I've mentioned improving claim
14 clarity. We're attacking this in a number of
15 avenues. As I mentioned, 112 (f) came out with a
16 separate module on clarity. As we continue to
17 roll out training, we envision including what
18 examiners can do to clarify the record. We're
19 also looking at other avenues of how we can do
20 that with focus groups, et cetera. And I know at
21 the upcoming AIPLA partnering in patents event
22 that will be on October 23rd, there will be a

1 section devoted to exactly getting some more
2 feedback on what we can do to better clarify the
3 record.

4 Previously, I mentioned the glossaries.
5 I also mentioned with clarifying the record --
6 we're working with Robert. We also have another
7 team which is joint management and POPA members
8 working on the glossary issue. And again, the
9 White House has asked us to consider this as one
10 of the potential initiatives for improving claim
11 clarity. So we are exploring the possibility of
12 use of glossaries in prosecution through that team
13 that I just mentioned with Robert. This will be a
14 topic, as I also said, at the Silicon Valley
15 roundtable, and I envision there will be some sort
16 of pilot that we go forward with where people can
17 opt in and have a glossary and we'll evaluate the
18 effects of the glossary. What we'll have in the
19 near future will be a notice that will come out
20 announcing the roundtable, and then also seeking
21 some feedback on the glossary issue. And there
22 will be a number of questions trying to get some

1 specific feedback and guidance of how we can best
2 incorporate a pilot program.

3 I'm going to move to some other training
4 and guidance materials that are out. I'm touching
5 the high level. If anybody wants to jump in, feel
6 free to ask any questions at anytime. I'll
7 certainly take questions when I'm done, as well.
8 But moving to some other training initiatives,
9 just so you can see the big picture, we also have
10 completed compact prosecution training. It's not
11 the first time we've come out with training to the
12 core on compact prosecution. We all obviously are
13 very focused on making sure that we're most
14 efficient as we can be in the office. This
15 training covered a variety of topics, certainly
16 not limited to you know, office actions being very
17 complete and very clear. And we've addressed the
18 searching in there and interviews as other topics.

19 And I have two more topics to discuss
20 before I'm finished with my portion.

21 MR. SOBON: Can I ask a question?

22 MR. HIRSHFELD: Yes, I'm sorry.

1 MR. SOBON: On the issue of training to
2 -- I haven't even looked at the training. I made
3 a note to myself that it would be good to review
4 these things and have sort of a public input as
5 well to how you're training. Have you given
6 thought to -- you know, in a similar vein to what
7 we were talking about earlier, about having some
8 sort of public private partnering on the training,
9 like when you're doing these ongoing training
10 courses to involve key practitioners to give their
11 side of things as part of the training? I'm not
12 sure how they look or feel, but it struck me that
13 you could do this on a regular basis as part of
14 all of the ongoing training that give some realism
15 to the process in some fashion.

16 MR. HIRSHFELD: Yes. So there's a
17 number of ways that we have approached exactly
18 that issue, one of which is some of the
19 roundtables, like the software partnership
20 roundtable. We started to get feedback from
21 people in the room about topics we should train on
22 and some specifics. We've also -- you know, I've

1 had many people come to me -- Back when Dave
2 Kappos was here, we had actually reached out to a
3 number of people to get input on some real world
4 examples and where we can help focus.

5 So we've done it through some of the
6 roundtables. We actually started the functional
7 language, the 112 (f) as responsive to some of the
8 feedback that we have received from people --
9 feedback that ended up being repeated at the
10 roundtables when we got feedback from different
11 people on the same topic. So that's one avenue.

12 I know also, with some of the Bar groups
13 we've explored this, and even as late as this
14 morning, Andy and I were just talking about some
15 work with the ABA IPL section where they are
16 looking at creating potentially some companion
17 documents that would work with our training and
18 that we'd be able to take a look at those and be
19 able to see -- you know, just have a two way back
20 and forth. We can see what they're pointing is
21 the hot points that they're seeing, et cetera. So
22 I think what you're saying is great.

1 112 (f) was something that's been in the
2 works for a while. As we proceed down other
3 avenues, we are going to need to get increased
4 input. Like I see certainly, 112 (a) in the
5 electrical areas is more of a controversial topic,
6 I think, certainly than say, 112 (f) is. And I
7 certainly see us you know, working with the public
8 through the roundtables and other means to make
9 sure we're getting the right feedback.

10 MR. THURLOW: Just a quick follow up,
11 Drew. Just on the use of 112, I guess with the
12 whole software partnership, I understand the focus
13 on the functional claim language and so on. But
14 having been involved in some litigations and
15 especially these days with all of the post- grant
16 work, I guess my overall point, I recall in one of
17 the early PPAC meetings, the office tracks the use
18 of 112.

19 So to the extent you can provide an
20 update on that and some discussion. The reason
21 why it's important, it's just not functional
22 language or functional claiming and so on. In my

1 opinion, I think the majority of examiners do a
2 very good job examining the claims in light of
3 Prior Art. But sometimes, you know, in
4 litigation, what we do with the post-grant work,
5 each and every word is really scrutinized and
6 reviewed. And I'm not sure what level -- the
7 examiners do that, but that's part of the
8 litigation world, I guess. But I guess my comment
9 is, focus on all of 112 and the use of that is
10 something that should be emphasized even more.

11 MR. HIRSHFELD: Right. So you raised a
12 number of good points, one of which is our Office
13 of Patent Quality Assurance tracking. And going
14 way back to the impetus behind some of this
15 training was our internal reviews of the 2011
16 training on 112 in general. We had a big
17 comprehensive package that went out, and we went
18 to take a look at what some of the effects were
19 and have that inform some of our next steps.

20 One of those next steps, in addition to
21 being training on things like 112 (f) was to
22 better track the data so that we can take a better

1 look down the road. So we actually are in the
2 final stages of improving our data capture, so
3 when our Office of Patent and Quality Assurance
4 specialists are reviewing cases, they're better
5 capturing the types of errors, where they are, how
6 they were made, et cetera, where good office
7 actions were made. We're trying to just get a
8 much more comprehensive view of the statistics
9 that result from the actual office actions, so we
10 can better inform what to do next. So we have
11 certainly changed that.

12 MR. THURLOW: And just a -- and that all
13 sounds great. A couple of quick follow-ups on it.
14 The use of antecedent basis is very important.
15 Use of -- whether the subject matter in the
16 preamble is considered part of the claim. Varied
17 things. All of those 112 issues really turn out
18 to be important aspects to focus on and to the
19 extent the office can do that, I continue to
20 recommend that.

21 MR. HIRSHFELD: Yes. And I agree, and
22 the 112 (f) was a starting point, not an ending

1 point. And there is much more to follow, and as I
2 said, you know, we envision -- you know, Peggy,
3 Andy, Bruce and I have had many, many
4 conversations about the ongoing nature of training
5 in this area as well as other areas. But
6 certainly, again, 112 (f) is just the starting
7 point, so there will be training that will
8 continue on all of these topics.

9 And again, I'll reiterate the key point
10 that we think is really clarifying the record and
11 making sure that you know, an examiner -- an
12 applicant and an attorney reviewing a case, an
13 office action, should know what the examiner is
14 thinking. And you should be able to have a quick
15 meeting of the minds. And that way, if you have
16 an agreement, great. If you have a disagreement,
17 I would say that's a great situation, too, because
18 at least you know you're on the same page. You're
19 on the same page early, and you can take steps to
20 move forward. And that's our big picture plan.

21 MR. FOREMAN: Louis?

22 MR. BUDENS: I'd like to follow on to

1 Peter's comment a little bit. First of all, I
2 agree -- Peter and I don't often agree, but this
3 one will get (inaudible) angry, too that the 112
4 issues need to be addressed. I think we have
5 whole sections of the office that haven't written
6 a 112 second paragraph rejection in I don't know
7 how long. Not because the examiner doesn't
8 necessarily understand the claims or not
9 understand the claim. Because their directors
10 don't allow them to do those kinds of rejections.
11 They don't want any part of them. So that's one
12 area.

13 Another question I want to go to is the
14 glossary and the clarity issues. And at the
15 outset, we are trying to work with the agency on
16 this one. We have a team, you know, trying to
17 figure this out. For the life of me, I have not
18 figured out why the White House is getting this
19 far into the weeds, but on stuff like this
20 glossary issue -- before we go down the path of a
21 pilot of some sort, has the agency gone back --
22 and I'd raise this at the team, but -- has the

1 agency gone back and just done a search of patent
2 applications that already had glossaries in them,
3 and tracked the history of those cases
4 retrospectively to see, you know, did having a
5 glossary in the case affect the prosecution
6 history of the application?

7 Did it issue its allowance? If it went
8 to court, did it affect -- you know, was something
9 in the glossary dispositive or -- you know, it's
10 hard to say they would ever be dispositive, but --
11 well, I guess it could in claim language and
12 stuff. So, has any of that been done, before we
13 sit there and go off and launch a prospective
14 pilot when we would, you know, find out the same
15 information looking at lots of -- you know, 200
16 years of past history?

17 MR. HIRSHFELD: I think Robert, you
18 raise a very good point; a point that was raised
19 to me after you raised it with the team. And so,
20 we are certainly going back and trying to identify
21 cases where we can get helpful information from
22 glossaries, either ones that are completed or

1 cases that are pending right now. So I see this
2 moving in parallel, you know, based on your
3 feedback, to go down that path. We see that going
4 in parallel with the team's work as it proceeds
5 forward to try to see how we can also move
6 forward.

7 MR. SOBON: Not to belabor that, but on
8 that one issue of glossaries, it is, I think, a
9 little bit -- I think the impulse behind is
10 correct. It's just that glossaries are weird, I
11 guess, way to phrase it. I think it actually
12 unites to what Robert saying is on 112, too, and
13 other things, is that the real issue is having
14 examiners if there's a claim term that isn't
15 actually described anywhere in the specification
16 -- the simple thing is for an examiner to say,
17 what do you mean by that claim term, and having
18 that on the record in the file history about what
19 they meant by the claim term.

20 And I know a number of the PE2E to the
21 tools are intended to provide that for the
22 examiners to have an easy way to find terms that

1 aren't found anywhere in the specification to do
2 that, which is also very useful, I think. But I
3 think that's the simple answer -- not that we have
4 to put up some sort of table that war equals peace
5 and love equals hate (Laughter) and make those
6 infinitely regressive sort of things. But just
7 sort of have that on the record. I think that's
8 the simpler answer. But anyway, that's me.

9 MR. JACOBS: Yes, very quickly. I need
10 to clarify the record on behalf of all the UC
11 Berkeley alumni here, that Berkeley is not
12 actually located in the Silicon Valley, although
13 it may be near the Silicon Valley office.

14 (Laughter) And then, to build on Robert and
15 Wayne's comments, I think the same thing may be
16 happening with the glossaries that happened a
17 little bit with the 112 (f) discussion, is that
18 the 112 (f) discussion was one idea of a possible
19 approach to a much broader problem, which had to
20 do with section 112 issues related to claim scope.
21 Right?

22 And the same happens with the

1 glossaries, is that there are lots of others
2 things that need to be considered, including what
3 Wayne mentioned, but also, just the simple task of
4 aligning the terms that are used in the claims
5 with support from the specification, which often
6 isn't done to the extent that it can. There are
7 many other ways of approaching this that don't
8 necessarily lead to glossaries that may be
9 self-serving. I mean, I've seen people in
10 litigation submit the Microsoft dictionary. And
11 then, you argue about whether it's Microsoft's or
12 IBM's dictionary. It really doesn't help in terms
13 of defining the claims. And there may be many
14 other approaches that are much more easily
15 implemented and effective with respect to the same
16 problem.

17 MR. HIRSHFELD: So I'll conclude on
18 glossaries at the risk of using up all of Janet's
19 time here, just to say that we are in the stage of
20 getting feedback.

21 MR. JACOBS: Right.

22 MR. HIRSHFELD: So the notice that will

1 go out and the discussion at the next roundtable
2 will be to get more feedback. So you know, all of
3 this feedback is great, and I hope it continues,
4 and we will gather all of the feedback, and then
5 obviously, you know, see what the appropriate next
6 step is. But I see -- I agree with all of the
7 comments that there's many avenues to address all
8 of these, and we're trying to address you know,
9 the clarity issue and the meeting of the minds
10 issue through a number of differing fronts,
11 glossaries, 112 (f) being just two small features
12 of the bigger picture.

13 So I'm going to move on to my last two
14 slides, and interestingly, going from a discussion
15 of clarity to the CLS Bank case (Laughter). So
16 I'm going to go quickly through the last two
17 slides, more to say that guidance on these two
18 cases, the CLS being one and Myriad being the
19 other case, initial guidance was given and is also
20 on the web site that you can locate through the
21 same link that I spoke about earlier. As Terry
22 mentioned this morning, certainly, with respect to

1 Myriad, we are looking at additional training. We
2 envision in the near future to have training on
3 the reach of Myriad, since there's been numerous
4 questions, of course, about you know, does it
5 reach past nucleic acids? If so, how is that
6 accomplished, et cetera? So we do envision the
7 next step will be to address that issue in
8 training, and then followed by more TC specific
9 examples of both Mayo and Myriad and how they
10 apply to specific technologies.

11 CLS Bank, we're obviously anxiously
12 awaiting to see if this case will end up at the
13 Supreme Court for some next steps. So I went
14 through this quickly, but both had an up to date
15 -- have a one-page memo. You certainly can get
16 there through our web site. I'm going to turn
17 this -- unless there are any other questions? I'm
18 happy to -- I'm going to turn this over to Janet,
19 and I'm sorry. I think we took most of the time,
20 but if you can go to AIA.

21 MS. GONGOLA: Thank you, Drew, and good
22 morning. It's always a pleasure to speak with

1 PPAC. May I please have -- thank you. So this
2 morning, kind of I have taken that a couple of
3 themes have emerged. One is training and another
4 is -- training internally and another is education
5 of the public. And coincidentally, that's what my
6 presentation about AIA implementation focuses on.

7 I want to cover a couple of different
8 topics with you. The first topic is First
9 Inventor to File training that is currently
10 ongoing, and explain to you what we've done to
11 educate our examiners about the new statutory
12 framework. And then, the second part is to
13 provide you with an update about some future
14 public training that will be happening on the
15 two-year anniversary of the enactment of AIA.

16 There seems to be a problem. I'm not
17 quite sure where the training slides are, so I
18 think those in the room -- there are copies
19 available. PPAC has received a copy, and
20 apologies to those on the web site. We will have
21 those slides posted for you over the lunch hour.
22 So, maybe if we -- for those of us in the room,

1 I'm going to start on slide 2 of the handout. On
2 that slide, we want to provide an overview of how
3 we're handling the First Inventor to File training
4 --

5 MS. FAINT: Is this it?

6 MS. GONGOLA: The slide deck is called
7 Status Report, USPTO Implementation of the America
8 Invents Act. It's six pages in total. Are we
9 clear now? Okay, very good. So we have chosen to
10 use an iterative approach to our First Inventor to
11 File training. The reason for that, we believe by
12 repeating the information which can be complex for
13 the examiners to master over a period of time, we
14 will achieve better learning and greater retention
15 of the materials.

16 Additionally, we've chosen to do the
17 training in a variety of ways. Lectures, practice
18 exercises and then, a hands-on workshop involving
19 a discussion with the examiners where they apply
20 the framework to a mock examination case.
21 Further, we're making all of our training
22 materials in computer based training form or CBT

1 form, so that they can be stored in a library and
2 accessed after the fact, both by examiners as well
3 as the public. And I'll show you how to access
4 those materials momentarily.

5 So, moving on to slide 3, this slide
6 lists for you the training that we have completed
7 to date. We have given two lectures to all of our
8 examiners. The first lecture was an overview of
9 the new statutory framework set forth in 35USC102.
10 That occurred in March. It was one hour in
11 duration. Over the past two months, we have been
12 completing comprehensive training where we've
13 delved deeper into the statute to address more of
14 the nuances, and we've provided many, many
15 examples to the examiners to show how Prior Art
16 and the exceptions apply.

17 Further, we've made a series of videos
18 available to the examiners. These were videos
19 that they had to watch before attending the
20 training sessions. They dealt with kind of a
21 high-level overview of the framework, new
22 definitions that the AIA introduced, as well as

1 other AIA related topics like Inventors Oath or
2 Declaration. And we've provided, lastly,
3 examiners one set of practice exercises where they
4 took mock fact patterns and had to analyze it
5 under the new statutory framework, and then we
6 walked through the answers with them.

7 Moving to slide 4, this slide lists out
8 for you future training that is expected. We are
9 planning for a workshop, as I indicated, and this
10 workshop takes an actual case -- or a mock case
11 and allows the examiners to apply a variety of
12 different Prior Art references to the claims in
13 that case to determine whether they are indeed,
14 Prior Art, or they fall out under an exception.
15 The workshop also gets into the issues of how
16 applicants might raise exceptions for the
17 examiner's consideration, so the examiner will
18 know what to expect in actual prosecution. We
19 will roll out this workshop next week for the
20 design examiners, and then, throughout fiscal year
21 '14 for the remaining examiners. We likewise have
22 a few more videos being planned to cover for

1 examiners how to do know if they do have a First
2 Inventor to File case on their dockets, and how to
3 handle affidavit and declaration practice under
4 the First Inventor to File provision.

5 Now, moving to slide 5, so that
6 examiners have ample help available if they have
7 questions about the new First Inventor to File
8 provision, we've made three ways for them to get
9 those questions answered. The first is, we have a
10 First Inventor to File training team comprised of
11 representatives from across the agency. The
12 members consist of folks from the technology
13 centers, from our quality assurance area and legal
14 advisors from the Office of Patent Legal
15 Administration.

16 The second way is, we have a team of TC
17 AIA specialists. There are 60 members of that
18 team that we've armed with additional training to
19 handle the First Inventor to File issues and
20 questions that they may resolve. And then lastly,
21 we've created a First Inventor to File e-mail that
22 examiners can submit a question to and receive an

1 answer within 24 hours.

2 Moving to slide 6, this slide shows a
3 further resource that we've created. It's our
4 First Inventor to File internal micro site. It's
5 available to our examiners and it houses all of
6 the information on the First Inventor to File
7 provision. All the training materials, the
8 questions we're cataloging and how to get
9 prospectively for future questions. Slide 7 for
10 you shows where the public may access all of our
11 First Inventor to File training materials. Those
12 materials are posted on the First Inventor to File
13 section of our AIA micro site.

14 The slide gives you the address, and
15 then I have a screen shot showing the micro site.
16 The circle highlights the examiner training
17 section, and at the very bottom of that section,
18 so that the public can provide feedback to us on
19 the scope of our training, any missing
20 information, we have contact information so they
21 e-mail directly to me to indicate here's what we
22 think of the training. Here's what we'd like to

1 see next. So that kind of gives you an overview
2 of First Inventor to File.

3 I'll now move on to my last topic, which
4 is an anniversary celebration of sorts that the
5 agency is hosting on September 16th, one to five
6 p.m. here at our Alexandria campus. We intend to
7 use this forum to delve into AIA provisions that
8 have been in place for the past year, to let the
9 public know what's been working well, where there
10 might be issues or areas for improvement. If you
11 turn to slide 9, you'll see that I provide an
12 agenda of what topics we will address.

13 So on the patent side, we plan to cover
14 prioritized examination or track one, pre-issuance
15 submissions, supplemental examination, the
16 Inventor's Oath or Declaration provisions as well
17 as the micro entity discount. And we'll be doing
18 that through a series of short vignettes on those
19 topics; some slides, some little hypothetical fact
20 patterns to walk through, some true/false
21 exercises with the audience. Then, we'll move in
22 to demoing our First Inventor to File workshop

1 that I just talked about, so that all of you can
2 understand exactly how examiners are being trained
3 to handle a mock application.

4 And our last segment of the day will be
5 with our patent trial and appeal board. It will
6 be a panel discussion to cover select topics for
7 the administrative trials; discovery, settlement,
8 the focus of how the hearings are being
9 structured. Throughout the day, there will be
10 multiple opportunities for the public to ask
11 questions of our agency experts. So if there's
12 ambiguity out there, we will have the opportunity
13 to address it.

14 And now, my last slide, 10, to the
15 extent that you can indulge me for even 30 seconds
16 more, I'd like to kind of open the floor for your
17 feedback on AIA topics where you believe the
18 agency might need to do further work, or future
19 AIA events that you think might be helpful, like
20 roundtables for the public, either to provide
21 education outward or perhaps, to collect feedback
22 into the agency about various proceedings that we

1 have in place. So, I welcome any suggestions on
2 this front.

3 MR. FOREMAN: Great. Thank you, Janet.
4 And I think some of the feedback that I'd like to
5 provide is, and it was brought up earlier in the
6 discussion, is creating video content. So, a lot
7 of what is being done here, it's wonderful. But
8 to the extent that you capture that video and then
9 post it online, it becomes just that much more
10 effective for people to download. We kind of live
11 in a society now where people gather their
12 information in short, two-minute episodes. And so,
13 whenever you can use video, I think that would
14 really benefit the user community.

15 MS. GONGOLA: That's great feedback, and
16 so far, we've tried to take every AIA event that
17 we've done with the public, and we have made it
18 available on the micro site, and that's a practice
19 that I envision we will continue to do.

20 MS. KEPPLINGER: Two quick things. You
21 have an e- mail address for examiners to ask
22 questions about First Inventor to File. I think

1 the public might also benefit from something like
2 that -- a help desk or something as it starts to
3 be put into place. And also, you mentioned that
4 the training materials will be put on the AIA web
5 site. Hopefully, also consolidated onto the -- I
6 think they have a front page training area, so
7 also consolidated there so that everything is in
8 one spot and it can be quickly found there, as
9 well.

10 MS. GONGOLA: Yeah. Both are great
11 suggestions. If the public has questions, we have
12 had for many months, an AIA help telephone number.
13 It's HELP AIA, 1-888-HELP-AIA. They can call that
14 number for First Inventor to File. And your point
15 about placing First Inventor to File materials on
16 that specialized help site hit me when I was
17 sitting so yes, something -- thank you. We need
18 to do that.

19 MR. SOBON: Really quick. We talked
20 briefly, you and I, about this yesterday. This is
21 great stuff, and I think it's great to have this
22 two year anniversary -- two years in person and

1 meeting. I think the PPAC, my sense of it
2 personally would like -- and maybe some rolling
3 basis based on when the provisions were
4 implemented in terms of we reviewed and helped you
5 craft the implementing regulations on the various
6 provisions, to have some sort of orderly look back
7 at one year out for each of those provisions as
8 we're moving forward, to collect feedback from the
9 public about how well those regulations are
10 working.

11 It could be a very useful tool and
12 oversight in terms of that was the best job that
13 you all felt could be done at the time. But they
14 are subject to review and revision if needed. And
15 I think having a useful kind of feedback mechanism
16 would be, I think, warranted. So that would be
17 great.

18 MS. GONGOLA: Thank you very much. Yes.
19 We always had indicated when we were implementing
20 that this was an iterative approach, and we would
21 go back and look over time, so that your
22 suggestion feeds nicely into the approach we plan

1 to take.

2 MR. FOREMAN: Any other comments or
3 questions for Janet? Well again, thank you Janet,
4 for your time this morning, this afternoon, and
5 this brings us up to the lunch hour. We're a
6 little bit behind, but that's okay. No one wanted
7 an hour for lunch, anyway. We are scheduled to
8 pick back up at 12:50, so we've got a little bit
9 less than 50 minutes for lunch. And if I could
10 just remind the members of PPAC, we are going to
11 get a briefing from Richard Malsby and Elizabeth
12 Daughtery on some of the initiatives with the
13 Smithsonian, and that will be over our lunch
14 break. And members of the public are welcome to
15 attend that, as well. So right now, we are going
16 to adjourn. It will be in here. Please grab your
17 lunch, bring it back at 12:20. And so, from 12:20
18 till 12:50 we'll have that presentation from
19 Richard and Elizabeth. Thank you.

20 (Recess)

21 MR. FOREMAN: We're back from our lunch
22 break, and hopefully, some of you were able to

1 listen to the presentation by Richard Malsby and
2 Elizabeth Daughtery on the Smithsonian event.
3 Additional information on that will be posted
4 shortly online, but for those of you who are just
5 joining us back from the lunch hour, we have a
6 slight change to the schedule. We are going to
7 lead off in the second half of our session with
8 Tony Scardino, Chief Financial officer, and then
9 Dana Colarulli will give us a legislative update
10 immediately afterwards. So with that, Tony, I'd
11 like to turn the floor over to you, if everyone is
12 ready, and we will allow Tony to give us an update
13 on finance, budget and the all-popular
14 sequestration.

15 MR. SCARDINO: Well, with that opening,
16 I'm going to have to rethink what I'm going to
17 say. Well, thank you. It's a pleasure to be
18 here, as always. It's an interesting time, as
19 always in the finance world of the Federal
20 government when we're nearing the end of a fiscal
21 year waiting to see what's going to happen October
22 1st for the next fiscal year while we are busily

1 preparing a budget to go to the Office of
2 Management and Budget next month for the following
3 fiscal year.

4 So I kind of want to give you a
5 different story today of sorts in terms of --
6 usually I go '13, '14, '15. Today, I'm going to
7 kind of give you like -- recap where we've been
8 this year. There was a lot of uncertainty over
9 the last six months, a lot of it do sequestration,
10 you know, what's going to happen. You know, when
11 you're managing funding for a Federal agency in
12 one fiscal year, especially here at the USPTO,
13 we're very concerned about what's going to happen
14 the next year, especially next quarter under
15 the world of a continuing resolution.

16 So, what we did to manage this year, of
17 course, is we made several budget reductions as we
18 were dealing with sequestration and some lower
19 fees earlier in the year. And a lot of that, I
20 think we explained earlier or previously was in
21 the area of IT. Those things are a little more
22 discretionary, not that they're not very important

1 and critical for our future. They were things
2 that we could cut rather than doing things like
3 RIFS (Reductions in Force) or furloughs or cutting
overtime -- all
4 things that were producing revenue that were in
5 the plan to get us to the workload that was coming
6 in.

7 So sequestration, also basically was
8 offset a little bit because we had a strong
9 operating reserve coming into this year,
10 thankfully. So we'll go through that a little bit
11 more in a second. But just to give you some idea
12 of sequestration, on the patent side of the house,
13 it's going to be more than \$120 million, we
14 predict. Just to give you a little background on
15 that again, it's 8.6 percent of all fees collected
16 since March 1st. So we calculate that to be
17 between 120 to \$135 million this year.

18 So where we are now? On the plus side,
19 actual filing rates have been trending 7.5 percent
20 above last year. We had predicted closer to 5 or
21 6 percent, so 7.5 percent is really, really,
22 really positive. The flip side to that is, of

1 course, with the filing rate comes work. So with the
2 money that comes with that work, 8.6 percent of
3 those fees are sequestered, but we still do a
4 hundred percent of the work. It still sits in our
5 queue.

6 Another positive development is new fees
7 went into place March 19th, as you know, and we
8 had predicted a bubble or a surge before March
9 19th, and then an associated or a corresponding
10 trough after March 19th. Folks would pay things
11 that they could pay early at the lower fees.
12 Well, the bubble wasn't as big, and thankfully,
13 neither was the trough. So fees are coming in
14 more or less where we had initially predicted them
15 earlier this year, before the bubble -- before
16 sequestration. So that's all positive.

17 We're currently running about \$30
18 million ahead of our revised plan levels. In
19 other words, after sequestration and after the new
20 fees went into effect, we took a snapshot to say,
21 what do we think is going to come in by the end of
22 the year. That trend, we're running a little bit

1 above that. That's very positive. That's enabled
2 us to turn on some limited, things that we
3 had turned off, or I should say that we kind of
4 reduced from our budget line activities, and it's
5 also helped us to prepare for fiscal year 2014,
6 which I'll go through in a minute.

7 So far, we've sequestered \$95 million,
8 just to give you some idea, since March 1st.
9 That's 8.6 percent of the fees that we've
10 collected. So for '14, or fiscal year 2014, we
11 are anticipating a very strong revenue stream
12 again, again, with those filing rates coming in --
13 probably 6 percent greater than this year. That's
14 the latest trend. So with that, we'll be able to
15 get the ITP budget back on track. A lot of
16 activities that we've kind of either put on hold
17 are what we politely call our life support, we will
18 turn them back on, a lot of patents IT projects
19 specifically. So we'll be able to do that as well
20 as continue to grow the operating reserve.

21 As proven this past year, it was only
22 because we had an operating reserve that we were

1 actually able to kind of survive through some of
2 the bumpy times that we had earlier in the year.
3 So at the same time, we're trying to prepare for a
4 continuing resolution. Now, everyone who follows
5 this closely knows we've had continuing
6 resolutions something like 32 out of our last 35
7 years. They almost happen every year, so we
8 always plan for them. This year, everyone is
9 saying we're going to have one. It's literally
10 impossible for them to pass all the budgets before
11 October 1st.

12 So we'll have a continuing resolution.
13 But does that mean we'll have one for two months,
14 six months? We know there won't be a full year
15 CR, at least not right off the bat. They may
16 eventually get to there. So to give you some idea
17 of what that means, a continuing resolution means
18 we live at last year's operating level. Well,
19 what level will that be for fiscal year '14?
20 We're not really sure. Is that the post
21 sequestration number or will it be the
22 appropriated number? We're not sure. No one is

1 sure, because sequestration is something that
2 hasn't been decided yet.

3 In other words, the bill calls for it,
4 the act that calls for sequestration is still in
5 existence. No one's figured out whether we're
6 going to try to find another solution or whether
7 we're still going to live under sequestration and
8 what that will mean. Will it be a 5 percent cut
9 like it was this past year? Will it be greater or
10 something less than? So we are preparing for it.
11 We are preparing for a continuing resolution from at
12 least two months up to at least possibly six
13 months. And that's going to be supported
14 by an operating reserve that will be a little
15 higher, possibly, than it was coming into this year.
16 So that's a positive.

17 And then fiscal year 2015, as I
18 mentioned, in the next month or so, we submit a
19 budget to the Office of Management and Budget for
20 fiscal year 2015. We will be providing you a copy
21 to review before that, so you know, we asked for a
22 kind of due diligence and we're willing to have a

1 conference call, whatever is necessary, to go
2 through anything that's in there. We don't
3 anticipate any surprises. I don't think you'll be
4 surprised, because it's kind of the same direction.
5 Right? We're trying to get pendency and backlog
6 back to where we want them to be.

7 We've got of course, IT in there as
8 always. There are many systems that we're trying
9 to either update or replace. So I don't think
10 you'll see any surprises. It's just kind of
11 moving in the same direction that we've been doing
12 for the last couple of years.

13 And the last thing I kind of want to go
14 through is the Strategic Plan. We're not sure if
15 we've mentioned this to you before, so we
16 wanted to be sure to do so today. You will be
17 seeing a draft framework for our Strategic Plan.
18 Now, the Strategic Plan has to be updated every
19 four years, typically about a year after an
20 administration starts. So, our new strategic plan
21 will cover the years -- fiscal year 2014 to '18, a
22 five-year period, and it's due to Congress with

1 the President's Budget the first Monday in
2 February. So, roughly six months from now.

3 So we've been working internally to
4 revalidate our existing mission, vision, and
5 strategic goals. And so, we've developed a draft
6 framework that we would like your consideration
7 and feedback. So we'll be sending that to you
8 probably by -- I don't know exactly when.

9 The near term goal is to get you a full draft of
10 the strategic plan, though, by early October. So
11 we'll probably get you the framework before that.
12 And after that review, we'll be turning to the
13 employees and public for their input.

14 If you were around four years ago, it
15 was a very studied process and we went around and
16 had road shows and sought comments everywhere. I
17 don't know if it will be that extensive this time
18 around, because it's a continuation, like I
19 mentioned. Our vision and mission is not
20 changing. Our strategic goals won't be changing,
21 but some things that were in our plan four years
22 ago, like getting a sustainable funding model or

1 you know, authority to set our own fees, we've
2 accomplished those things. So they come off the
3 plan and we can put some new things on that have
4 to do with maybe IA implementation. So we
5 don't think you'll see any surprises, but we'll be
6 talking certainly in the near future. That's
7 pretty much all I've got.

8 MS. SHEPPARD: Thank you very much for
9 that report. That was very uplifting, in spite of
10 the very challenge -- the challenges that you
11 have. And I think I wanted to say this, and I
12 know that most of, or all of PPAC joins me in
13 this, is that USPTO and your group has done an
14 outstanding job in the face of some very
15 challenging circumstances by maintaining quality
16 and continuing to decrease pendency.

17 The problem is that what we're going to
18 see -- there are short-term effects and long-term
19 effects. And the long-term effects of
20 sequestration and the fact that all the user fees
21 are not being put into the system are going to be
22 hurting the people who are actually paying the

1 increase in the fees right now. So that
2 additional 7.5 percent increase? Those are the
3 people who are going to be on the losing end of
4 the 5 percent decrease in the user fees going to
5 the PTO.

6 So if next year, the sequestration takes
7 place, in addition to the CR, you've already cut
8 your discretionary funding. What goes next? And
9 what's that going to affect? I know that's hard
10 for you to say, but I can't imagine pendency is
11 going to do well if we start attacking the
12 productivity awards or other things that helped
13 the pendency go down.

14 MR. SCARDINO: It's a great question.
15 And I mean, it's obviously something we struggle
16 with every day. I mean, the last thing we cut,
17 obviously, is people, because people help generate
18 the income that keeps this place going. Right?
19 And that's our mission is to provide services to
20 the folks that request patent applications or
21 trademarks. So you know, once you figure out what
22 of your budget is fixed, i.e., salaries,

1 comp, rent -- those are your fixed expenses. That
2 gets to about 90 percent of our budget, if you
3 include the maintenance and operations of our IT
4 systems.

5 So you've only got 10 percent that's
6 discretionary, and that would be things like IT
7 development, travel, training, maybe some
8 international education, some programs we run.
9 Now you know, when I say they're discretionary,
10 I'm not trying to say that they're not critical or
11 important, because we're fond of saying if you
12 don't maintain your infrastructure, eventually,
13 you're going to have problems. So it's a
14 shortsighted solution. So as you mentioned,
15 Christal, we like to say sequestration of '13 kind
16 of took care of the low hanging fruit in the sense
17 of, there were things that we could stop doing.

18 We could pull back on some IT
19 development. But we can't pull back much longer.
20 Some of these systems, of course, were scheduled
21 to replace aging systems. And if the aging
22 systems start to fail, that's where we have a real

1 problem, on the production side of the house. If
2 PALM or something like that goes down, we have a
3 real problem. So it's great that we started this
4 conversation really positive. I'm trying to get
5 back to that point.

6 (Laughter)

7 MR. SCARDINO: But I can't. I'm at a
8 loss for words. It doesn't happen often. Wayne
9 is going to help us.

10 MR. SOBON: I'm going to be pithy
11 (Laughter) and tart, not necessarily so happy. I
12 really emphasize everything that Christal said,
13 and we understand exactly what you're facing. I
14 guess a question, which as you said -- in your
15 report, you said that the operating reserve would
16 continue to grow. Is it growing right now? So
17 the question impacted in that is, these fees that
18 have been sequestered, have they gone into the
19 prior unavailable billion-dollar diversion fund
20 that sat somewhere in treasury never to be seen
21 again? Or are they going into the reserve fund
22 set up by AIA, or some combination of both?

1 MR. SCARDINO: Unfortunately, they're
2 going to the former. Because the sequester --

3 MR. SOBON: Yeah, great.

4 MR. SCARDINO: Yes. (Laughter) The AIA
5 reserve fund, of course, is a fund that was
6 established for anything we collect above our
7 appropriated amount. The sequestered funds were
8 below our appropriated amount. In other words,
9 it's part of your appropriation, so they're deemed
10 unavailable for expenditure. So they're in a
11 separate account that can be reappropriated to us,
12 just like the billion dollars that was diverted in
13 the past. The likelihood of that happening is
14 probably slim, because there would have to be
15 additional budget authority found to do so.

16 So when I say the operating reserve,
17 it's different than the fee reserve fund, of
18 course. The operating reserve coming into this
19 year was about \$111 million. We think -- when I
20 say it's growing, it'll probably end the year at
21 120 million or 130 million or some number like
22 that, because what happened was, we cut spending

1 back in March when sequestration hit, and then
2 fees have come in a little stronger than what we
3 thought they were going to between now and then,
4 so we didn't turn on the spending as fast. It's
5 just not possible to do with things like IT
6 development. So the plus side to that is the
7 operating reserve grows a little bit, which gives
8 us a little more leeway in fiscal 2014.

9 MR. SOBON: Okay. That sounds like some
10 good news. And then, so the comment I have,
11 echoing what Christal said is, you know, part of
12 the irony of a number of us in the user community
13 looking in at this is that the administration just
14 unleashed a whole kind of confetti or potpourri of
15 initiatives, both executive things that are
16 imposed on the office, as well as things for
17 Congress to put into place about addressing the
18 effects of patent support quality being exerted
19 against various folks, while at the same time,
20 interpreting the sequester rule.

21 So to take fees that users are paying
22 into this office that were intended precisely by

1 AIA to provide examiners, judges and IT systems to
2 exactly (inaudible) but not arguing to do over the
3 last five to ten years, which is improve the basic
4 infrastructure and plumbing of the organization to
5 create even better final products and better
6 patents of higher quality. So you know, it's a
7 matter of some irony, if not tragedy, that this is
8 happening right now. And so it's of extreme
9 anguish to a number of observers in the external
10 community about that this is happening, and
11 obviously, you know, again, I just echo you are
12 doing a valiant job in the face of this headwind
13 to keep what you have been achieving, achieved.

14 But we, you know, cannot express
15 strongly enough our upsetness (sic) about this.
16 And you know, as being one of the team that was on
17 the subcommittee drafting the fee setting report
18 as part of our AIA legislative sanctioned role,
19 you know, we knew the theoretical potential that
20 we hadn't fully gotten and the diversion in AIA,
21 but that all the good will of all of the
22 participants involved spoke towards that that was

1 theoretical, but yet, not likely.

2 And within, I guess, instantaneously
3 with the new fees going into place, we already
4 have now the effect or the same effect as we had
5 under diversion. So you know, we are extremely
6 upset by this, and I personally am upset by this,
7 having co-drafted that this has come to pass so
8 quickly. So you know, obviously not blaming you
9 at all. This is a bigger, bigger issue. But it
10 is of extreme concern.

11 MR. SCARDINO: Yeah, we recognize that,
12 too.

13 MR. FOREMAN: Other comments for Tony?

14 MS. SHEPPARD: I could just follow onto
15 that to say that an area of additional concern in
16 addition to the President's requested, it put
17 additional burdens on the PTO are things that are
18 going on in Congress that may expand the role of
19 the judges, et cetera, that are just going to have
20 additional when AIA implementation is still not
21 complete. There are some other things that still
22 need to be done that probably are going to be on

1 delayed timelines, but I understand are still in
2 the process.

3 One of the things that I wasn't going to
4 bring up is the offices, the other offices that
5 are being --

6 MR. FOREMAN: Satellite?

7 MS. SHEPPARD: -- satellite offices that
8 are being opened. They're very important.
9 However, the core functions of the operations here
10 at the main office in PTO that provide the
11 services that people are paying for may need to
12 take precedence over those other offices. Do you
13 have any numbers on how much it costs to open an
14 office?

15 MR. SCARDINO: To a certain extent, it
16 depends on the office. But I will tell you, in
17 fiscal year 2013, we've delayed some activities
18 that would have supported opening the offices, not
19 because they're not a critical initiative, but
20 that they were new recurring costs, and our first
21 priority was, like you said, to take care of
22 mission related activities here in the core. We

1 are hopeful to open all of the satellite offices
2 as directed in the near future. And having full
3 access to fees is going to enable us to do that.

4 MR. FOREMAN: Any further comments or
5 questions for Tony? Again, Tony, thank you, and
6 we all believe you're doing a terrific job under
7 very extreme conditions. So we appreciate the
8 update. Thank you.

9 MR. SCARDINO: Thank you.

10 MR. FOREMAN: At this point, I'd like to
11 turn the floor over to Dana for our legislative
12 update. I'm sure it will be equally interesting
13 (Laughter).

14 MR. COLARULLI: Well first, I'd just
15 like to thank Tony for going first this time
16 (Laughter) and answering all of your questions on
17 sequestration.

18 MR. SCARDINO: Anytime, broker.

19 (Laughter)

20 MR. COLARULLI: And giving an uplifting,
21 at least, beginning.

22 MR. FOREMAN: I'm sure there are more

1 questions than what we had.

2 SPEAKER: He just left you (Laughter).

3 MR. COLARULLI: If you say it long
4 enough, it's true. So he's answered all of your
5 questions (Laughter), so I'll just -- So happy to
6 be here. Thanks for allowing me to give the
7 regular report on what the Hill is thinking about
8 IP issues, and I think what's true to say is not
9 just in the patent area, but other areas of
10 intellectual property. Certainly, Hill staff
11 continue to be very interested in not just
12 addressing some of the policy issues and certainly
13 the litigation issues on the patent side, but
14 also, as Christal suggested, even proposing ways
15 to expand the role that we have, which may cause
16 us to need more resources to do that, and it's
17 something that we're very aware of.

18 Let me start with this one thing I just
19 want to add to, based on Christal, your question
20 to Tony on the satellite offices. You know, I
21 think it's fair to say from the PTO, we don't
22 necessarily see these offices as you know, an

1 additional thing to do, simply focused on outreach
2 or even establishing a presence. The intent of
3 them even from the beginning, was to add to our
4 operational capacity.

5 So it really is unfortunate. It's
6 certainly the right decision to make, but
7 unfortunate that we had to delay some significant
8 things with the satellite offices. I say that not
9 only because there's great interest on Capitol
10 Hill, certainly for us to at least have a
11 presence, even with the relatively minimal jobs
12 that they would create in those areas. Certainly,
13 they see the PTO in those regions as playing an
14 important role to building the resources they have
15 to spur innovation in their areas. We certainly
16 see that, as well, but there really is a core
17 operational context, too. So enough to say from
18 -- at least from the seat I sit in. Certainly
19 again, right decision to make, given the budget
20 that we're dealing with, but unfortunate, because
21 it really will continue to support a lot of things
22 that we've been doing over the last four years.

1 So with that, let me give the
2 legislative update. Many have called this
3 Congress the greatest do nothing Congress, or at
4 least it's shaping up to be. We're only in the
5 first session, so hold your judgment until the
6 end. I've been told the exception to the do
7 nothing is IP. I also think that if you're trying
8 to rate do nothing on the activity, well, there's
9 been a lot of activity in the IP space; at least a
10 lot of conversations. And conversations about
11 patent issues stemming from or flowing from some
12 of the changes in the AA, but then focused on
13 patent litigation have dominated a lot of the
14 discussion.

15 The White House has certainly weighed
16 in. We've been at the table helping to think
17 about the best ways to address some of these
18 issues that were addressed in the AIA, but maybe
19 there's more that can be done both here at the PTO
20 and in the courts. So, from the Hill perspective,
21 they've held a number of hearings, four, at least
22 three of which really relate to -- specifically

1 relate to patent litigation abuse. A fourth one
2 in front of the Small Business Committee really
3 focusing more on AA implementation and resources
4 we provided for small business.

5 The activity now is really going to move
6 towards a more direct review of some of some of
7 the legislator proposals, and we'll get into that.
8 But at least on the House side, the Oversight
9 hearings receiving testimony -- a lot of that has
10 already occurred. I think we'll see some parallel
11 of that in the Senate side, but so far, those
12 issues have just been discussed on the House side.

13 Continuing with hearings -- hearings on
14 the copyright side. Again, a large number of
15 discussions and hearings focused on reviewing the
16 copyright statute. And I wanted to give a sense
17 of the split attention span of at least the House
18 judiciary committee. The first hearing I list
19 there is not in the judiciary, which is our core
20 committee of jurisdiction, but in front of Energy
21 and Commerce. There is a split jurisdiction here,
22 especially as they relate to issues -- copyright

1 issues related to the Internet and regulation of
2 the Internet. And this one in particular was
3 regulation of a satellite television law.

4 But the mainstay of copyright policy has
5 been discussed in front of House judiciary. This
6 follows a call from the chairman to not only look
7 at patent litigation abuse, but start a much
8 longer process, or what we expect to be a much
9 longer process of looking at and reviewing the
10 copyright statute. You can look at this as an
11 attempt to restart a discussion on -- that I think
12 it's fair to say, somewhat blew up in the SOPA and
13 Protect IP discussions. So this is a continuation
14 of that.

15 Like in the patent context where the
16 White House stepped in and gave some fuel to some
17 of the proposals that we're seeing proposed in
18 legislation -- in this area, the Department of
19 Commerce, and the engine of which being the USPTO
20 and our colleagues at NTIA issued a copyright
21 green paper just a few weeks ago. We hope that
22 that will be fodder for some of the additional

1 congressional hearings that we are expecting,
2 probably in the fall on the copyright issues. We
3 don't expect legislation necessarily to be
4 introduced right away, but certainly, hopefully,
5 our report will be a contribution to the issues
6 that they're reviewing upcoming, as I said, in the
7 fall.

8 My staff and Shira Perlmutter and the
9 copyright team here at PTO is getting up to the
10 Hill, briefing the Hill on a number of these
11 issues. This is really a comprehensive report the
12 likes of which this agency hasn't issued since
13 around 1995. So we're trying to get the word out
14 and facilitate that conversation. Important in
15 this context, again, to show that this --
16 certainly this split attention span of the
17 Committee on Intellectual Property Issues.

18 So at the last PPAC meeting, I started
19 to talk somewhat about these issues. This is the
20 White House announcement, and I wanted to spell
21 out the content of that announcement and talk a
22 little bit about what we've been doing in terms of

1 outreach. Five executive actions, four of which
2 I've listed here which fall in USPTO's homework
3 assignments list; various folks from around the
4 agency, certainly patent operations, certainly our
5 legal counsel, the Office of Policy and External
6 Affairs and many others helping to implement these
7 seven legislative recommendations. And I'm going
8 to show in the next slide how they have translated
9 it into some of the legislation we're seeing up on
10 the Hill.

11 On the executive actions, we've been at
12 the agency beginning to do more outreach, meeting
13 with a number of trade associations and
14 organizations that have been looking at the
15 legislative proposals. Our goal is really to
16 update them on where we are on implementing the
17 four executive actions. And we've gotten a very
18 good feedback from that; I think very consistent
19 with the other announcements that the White House
20 has made. They've given support to things that
21 Congress should spend their time focusing on,
22 things that Congress could do and consider to

1 improve the system as a whole. That's the case
2 here. But notwithstanding potential congressional
3 action, there are things that the agency can do.
4 Those find their way into the executive actions.
5 We agree with those and we're moving forward on
6 them quickly.

7 This slide just reflects the legislation
8 that has been introduced on these issues. I tried
9 to provide a simple way -- if you look on the
10 right hand column, of giving a sense of some of
11 the issues that are raised here. You'll see a
12 great similarity between this list and, as I said,
13 the White House list of legislative
14 recommendations that it made. The legislative
15 discussion, at least on the House side, I think
16 has been becoming more sophisticated, which is a
17 good thing, if you start from the context of we
18 have to get those terrible trolls.

19 This is a little bit moved in the
20 direction of, well, what's the actual abusive
21 activity that we're trying to stem or limit that's
22 really manipulating the litigation system and

1 making the value of a patent not what it used to
2 be. Well, that's what this list reflects, I
3 think. It reflects a look at various litigation
4 related provisions that go to costs. Fee shifting
5 certainly is still there. Pleading standards,
6 limiting discovery where appropriate, even giving
7 some additional fuel to imposing rule 11
8 sanctioned where appropriate. We've seen those
9 proposals, as well.

10 I mentioned at the start, there are also
11 proposals that would expand the work that the PTO
12 has in front of it, and certainly, we're looking
13 at those proposals with an eye towards the
14 resource implications. Expanding the covered
15 business methods program is certainly one of
16 those. The White House, however, also supported
17 that, looking at a possible expanded scope of the
18 patents that could be brought to that proceeding.
19 That is the similar discussion on the Hill. The
20 Hill also is having a discussion about the time
21 period, the duration of this pilot. Proposals to
22 make it permanent or at least extend it have been

1 actively discussed.

2 Lastly, the issue that we've been
3 spending a lot of time here at the agency -- real
4 party and interest and transparency, certainly, in
5 patent ownership. Well, there's activity we can
6 do here at the agency, and Drew and his team and
7 Michelle Lee have been really leading and
8 facilitating a discussion here about how we can
9 make real part and interest and a new default,
10 using the language of the White House
11 announcement. Certainly, we all recognize that
12 there are limits, and companion legislation could
13 be helpful, as well. We are seeing some of those
14 proposals introduced, as well.

15 So that's your quick, at a glance of the
16 legislation that's been introduced. I do expect
17 additional bills to be introduced. I think there
18 are, as I said to the legislature subcommittee
19 yesterday, there are some primary vehicles. We
20 have certainly one on the house side, and eyes are
21 on the Goodlatte bill. I think we can expect at
22 least a new draft, if not a bill introduced come

1 fall to move the House process forward. The other
2 bills that have been introduced, certainly they
3 represent members that care about these issues and
4 would like to be a part of that discussion going
5 forward. I think you'll see a lot of those issues
6 that they raise included in whatever vehicle goes
7 forward, or at least offered as amendments when
8 these bills move to markup. I think, as I said,
9 the next phase in this at least on the House side
10 is going to be moving these bills to markup.

11 A couple slides on just other
12 miscellaneous issues that we're -- initially in
13 this legislation that we're following. Certainly
14 budget, the bill that Representatives Honda, Eshoo
15 and Lofgren introduced to remove PTO from the
16 impacts of sequestration. It doesn't seem as if
17 that bill will go forward. I know Mr. Honda has
18 approached appropriations Chairman Wolf about
19 amending his bill to include those provisions.
20 Again, unclear whether those would be adopted, but
21 certainly there has been some active discussion on
22 the California delegation interested in us moving

1 out to their home sooner, rather than later. And
2 I expect some of that to continue.

3 Miscellaneous other patent provisions --
4 we've Senator Cardin reintroduce a bill to limit
5 enforcement of certain patents in particular
6 technology areas, in this case, patented
7 technology acting in compliance of FCC regulations
8 to provide E-911 services. An interesting bill.
9 Unclear if it's going anywhere, but certainly an
10 attempt to address a need, something that this
11 member and others have introduced over a few
12 Congresses. There were also versions of this bill
13 offered as amendments to the AIA in different
14 forms throughout the history of that bill.

15 Another promoting startup innovation act
16 by Representative Chabot. That's a simple
17 expansion of the micro entity category of
18 applicants that was created under the AIA
19 increasing the number of relevant patents from
20 five to seven, increasing the gross income limits,
21 as well. So expanding the scope of that pool
22 slightly. Equally, issues related to trademarks

1 -- anyone recognize what that bill is? Any
2 trademark people in the room? That's the Redskins
3 bill.

4 A number of other copyright legislation,
5 particularly with the cell phone unlocking, trade
6 secrets, issues in trying to push the enforcement
7 of trade secrets, particularly by creating a
8 private right of action. Discussions on
9 counterfeiting and design. Certainly, a number of
10 bills on cyber security and the White House has
11 again weighed on executive actions that it could
12 take to further that discussion. Generic drugs
13 and international trade issues.

14 Other issues and other considerations,
15 at least for the 113th Congress for my staff in
16 terms of outreach and in terms of other issues
17 that we've being asked about -- I mentioned the
18 green paper already, and that we're briefing the
19 Hill on the contents of the paper. This will be a
20 multiyear process, but it's a good restart of the
21 discussion, we believe. Continuing interest on
22 the satellite offices and continuing pressure to

1 us, even in light of sequestration, to really
2 identify a timeline. It becomes very difficult
3 for us for the reasons that Tony had mentioned,
4 given that it's really unclear what will happen in
5 the remainder of the term that sequestration may
6 impact both this agency and the rest of the
7 federal government. We like the attention, but
8 difficult to give a definitive answer when we may
9 be able to move forward. There are things that we
10 can move forward with, so we're looking at those.

11 International treaties. Last few years,
12 we've seen a lot of activity here. These that
13 I've mentioned here are focused on copyright
14 issues. One, the first copyright treaty on
15 rights, particularly on audiovisual performances,
16 and the other, perhaps a balancing. The first
17 international treaty that's been discussed that
18 provides limitations and exceptions where
19 appropriate for a particular audience. And that's
20 to serve the visually impaired or the blind.

21 Certainly, more going on in the
22 international space, and you'll hear from Mark

1 Guetlich later today about some of the activities
2 on patent law harmonization that are going
3 forward. Yet to see a great pickup from Capitol
4 Hill via getting interested in those issues. I'm
5 sure they certainly will, but you'll hear a report
6 later on for the rest of the team.

7 Nominations. We have a new Secretary of
8 Commerce. We have a new, very esteemed judge on
9 the federal circuit. He has great background.
10 We're very happy about that, as well. You had a
11 presentation earlier from Richard Malsby. I won't
12 talk too much more about the partnership with the
13 Smithsonian but to say that we have been trying to
14 engage Hill staff in understanding the role that
15 we see and the benefit of the partnership, and
16 particularly, bringing folks up to see the exhibit
17 at the Smithsonian right now. Actually, it's not
18 build a better -- it's actually inventing a better
19 mousetrap, and you know, to up their traffic, I
20 encourage all of you to go visit if you haven't.
21 It's a great exhibit. We brought some Hill staff
22 up there. It's a good way for us to engage them

1 in a very different environment, something
2 interesting but also enforce the importance of our
3 well functioning, our operations, access to fees
4 certainly is an issue that always comes up.

5 Lastly, the various different ways that
6 we've been doing outreach to the Hill. I'll
7 highlight only the last one. Last week, we had a
8 session here in the Global Intellectual Property
9 Academy on China issues. We had four very senior
10 Hill staff that trekked out to Alexandria. It's
11 not an easy thing for me to get Hill staff to trek
12 out to Alexandria. Christal came out, I think
13 maybe once or twice when she was up on the Hill.
14 But it shows that the interest is there, if we're
15 able to get Hill staff in the room with actually
16 seasoned practitioners. Again, it's another
17 opportunity to help them understand the importance
18 of some of these issues and where to put their
19 focus. With that, that's all I have. Get a sense
20 of a lot of the activities that we're doing.

21 MR. FOREMAN: Great. Thank you, Dana.
22 Comments or questions for Dana? Christal?

1 MS. SHEPPARD: A couple of quick
2 comments. One is, I mentioned earlier and I had
3 forgotten to mention this to probably the
4 appropriate person, but the AIA is not completely
5 implemented yet, or just the things that were
6 required of the PTO to do have not all been done,
7 one of which is the gene patent study, which is
8 what, over a year and a half overdue at this
9 point? I'm wondering what happened to that.

10 The second thing, and I'm just going to
11 end here is that I want to correct Chief Judge
12 Smith. He's never wrong, but I'm just going to --
13 he had this analogy that for the Hill, if you're
14 going to give more responsibilities, if you wanted
15 to make more bricks, give us more straw. And I
16 thought about it, and I thought, no, it's let us
17 keep the straw that is coming in. And so I just
18 wanted to correct the record on that (Laughter).
19 But going back to the gene patents, where is that
20 report?

21 MR. COLARULLI: Can I start with the
22 second one and I go into -- So no, I -- and

1 correct the record for the judge's statements. I
2 think that's absolutely right. The vision for
3 this agency was to be self-sufficient. That's a
4 vision that was continued in the AIA and is
5 somewhat being undercut at this point. So I'm
6 sure that's what the judge meant. The fact that
7 he can actually assemble bricks with straw is a
8 whole other topic and very impressive.

9 Genetic testing studies -- so let me
10 correct that one, too. Not the gene patent study.
11 And I've been very careful to correct folks. I
12 think one of -- a very difficult issue, I think
13 one that we've had lots of discussion, both with
14 the external world -- we've held three public
15 hearings. We've had an exhaustive process through
16 the federal government in a couple drafts of this
17 report. The requirement in the legislation was
18 for us to look at genetic testing, and in
19 particular, look at access.

20 It was not an issue patentability, but
21 really, it was access. I think one of the
22 challenges for folks externally and internally has

1 been getting their head around that distinction.
2 Does the patentability of genes affect this report
3 at all? I would argue no. Does the recent Myriad
4 decisions -- and there's now been, I'll count two
5 or three times during the course of development of
6 this report where Myriad decisions have caused
7 folks internally and externally to take a new look
8 at the report and as a result, it's actually
9 slowed down the process.

10 So what I can tell you is that it's
11 still being actively discussed. We've done yet
12 another draft based on a lot of the feedback we've
13 gotten from all three of the hearings. We think
14 we're close to issuing a report. I get regular
15 calls from Debbie Wasserman-Schultz wondering
16 where this report is, as well. So we're hopeful
17 that we'll get a report out by the end of this
18 year, hopefully this fall.

19 MR. THURLOW: Okay, Dana. Thank you
20 very much, as always. At least I know it's
21 August, it's a tough time, but are there any
22 Senate or House Judiciary Committee meetings

1 scheduled or hearings schedule for the fall? Or
2 I'm sure the feeling outside is that something is
3 going to happen, because the White House
4 involvement and all the so-called discussion, I
5 guess that's been going on up to the -- what that
6 actually entails is the subject of much debate
7 that you're in the middle of, of course. I guess,
8 so much question is, I assume there's going to be
9 some hearings and so on. Is anything scheduled
10 yet? That's the simple question.

11 MR. COLARULLI: Certainly no more
12 hearings scheduled on the House side. None also,
13 on the Senate side, although we wouldn't
14 necessarily know what the schedule would be for
15 hearings. I expect that they might, but to go to
16 the bigger question, I'm also optimistic that
17 there will be some action, at least through the
18 House this fall. We're likely to see now -- we've
19 had a discussion draft circulated, as I said, by
20 the chairman. That's gone through, as I
21 understand, a significant reworking.

22 MR. THURLOW: Okay.

1 MR. COLARULLI: Not only addressing some
2 of the issues that folks have raised, the House
3 staff, but also borrowing from some of the
4 proposals that we've seen on the Senate side, in
5 particular, as it's related to some of the
6 litigation issues that -- the litigation cost
7 issues, the discovery and others. So I think what
8 we'll see pretty soon here will be at least
9 another draft, if not legislation introduced in
10 the House. Next step would be moving towards
11 markup. So I think there's a good likelihood of
12 significant activity in the House.

13 The extent to which that carries over to
14 the Senate is up in the air. The Senate staff and
15 House have certainly been discussing some of these
16 issues. The Senate has taken more interest in
17 some issues than others, so I think there's a
18 number of options that could go forward, one of
19 which, which frankly, I think is the least likely,
20 is that the House moves on a bill and then it's
21 picked up by the Senate. The Senate says, this is
22 just great. Let's pass it.

1 (Laughter)

2 MR. COLARULLI: I think that's unlikely.
3 But the Senate has not been simply silent and not
4 paying attention. They've been contributing to
5 the discussion. So I think the good staff work
6 that you'd expect is happening right now. There
7 will at least be some activity this fall in the
8 House. There's some options still on the table
9 for the Senate.

10 MR. THURLOW: Okay, just one -- there's
11 so many different initiatives. I just want to
12 focus on one. Discovery is obviously a big deal.
13 As I work around the world and I look at what
14 China does, very -- basically no discovery, even
15 just looking at what the PTO is doing with PETI,
16 you know, with the very limited discovery there.
17 That's a major issue. And I recall a few years
18 ago that Judge Rader had a paper, a model order or
19 some recommendations on discovery.

20 MR. COLARULLI: Yes.

21 MR. THURLOW: And there's a lot of
22 issues out there that need discovery. I guess my

1 question is, in the materials I've read, I haven't
2 seen much discussion on discovery. And please
3 correct me. I also -- my question is, are they
4 trying to limit discovery or are they saying for
5 the certain core aspects of discovery, we'll
6 permit -- if you want outside of that, you can get
7 it, but you have to pay for it.

8 MR. COLARULLI: So we've seen both in
9 additional proposals. Right? So we've seen
10 limitations on what discovery could come into
11 play. We've seen timing restrictions that you say
12 discovery cannot begin until this point as a way
13 to limit the cost of discovery. Let's see. And
14 then, we've seen that third category which is not
15 hard rules in statute, but direction to the
16 federal judicial conference to provide either
17 guidance or to initiate a more formal process of
18 issuing rules. Now, that would take some years,
19 but actually, could have a significant and
20 long-term benefit.

21 I think Hill staff are looking at, well,
22 we should do both. That maybe there's some

1 reasonable short-term changes we can make to try
2 to limit or at least time out discovery and
3 provide some guidance or request the federal
4 judicial conference to provide some guidance or
5 guidelines. You know, a lot of the discussion,
6 and discovery is a good example, that we're seeing
7 up on the Hill, I think in a very good way are
8 looking at local model rules and trying to mirror
9 some of that discussion. I don't think they've
10 been fully successful. I also don't think there's
11 necessarily consistency across what we would all
12 consider the good local patent rules that were
13 around the country.

14 MR. THURLOW: Right.

15 MR. COLARULLI: So in terms of clear
16 guidance to what should be adopted into the Hill,
17 it's not so clear, but at least they're looking at
18 the local patent rules for some inspiration. So I
19 think Peter, there is attention being given to
20 discovery as one of the main cross-drivers. And
21 at least those are the three or so ways that we're
22 seeing Hill staff trying to address those costs.

1 MR. THURLOW: Thank you very much.

2 MR. COLARULLI: Sure.

3 MR. SOBON: I think you know, the cost
4 driver is one thing in our U.S. style discovery.
5 And I think a twin part that actually is driving
6 most -- I think a lot of what's being perceived as
7 parasitical and improper activity at a litigation
8 level is also the prolonged uncertainty of our
9 patent litigation approach. AIA and the PGR and
10 IPR procedures are intended to get at some parts
11 of that early on. But you know, right now it's
12 obviously pending a potential revisit of Cybor in
13 the Lighting Ballast case by the federal circuit.

14 But is there any discussion at the
15 legislative level of revising the level of
16 deference given to district court judges at a sort
17 of statutory level? Because I think one of the
18 biggest drivers that you can -- parasitical
19 activity where you can actually hit people up for
20 below cost of defense thrives the longer
21 uncertainty and costs -- costs from the discovery
22 and uncertainty from frankly, Cybor, exist.

1 And to the extent that a patent is not
2 necessarily valid or invalid, or the claim is
3 maybe or maybe not infringed until cert is denied
4 at the Supreme Court level, extends that for three
5 to five, seven years. And that is precisely what
6 drives the ability to use that risk as value. And
7 I wondered if there's anything legislatively
8 people are discussing about this. I mean,
9 obviously, the best prudent thing would be to wait
10 and see what happening with the federal circuit,
11 but assuming they don't revise Cybor, is there any
12 discussion about that?

13 MR. COLARULLI: So I know there had been
14 legislative proposals in the past on this. I
15 haven't seen in the current round, discussions of
16 legislative language that would say deference to
17 the district courts. But the topic of certainty
18 in path litigation certainly underlies a lot of
19 this. I think, you know, this is one of the
20 topics that we had hoped to have any expansion on
21 the executive order -- we're asked to expand our
22 Edisons College program. To the extent we're

1 bringing in folks to help us look at some of the
2 dynamics in the patent system, certainly, this
3 would be one of the areas. But I mean, to
4 directly answer your question, I haven't specific
5 language this round, although I had seen it during
6 the AIA discussions.

7 MR. HALLMAN: I had a quick question.
8 Could you remind us again what the office is doing
9 around the executive action titled Empowering
10 Downstream Users?

11 MR. COLARULLI: Absolutely.

12 MR. HALLMAN: Exactly what does that
13 involve?

14 MR. COLARULLI: Empowerment is a great
15 thing. (Laughter) So we have been translating
16 that as education. The way to empower this group
17 of individuals, and I described this as,
18 traditionally, the PTO has had a role of educating
19 and reaching out to applicants, certainly
20 inventors, those seeking rights, and to the
21 extent, although limited at the door of providing
22 legal advice, providing some guidance to those

1 pursuing rights, holding rights to make their way
2 to the system and make use of the rights.

3 The White House executive action asks us
4 to help also a different audience, but a related
5 audience. That audience that isn't engaging with
6 rights, but maybe are pulled into the patent
7 system, perhaps unwillingly, and I'm giving a
8 particular visual image of a troll carrying
9 someone, dragging someone into the system. They
10 receive a demand letter. They don't know what to
11 do. They put their hands up in the air. You
12 know, maybe they call a patent attorney, but most
13 likely, they may call the patent office and say,
14 what do I do? Someone is inflicting a patent you
15 granted on me.

16 Well, in this case, we can play an
17 equally positive role, and this is the thrust
18 behind the White House executive action, to
19 educate that audience to say, you know, this is
20 what a demand letter does. Here are some
21 resources that you have to find out who owns that
22 patent and what it covers. So you can start that

1 process of determining how you might best respond.
2 We're not going to give you legal advice, but
3 we're going to at least help you to get to that
4 information level so that you're making
5 knowledgeable decisions, and maybe your hair is
6 standing a little less on end. Maybe you're
7 screaming a little less. You can start going
8 through that thought process a little bit more
9 rationally.

10 How does that relate into kind of
11 tangible? We're putting up a web site. That's
12 usually the answer to something. We're putting a
13 new web site (Laughter). And it's to provide not
14 only access to education and some -- again,
15 information to help you start answering some of
16 these questions, but also, access to tools, our
17 inventor assistance tools, you know, people you
18 might be able to call. We've been developing our
19 pro bono resources, and that also could be a good
20 tool.

21 And then, a third category of data. So
22 if you come to the PTO web site, very quickly, you

1 can -- if you have a patent number, you can search
2 it. You can find out whatever information is
3 available on the patent, potentially on the owner,
4 to the extent we have updated ownership
5 information. That's also helpful. To the extent
6 it's been in litigation, and that information
7 (inaudible) will make that available, too. So
8 short-term and long-term here, but primarily,
9 developing a web site here in the short-term that
10 provides more ready access to this information.

11 Long-term, integrating into a lot of the
12 other services and education that we're already
13 doing. These additional materials that, as I
14 said, I think hit a new audience, a slightly
15 different audience than PTO has traditionally been
16 focusing on.

17 MR. FOREMAN: Great.

18 MR. HALLMAN: I just want to say for the
19 record, good luck with doing that without actually
20 giving --

21 MR. COLARULLI: Legal advice (Laughter).

22 MR. HALLMAN: -- real legal advice.

1 Because what you've described is just right on the
2 cusp. That will be an interesting thing for you
3 to work out.

4 MR. COLARULLI: Thank you (Laughter).
5 I'm going to just send them to Peter, I think.
6 That's the answer.

7 MR. SOBON: Dana, one further initiative
8 I had a question on that was raised to me is the
9 issue of the small claims patent court. And is
10 the office still supporting or investigating that,
11 and/or there's a rumor that you guys have backed
12 off or that it's not having so much impetus behind
13 it. But what are your thoughts there?

14 MR. COLARULLI: I never trust rumors,
15 Wayne.

16 MR. SOBON: I end rumors. (Laughter)

17 MR. COLARULLI: Not an issue we backed
18 off on, an issue that we went out with the federal
19 registry and have sought comments. We're still
20 looking at a lot of those comments. There has
21 been additional discussion even outside of this
22 office. I think there's a question of the next

1 steps here, and I know there are some in the Bar,
2 certainly ABA is very interested in furthering
3 this discussion. There's a parallel discussion on
4 the copyright claims court ideas, as well. So you
5 know, we're certainly looking at both.

6 You know, I will say about this issue,
7 because I've gotten into it recently a little bit
8 more, a number of folks have looked at this issue
9 as, well, does this really solve the abusive
10 litigation issues that a lot of the rest of the
11 focus is? I would say this really is a separate
12 issue and focused on different parties than we're
13 seeing are engaged in the NPE type of lawsuits.
14 This is really small guy, small guy. Small
15 inventor, small manufacturer. Imagine the capped
16 limitation on damages. It just wouldn't be
17 attractive to that current, somewhat abusive
18 business model that we're seeing, or abusive
19 activity that we're seeing.

20 So I think that's a good way to think
21 about this. This is really addressing a separate
22 problem. At the same time, it actually could help

1 some of the backlog in the courts by taking off
2 the table some of those issues. So, I think there
3 certainly is some merit. I've heard some very
4 good arguments against the idea. You are creating
5 another forum, and you know, our end goal really
6 should be to limit the costs so you can resolve
7 disputes quickly. So I think it's a great
8 discussion to have, certainly not over. Unclear
9 to me what the next steps are, but at least that's
10 how I've been thinking through that issue.

11 MR. FOREMAN: Well, thank you, Dana, for
12 a very informative discussion and presentation and
13 some healthy interaction back and forth. At this
14 point, I'd like to welcome John Owens and David
15 Landrith for their presentation. I've also been
16 assured that our technical difficulties this
17 morning had nothing to do with the impact of
18 sequester on their budgets (Laughter). It was not
19 a staged act in protest. But in all seriousness,
20 this is a topic that is of great interest and
21 importance. So John and David, I turn the floor
22 over to you.

1 MR. OWENS: Thank you and good morning.
2 It kind of scares me because I hadn't heard about
3 any technical difficulties this morning, but I
4 promise you they were not staged. So, I'm just
5 going to hand it right over to Mr. Landrith, our
6 portfolio manager for Patents. I've also asked
7 Debbie Stephens to join us today. She's the
8 associate commissioner for Patent Information
9 Management and our contact with our customer, and
10 I think she has interesting perspectives to share
11 with you all.

12 MR. LANDRITH: Thank you. So, to start
13 with the status of where we are with the different
14 projects in the portfolio and the examiner tools
15 and infrastructure project, this is the core
16 project for the examiner to handle patent
17 applications with as well as their work
18 assignments. And also, is the project that we use
19 to integrate functionality from other projects.
20 It's being used by 29 examiners. Half of the list
21 here represents functionality that you've seen
22 demoed here. The case listing down through

1 reference management tools; those have all been
2 improved, optimized. We've also added additional
3 functionality to the abandoned Office Action and
4 workflow. The next step is to continue to enhance
5 and we have a lot of prioritizing to do as we
6 resume activities in fiscal year '14.

7 Office Action: This was one of the ones
8 that was suspended due to sequester. We're
9 looking at restarting this. The progress that we
10 had made included the Office Action functionality
11 that we integrated through the examiner tools and
12 infrastructure which was both foundational work as
13 well as the actual implementation of abandonment
14 workflow.

15 So, CPC is the patent classification
16 harmonization effort between the USPTO and the
17 EPO. We have met all the deadlines through
18 international agreement. We continue to improve
19 the tools, and it's going to require substantial
20 changes to Legacy systems going forward in order
21 to make sure that we're covering all the bases,
22 both in terms of examination activities and

1 classification activities, as well as publication
2 needs and USPTO/EPO collaboration.

3 PATI Continuous Capture of Application
4 Data and PATI Gap Conversion: So, PATI Gap
5 Conversion, we would, at six- month intervals,
6 convert applications and mass into XML
7 applications meeting the claim spec and abstract.
8 The PATI Continuous Capture makes that obsolete,
9 so what happens now as of this spring is when
10 applications come in through EFS web, within hours
11 they are converted from image to XML and made
12 available to examiners. So, since this spring
13 we've done more than 8 million documents with
14 claim specs and abstracts that have been made
15 available to examiners in an average time of about
16 4 hours after receipt through EFS web.

17 So, the next steps for that, we are
18 looking to improve the quality and expand the
19 scope of documents that we cover. The ones that
20 we are resuming are the remarks in the IDS
21 documents, and then we're looking at ways also to
22 capture other documents.

1 The other thing that we want to do is we
2 have an archive of office actions that is in DOC
3 format or DOCX format, and we have a project that
4 we are resuming in order to facilitate the
5 conversion of those into XML.

6 GPSN is the Global Patent Search
7 Network. We acquired the entire body of Chinese
8 patents. We had them machine translated. We put
9 them on the web and we made them searchable, so
10 this uses the same base technology as the patent
11 search demo that you saw. What is available right
12 now: The release site is the 2008 to 2011 data.
13 At the beginning of fiscal year '14 we'll be
14 releasing the '85 to 2007 data, which will be the
15 entire corpus of the Chinese patent grants. What
16 we were looking to do, it's called Global Patent
17 Search Network because we're looking to add
18 additional patent content, both U.S. patents and
19 patents from other countries.

20 So, One Portal Dossier, this makes the
21 U.S. patent data available to IP5 partners. That
22 was completed as of July. We're looking at

1 exploring ways to best implement our use of the
2 IP5 or accessing other IP5 partners' data to begin
3 implementation in fiscal year '15.

4 So, we talked last time about the impact
5 of the sequester and the suspended projects, and
6 what I would like to talk about here is our
7 strategy for resuming those projects. We have the
8 core PDE examination tool projects which we're
9 currently working with POPA right now to validate
10 milestones and assign dates to releases to
11 different audiences, so the examination tools and
12 infrastructure project is part of this. It wasn't
13 cancelled but rather scaled down. That is going
14 to be scaling back up, and its milestones are key
15 to this as well.

16 But for the suspended ones, we have
17 Exploring Search Technologies, which is the work
18 that we're doing toward examination search, but
19 it's also fueled other projects. As I mentioned,
20 the technology that we have used throughout this
21 project is also the basis for the GPS end product.

22 We have the PDE Office Actions Phase 2,

1 which we're resuming in order to continue to work
2 on that. We also have the IFW and Legacy Services
3 Retired Project. IFW is the Legacy system that
4 stores all the images that are the representation
5 of the patents to the examiners. So, there is a
6 tremendous amount of this data, and it is not
7 going to be desirable to maintain two separate
8 sets, one for Legacy systems and one for Patents
9 End to End. And so the purpose of the IFW and
10 Legacy Services Retirement is to unify that across
11 the platforms and ease that transition.

12 The applicant tool and data projects
13 that we are resuming are the Applicant to Office
14 Interface, which Text to PTO is part of that. You
15 saw a prototype of that last year. Phase 2 begins
16 work based on completion of the phase 1 prototype
17 that we demonstrated. That will be planning work
18 with implementation currently slated for fiscal
19 year '15.

20 We talked a little bit about converting
21 the existing Office Action data to XML, taking the
22 archive of Office Actions that we have in.doc

1 and.docx format and converting them into XML for
2 IP.

3 So, there's one project that we
4 suspended in fiscal year '13 that we are going to
5 resuming in '15 instead of '14, and that's the
6 E-grant project.

7 And then we have two projects that are
8 not going to be resumed. We have the Continuous
9 Capture of CRU Data. That scope for that is going
10 to be subsumed under another project that we have
11 not created yet, but we will in our process of
12 prioritization. And the Business Architecture
13 Project is being subsumed into another project
14 called the PE2E architecture support project.

15 The challenges that we have for exhuming
16 projects are many. There's a 6-month calendar
17 delay due to the suspension of projects. This is
18 just the number of months from April through
19 September. Restarting projects and procurements
20 will take between 60 and 90 days, and has to be
21 phased to accommodate USPTO capacity. We normally
22 stagger these over the year so they have a

1 constant level of work rather than one month of
2 intense work with little else to do. We are
3 working to get a head start on this so that we
4 have the pipeline seated.

5 Rehiring to replace the contract staff
6 which will take 6 to 12 months -- we lost a large
7 group of developers who took a long time to
8 acquire. Many of them had as many as two years of
9 experience in the PED projects. That touches
10 every aspect of the project, not just programmers
11 but project managers and technical leads as well
12 as the support areas like database and testing.
13 It will take about 9 to 18 months once we're
14 actually up and running. We've hired people. It
15 will take about 9 to 18 months to achieve the
16 velocity that we were at in April. As I
17 mentioned, the staff that we let go; the
18 contracting staff had as many as 2 years of
19 experience in these areas, and it's going to take
20 time for the new staff to develop a comparable
21 fluency. So, questions and comments?

22 MR. HALLMAN: I had a question. With

1 respect to the contract staff, I take it that the
2 people who we had to sever a relationship with
3 because of the sequester, do those people
4 disappear? They're not in a position to be
5 re-hired? I'm just curious that -- I understand
6 people with certain backgrounds can be hard to
7 find, but again, once you sever your relationship
8 with them, do they simply drop out of sight and
9 they can be rehired?

10 MR. OWENS: We always hope to re-acquire
11 good talent that we unfortunately lost due to the
12 sequester and budgeting issues. However, IT in
13 this area, this Washington D.C. metropolitan area,
14 even during the downturn of the economy did not
15 suffer. Good IT people always get good jobs, and
16 it has been our experience that when you let the
17 good IT people that we worked so hard to get go,
18 they don't just sit around for 6 months with no
19 job. They re-acquire new work, and it is likely
20 that we will not get the bulk of those folks back.
21 We went had a significant loss. We had almost 100
22 people actively working on the project. We have

1 10 now, so -- or a little less than 10. So, it
2 will be a devastating loss.

3 There's an iterative process where you
4 have to find new people, get them on board, train
5 them, get them to do work, and then the bad ones
6 you toss back and wash, rinse, repeat. And that's
7 the process that took us a couple years to build
8 the team that we had, and it's going to take us
9 time to build back up to where we were.

10 MR. HALLMAN: Have you had any learnings
11 from your past experience that will maybe enable
12 you to be able to expedite the process you're
13 going to have to go through forward to bring the
14 staff back up?

15 MR. OWENS: It's like climbing Mount
16 Everest. You never know what you're going to
17 find, but you just go through the -- we have a
18 good process for it, but you never know. You
19 could get -- a miracle could occur, and you get
20 all fantastic people and things go very easily.
21 My experience has shown that that's not accurate
22 (laughter) as much as we hope to have that happen,

1 but we have a good process that's as good as
2 anywhere else, and we will trudge through it to
3 get the right people on the job again. It's all
4 about keeping them once you get them.

5 MR. HALLMAN: So, the efforts you're
6 planning -- I think everybody's assuming that
7 sequester's not going to go away, so are the
8 efforts you're planning, how is this going to be
9 paid for if sequester is still in place because
10 you're obviously talking about bringing -- and I
11 want you to do it. Understand, I want you to do
12 it. For me, it's more curiosity. How are you
13 going to bring these resources on in light of the
14 fact that the sequester has not stopped?

15 MR. OWENS: We're working very closely
16 with the CFO Shop. This year things have changed
17 slightly given the fact that we do have a
18 different level of expected income given our fees
19 adjustment that kind of hit us mid-last year. Of
20 course, never going to say that I have a crystal
21 ball on how the economy's going to turn, how
22 patent filings are going to be, on how sequester

1 will or will not affect us, so on and so forth. I
2 mean, you could certainly paint the world's worst
3 possible scenario, and then this agency would look
4 at slowing down IT projects again.

5 I think Tony talked to you about our
6 part of the budget. Though it supports the entire
7 agency, it's considered discretionary, not because
8 it's not important. We all know how important IT
9 is, but because it's not directly paying for
10 people. The agency will always look to keep
11 people employed, and by employed I mean federal
12 workers working with the systems at hand to
13 continue our core mission of examination of
14 patents. That is our primary concern -- and
15 trademarks, not this kind of (inaudible) back
16 here. But we are all about the mission, and we in
17 CIO know that we have to be flexible with that.

18 Now, long-term, that is really going to
19 take its toll. Right? Our systems aren't the
20 most stable. I think people point that out to me
21 all the time. We are largely in fire-fix mode
22 when it comes to dealing with issues that crop up,

1 and the real solution is replacing those
2 long-standing very old Legacy systems, as we had
3 in some areas, with newer ones. Patents End to
4 End was the primary mode of doing that for
5 patents. So, I can't really tell you.

6 What I can tell you is, is given all the
7 numbers that the CFO has gone through and our
8 ability to ramp up -- because you just can't turn
9 everything on at once -- and our expected
10 quarterly income, and how we would plan and start
11 projects -- which I have over 300 projects in the
12 hopper, by the way, spread out over multiple years
13 -- we believe that the income will allow us to
14 support a ramp-up at a controlled pace, and the
15 income should match it. Will I be here 6 months
16 from now telling you the income did not in come?
17 I don't know. Of course, if I did, I'd probably
18 be playing the stock market and wouldn't be here.
19 So, I really can't tell you.

20 What I can tell you is that we work very
21 closely with patents, with the estimations for
22 fees and our brothers and sisters over in CFO to

1 build the best plan humanly possible to maximize
2 our ability to execute for this agency and provide
3 the IT. That's all I can really do.

4 MR. HALLMAN: Thanks.

5 MR. JACOBS: Yes, I think you already
6 sort of answered my first question. My first
7 question was given that we discussed last time the
8 impact of nearly \$80 million in budget cuts over 6
9 months to IT, and in particular, almost \$12 to
10 PED, we discussed, and Tony alluded earlier today,
11 that this not only affects ongoing projects, but
12 it affects the continuing impact of an aging
13 infrastructure. One might conclude that given
14 that apparently nothing terrible has happened in
15 the last 3 months that maybe we're out of danger,
16 and I think you already answered that that the
17 danger continues and only gets worse. It's just a
18 question of when it might become noticeable to the
19 constituency.

20 But to move on from that, at each update
21 you remind us of certain projects involving XML,
22 some of which have been ongoing like PATI and

1 others that have been put on hold and may resume
2 such as Text to PTO. Can you comment on why
3 replacing -- and just to give people some
4 perspective on what we're talking about -- is
5 moving from a basically image-based infrastructure
6 in which everything is stored in images. It's not
7 searchable. It's not indexed. It's not
8 interoperable in terms of exchanging data from one
9 application to another, et cetera, et cetera. Can
10 you comment on why moving from an image-based XLM
11 infrastructure is important to the constituents
12 including the efficiency of operations, as well as
13 the impact on the user community?

14 MR. OWENS: Sure. So, I'll take a step
15 back. IFW, the current storer of data, as you all
16 know, is image based. Their examiners see
17 pictures. It is a core foundational fact that
18 computers don't deal with images very well, but
19 structured, tagged, text data, computers can read
20 and understand on their own. This would further
21 help facilitate an examiner with the ability to
22 not only search text instead of trying to search a

1 picture, which is incredibly inefficient and
2 almost impossible, when comparing to millions of
3 other pictures of text.

4 So, right off the bat, conversion from
5 text is one thing. That's a necessary thing. I
6 think we all search the Internet every day and
7 could only imagine if all the text was written
8 into documents stored as pictures. We'd never be
9 able to find anything.

10 The second thing is if it's tagged text,
11 then we can sort through the details a lot faster
12 -- the examiner could. It is a core tenet of
13 Patents End to End, and it has never changed being
14 a core tenant of Patents End to End to do as much
15 of that conversion as possible to allow the
16 examiner to have the most robust tool that they
17 possibly can to not only expedite but improve the
18 quality and efficiency of examination.

19 Now, all of that being said, we've had a
20 bunch of thoughts along these lines of things that
21 we've done. One of them that was mentioned
22 earlier was Text to PTO. The initiative or the

1 thought that instead of getting pictures from
2 everyone, if we could start receiving tagged text,
3 that would be really nice because then where
4 there's no errors in conversion, the tags are
5 there, and we don't have to guess at where the
6 tags are. And then on top of that, we know that
7 there's no difference in OCR and no misplaced
8 letters or words or whatever, and that increases
9 our quality, and you saw a demo of that.

10 Patents End to End SE, the first
11 implementation of Patents End to End -- the scope
12 of that project ended with the prototype and the
13 demo. We were then going to plan and then execute
14 in Patents End to End, the next phase Text to PTO.
15 Unfortunately because of sequestration and the
16 delay, we've had to push that out. Remember,
17 things that should have finished in the last six
18 months, Patents End to End SE was finishing in the
19 very beginning or first half of '14. It's now
20 going to finish in '15, and therefore everything
21 slipped to the right, so there's a delay in
22 continuing to do that work.

1 On a second side, we have a massive
2 amount of data today that we have to convert; not
3 only the incoming data that we're constantly
4 getting every day, but also the data in our very
5 large repository. As you know from a few months
6 ago, we figured out how to automate the
7 conversation of claims spec and abstract. That's
8 pretty basic and fundamental. I know that that
9 doesn't go far enough to help the examiner, and we
10 have other initiatives underway to convert the
11 other documentation types. Unfortunately, no one
12 that we have approached, no contractor, no
13 technology organization, no one has a way of
14 doing that appropriately, and the cost of doing it
15 through human beings is prohibitive, as we've
16 discussed previous, being thousands of dollars per
17 complete patent file wrapper.

18 So, we have the technology base with
19 Patents End to End, as we discover ways and work
20 with contractors, to build systems to
21 appropriately tag the text that we add them to the
22 repository of available data to the examiner as we

1 discover ways of doing that. And so, that, as I
2 described previously, and Mr. Landrith had
3 describe previously, we originally thought was
4 going to be the easiest part of this project. It
5 is, in fact, the most difficult part, and the
6 easiest part has actually been the ability to
7 build the completely modern redundant tools, which
8 also adds a layer of stability for an examiner,
9 quite honestly they don't have today and
10 desperately need.

11 I hope that covered all your parts of
12 your question. I tried to hit all the nuances
13 there. It's actually a very complicated question.
14 We could probably speak for hours on the topic,
15 but it is critical, and it is the most important
16 thing we can do is get that repository in XML to
17 build the set of tools that are desperately needed
18 here.

19 MR. FOREMAN: Yes, Robert?

20 MR. BUDENS: I want to pile on that one
21 a little bit. Actually, I'm going to let you off
22 the hook, John. I want to put the rest of the

1 team on the hook because we have been having a lot
2 of dialogue over the last several weeks, much to
3 John and Dave and Debbie's dismay and what have
4 you. We've been talking a lot about it, but I
5 think this is one issue that you brought up, Paul,
6 that I think we need is a PPAC need to look at and
7 probably need your help. We've clearly
8 established that we can't just go out and get a
9 contractor to convert all of our past files. It
10 doesn't do us any good with every passing day as
11 all the files would come in. I think one of the
12 things that I've been talking with these guys
13 about is the fact that we've got to get, at some
14 point, Text to PTO up and running, and we've got
15 to convince the applicant community that you all
16 need to step up the plate a little bit, too, and
17 help this project along by getting on board and
18 starting to submit documents in XML instead of
19 just PDFs and images that leave us pretty much
20 where we're at and can't make this conversion.

21 And I would just say that that's, I
22 think, someplace where you all can do a lot of

1 work is trying to spread the word that we've got
2 to get Text to PTO up and running. We've got to
3 get some tool that will allow you to put together
4 your applications and stuff, but when you push the
5 send button, it comes to us, and we can sit there
6 and watch it go spin around in the computer for
7 several milliseconds or whatever and spit out in
8 an already formatted and tagged and whatever
9 documents that go right up to the pool enough for
10 the examiner for examination. So, just my plug to
11 you all.

12 MS. JENKINS: I would even say it
13 broader than that. I think the user community --
14 and if you're out there listening, we really need
15 to step up in this area. I mean, the office is
16 doing some great efforts and strides with respect
17 to RCE, as you heard earlier, about education.
18 You're going to hear international.

19 And I was just looking real quick, I
20 mean, if you try to translate sequestration, it
21 doesn't translate very well in other languages, so
22 other countries really don't understand what we're

1 going through, and yet we keep implementing all of
2 these new projects, all of these new developments,
3 and it's just straining and straining and
4 straining the system that they use.

5 And the user community, when you see
6 that is when the system goes down, and you can't
7 file, and you can't search, and I've been
8 threatening to take my shoe off and stomp the
9 table because we need to step up here.

10 The IT system is vital. It's so vital
11 to everything that we do. Wayne won't get his
12 videos. I mean, we can't have that happen.

13 (Laughter) So, we really need to do more and to
14 be more vocal about this and be more pointed in
15 expressing the need for the growth in all the good
16 things that we've been doing over the past couple
17 of years and before that, of course, but more
18 recently, and to keep it going because we need to
19 remain a global leader, and we're not going to if
20 we don't support our IT.

21 MR. THURLOW: I'm sorry, just a very
22 quick question. So, next week I have meetings on

1 electronic filing. A big law firm -- we do all
2 our filings electronic. We put the document in
3 PDF form. We submit it, and that's been our
4 understanding of the process. Now if the PTO
5 recommends it, I'll have to check it. I mean, if
6 you want to know the format or want us to do
7 something else, I'm all for it. But quite
8 frankly, I think what we've been doing, whether
9 it's new applications, amendments, and so on,
10 they've always been in PDF. If the message is put
11 them in HTML and it's not difficult for us to do
12 it if there's an option to do it, we want to
13 submit it in Word, I'm all for it, I think, unless
14 something's telling me wrong, but my understanding
15 with electronic filing, it's always been PDF. If
16 it's something else, let us know, and I think
17 we'll help get the word out.

18 MR. OWENS: So, I'm actually in a second
19 going to hand this over to Debbie because I know
20 OPIM has reached out to our constituents and asked
21 their opinions about using things like a Word
22 formatted XML document, and there are some issues

1 surrounding doing that that make people nervous.

2 You are correct. I'm not saying what
3 you've been doing to date is wrong. In fact,
4 please continue to do so, and don't send a fax and
5 don't send a -- or mail. That's even more
6 complicated for us, but -- not that we won't do
7 it. I mean, we will. But no, what you're doing
8 is just fine, but it's the old technology.
9 Remember, those iPads I see at the table didn't
10 exist 10 years ago. Right? And they didn't even
11 exist more than 4 or 5 years ago, so technology
12 changes very rapidly, and they don't change as
13 quickly as our processes or our legal processes
14 and so on.

15 So, embracing the change to meet the
16 demand of the technology can offer the examiner so
17 much more than just looking at a picture. And
18 that is pre-processing. That's smart computers
19 that look at doing searches and presenting data to
20 the examiner right up front to help facilitate
21 their ability to do work.

22 And one of the things Robert and I have

1 been talking about is he sees all these really
2 cool demos. Right? We go into the development
3 effort -- well, not in the last 6 months but
4 before that -- and there was a lot of work being
5 done. Well, if we had the data tagged in this way
6 or we had this data, look at what we could
7 automate. And, of course, Robert and his folks
8 are all excited because they see the potential,
9 but then they come back to me and like, okay, when
10 can you get us this data? And I'm, like, well,
11 haven't figured that out yet, but once I have it,
12 it will be awesome.

13 And that's hard for him to hear because
14 there's the physical issues about the system's
15 availability, and I'm sure you all lived as our
16 Legacy systems have not met your needs. Various
17 systems crashed, and part of my organization plays
18 the fire-fighting role where we go and put out
19 fires, and I know Debbie has a list of them
20 because she reminds me of all the failures.
21 That's kind of her team's job, and -- to hold us
22 accountable, and we work very quickly to fix them,

1 but we live in a world where Google doesn't ever
2 go off line, where your e-mail through Microsoft
3 or Google or your local cable company doesn't ever
4 fail.

5 The systems we have here today were
6 never built to that level of complexity because
7 that just didn't exist 10, almost 20 years ago
8 when they were built. Some of our systems go all
9 the way back -- their foundations go all the way
10 back to the '70s.

11 So, there's a lot we're trying to fix
12 here, but fundamentally what I do not want to do,
13 and I've stated this right from the beginning, is
14 just hand you a new car that's the same car with a
15 different paint scheme. That's not what we're
16 about. We're about evolving, using the modern
17 technology to evolve the efficiency of the office
18 because at the end of the day we're only as good
19 as the IT can provide the facility to examine.
20 So, to do that we have to work together to embrace
21 the new technology, accept it into our
22 environment, have our constituents accept that new

1 technology, and work with us to deliver the
2 product that we need to efficiently examine and
3 that is tagged XML text.

4 It's going to be different. It's not
5 going to look the same. People are going to
6 consider it a significant amount of change, for
7 sure. But if you look at the world around us, XML
8 is embedded in HTML. It's a markup language.
9 Right? I mean, everything that we're doing, all
10 the data that the government has, under the Obama
11 administration, put out there is all in some
12 tagged text format. Look at all of the data and
13 research and knowledge that's gained from that.

14 We're just saying this agency has to
15 catch up, and I'd like to turn it over now to
16 Debbie to talk about some of those issues, but
17 those issues need to be addressed, and certainly
18 this body needs to understand what those issues
19 are and help us address them.

20 MR. FOREMAN: So, we're running a little
21 bit behind, but I think all this is very important
22 information, so if no one has any objections,

1 let's just go through the break. And, Debbie, if
2 you just want to carry on, we'll just keep going.

3 MS. STEPHENS: So, to address a couple
4 of things that John mentioned. In terms of the
5 Text to PTO outreach, a couple of points that were
6 of concern from the user community was upon their
7 submission, the metadata would then be available
8 to the USPTO. That was some sensitivity as to
9 what's in that metadata. What is private, what is
10 not? What, potentially, the USPTO would do with
11 that metadata was another concern.

12 And then, as well, just fundamentally,
13 when they submit images, as you know today,
14 they're static. They're in place. They can go to
15 a private payer. They can look at it. They see
16 it's uploaded. Everything's good. When you
17 submit text, there was some concern that it's no
18 longer static, that there could be some conversion
19 issues of the nature where introducing material
20 that is not intended from the applicant's point of
21 view, so that was just a couple points to John's
22 point on Text to PTO.

1 And the other thing I would like to say
2 is that in terms of our sequestration and budget
3 and the fact that we couldn't stabilize our Legacy
4 system -- so if it's not outwardly apparent to the
5 user community, all Legacy systems, that is the --
6 what we refer to as our patent application system,
7 our finance system that records the fees and the
8 payments that we receive with each application, as
9 well as those images that John mentioned. IFW,
10 that's the image file wrapper. Those contain all
11 those images. Those are the fundamental Legacy
12 systems that drive and support your EFS web filing
13 system and private payer. So, when any of our
14 internal systems -- and John hates this word -- go
15 down, then you, too, are impacted. It might be
16 for short periods of time. Sometimes, some
17 durations where we're just restarting those
18 systems, and they're simple, I'll say, reboots.

19 But if they are longer term, and we work
20 closely with John on those outages as we call
21 them, or down times, you do see them. You do see
22 them in terms of EBIZ alerts and notifications on

1 our website that the systems are down.

2 The other final thing I would say is
3 that in terms of EFS web filing, we had planned on
4 making it fully redundant, so that way we could
5 then minimize the impact and disruption to the
6 user community, but due to funding that was one of
7 the items that was unfortunately tabled. So
8 anyway, David?

9 MR. FOREMAN: Thank you, Debbie. Any
10 questions for John, David, or Debbie? Wayne?

11 MR. SOBAN: Just a quick comment. I
12 didn't even know until just until the presentation
13 about the Global Patent Search Network, the GPSN,
14 and it's extremely cool, and it shows the great
15 kind of work you guys do when you have full
16 funding resources, but it's totally an awesome
17 source. I'm hoping the rest of it gets populated,
18 but China's becoming incredibly a more important
19 area for global patenting, and to provide that
20 kind of level of ease of searching and cleanliness
21 of presentation, and so it's so great.

22 MR. OWENS: Thank you.

1 MR. JACOBS: For clarification, I think
2 you said private payer but the IFW is on the file
3 wrapper tab that you've got in public payer as
4 well as (inaudible).

5 MS. STEPHENS: Yes.

6 MR. FOREMAN: Thank you for your time
7 today. At this time I'd like to call up Mark
8 Guetlich, Senior Counsel for International Patent Policy
and Government Affairs,

9 the Office of Policy and External Affairs for our
10 presentation on international harmonization.

11 MR. GUETLICH: Thank you and good
12 afternoon to everyone. I understand we are working
13 right through our break here, so I won't be
14 offended if somebody has to run out. I've some
15 international topics to share with you. It's a
16 topic that's near and dear to my heart. I've
17 spent a career in industry, and part of the reason
18 some of you may not be too familiar with me is
19 because I had been out in industry, not in the
20 Patent Office. That's a recent step of mine, but
21 the attention to international issues has always
22 been part of my practice in

1 the corporate world.

2 The one thing that brought me in though
3 from industry into government is precisely
4 this topic we're talking about, the
5 America Invents Act, which has set the stage for
6 tremendous change internationally that was not
7 possible, wasn't even heard of, only a couple years
8 ago. So, that really was the stimulus for me to
9 say it's time to either put up or shut up from
10 pushing on the industry side to really moving
11 upstream and push from a chair in government
12 where I can actually facilitate some of these
13 changes.

14 So, that's just a little bit about me so
15 that you understand where I'm coming from and why.
16 Also recognize a second
17 piece that I want you to keep in mind throughout
18 all of my comments, that although I was in large
19 corporations through my corporate practice, I want
20 one of the changes that's
21 absolutely significant is the research and
22 development that has disappeared from industry is

1 being absorbed in the SME community and the
2 university community, and is growing fast. That means
3 this is no longer a big business game in the IP
4 business and in the economic structure of the
5 world. SMEs really are the growing part of the
6 economic engine and of the IP engine for research
7 and development
8 that industries seed, cultivate, and absorb
9 as they build new products and systems. So, bear
10 in mind, I'm a huge SME advocate. That permeates
11 all the comments that I have here, even though I
12 may be upsetting some of my former big industry
13 colleagues.

14 So, let's take a look here. What are we
15 going to do? We're going to have a primary look
16 at harmonization, what it is generally. I want to
17 set the stage for that a little more clearly in
18 this conversation, but I'm also going to spend a
19 little bit of time on recent activity since the
20 last quarterly meeting just to give you some
21 updates as well as spend a moment on a couple of
22 highlighted projects. One of them actually is the

1 Global Network that you already just saw, but I
2 have a couple of additional comments for that.

3 This really is a main picture that I
4 wanted to spend some time on. Really, the
5 emphasis here is what do we mean when we say
6 harmonization? And we're talking about
7 international harmonization and coherent
8 property rights. To some, this big "H"
9 harmonization word is a very bad word, especially
10 in WIPO contexts and certain organizations of that
11 status because harmonization is a threat to
12 national sovereignty to some. Because "you're
13 expecting me to change my laws
14 and I'm not about to do that."

15 On the other hand, the vast majority of
16 perspectives of international harmonization is
17 much more of the appreciation of the convergence
18 of common operations and activities and practices
19 that are performed by all offices, and why are we
20 all duplicating the same things over and over
21 again? Why can't we collaborate and coordinate on
22 some of these? That's the harmonization most countries
are talking about. That's a

1 much more prevalent view, and that's the harmonization
2 that I'm speaking of generally here.

3 So, to simplify this discussion and to
4 bring it down to Patent Office level, also in the
5 interest of time, it's become very, very clear
6 that patent offices are being called upon to
7 coordinate and provide workable mechanisms for
8 the intellectual property user community; and that is
9 fundamentally to support this desire to obtain and
10 enforce patent rights and, also I might add, to
11 integrate with the desire to have or not to have
proprietary
12 rights, and that does actually fit into the
13 picture. We seem to only be in the proprietary rights
14 business, and we are because we provide that
15 service, but we also have to blend with many, many
16 other kinds of intellectual property protection or that
support other
17 basic business approaches. That is also a
18 fundamental (piece of harmonization). I wish I could
say more about
19 that.

20 But what does this really mean for
21 patent offices, specifically? It's this need to
22 carefully consider the harmonization opportunities

1 that specifically facilitate this mass production
2 of a unique product that pays attention to the
3 balance of cost, quality, and timeliness.
4 Every single project you've heard about today,
5 I can
6 draw a line to some aspect of paying attention to
7 the balance of how this impacts lower costs,
8 not only for the office but for the user. How
9 does it impact higher quality, which everybody
10 wants? That the office wants to provide? That the user
11 wants to obtain? And also have some reasonable
12 balance of timeliness? This is why we do things
13 like implement the three-track systems, so if you want
14 more timeliness, it's available not only at an
affordable price but a
15 reasonable approach, just as well as if you want to
16 slow things down. We haven't gotten to the slow
17 things down part, specifically, but that's also
18 available.

19 Those are the kind of systems that we
20 need to build worldwide. That doesn't just work
21 for domestic environment because we're in an
22 environment now where a couple of smart people

1 with a reasonable computer and a FedEx
2 account, can be an international business and should
have a chance to
3 take advantage of international protection of
4 intellectual property rights.

5 So, we have this tremendous
6 opportunity and exciting challenge in front of us
7 given the premise that we are producing a mass
8 quantity of unique products on a massive scale.
9 Every patent is unique, and we do this thousands
10 and thousands of times a year with the same
11 assembly line, so it really is a daunting project,
12 but that's what makes this all so exciting.

13 Let me break this further down into two
14 pieces that are on the right side of your screen
15 here. What we're really talking about for
16 harmonization is we have the practical,
17 operational, technical harmonization; things the
18 Patent Office can decide to do on its own power.
19 Things that don't require anything but our own
20 rulemaking authority to make changes that we can
21 implement. Those are items that are in, for
22 example -- the Patent Prosecution Highway is a

1 great example of this. Global Dossier is another
2 great example of this category of work.
3 Each have their processes and formalities. Also with
the common
4 citation document project which I'll talk about in just
a
5 moment. Priority document exchanges too.
6 There are language and search efficiencies that can
7 come out. Also with the CPC, the Cooperative Patent
8 Classification system that you heard about - this is one
9 of my favorites. There's a huge step in the
10 harmonization direction when you consider that
11 everybody's going to be using the same library
12 indexing system, if you will. This generates all kinds
13 of collaboration opportunities in examination, as
14 well as the Global Patent Search Network that you
15 heard about a moment ago.

16 But then also we have this other
17 category of harmonization, which is a little bit
18 tougher nut to crack, which is the Substantive Law
19 Harmonization, and that's when we're talking about
20 applicable law -- it requires law changes, treaty
21 changes, or government policy changes. Those things
22 don't move quickly. They don't move overnight,

1 but that's the other category of harmonization
2 that exists. That's where our Hague Industrial
3 Design started. That's where the PLT changes
4 started. That's also, I might add, where AIA is
5 categorized. Significant changes to the law that
6 require law changes and government policy changes,
7 as well, which all fall into this category require
8 longer efforts of pushing. Various activities that
9 happen within the Office by a variety of groups:
10 some take more of a lead in one aspect or another,
11 but that's really irrelevant for the point of this
12 discussion. I wanted to lay this framework out
13 for you.

14 Also wanted to let you know that the
15 next steps that exist for Substantive Law
16 Harmonization, in particular, there's any number
17 of practical operational opportunities that will
18 come up as our IT development allows us to take
19 advantage of them, but we also have a grace period,
20 which is the next major step in Substantive Law
21 Harmonization that has to happen for the world to
22 allow the significant growth in SME use of the

1 patent system to really flourish, as well as lots
2 of other kinds of issues that come up such as
3 attorney- client privilege. There's another
4 harmonization issue that we're drawn into.
5 Prior-user rights can come up as well.

6 I'm not going to spend any time on this
7 slide, but there are so many opportunities for
8 varying levels of harmonization discussions that exist,
9 and many organizations involved to have that
conversation, that it
10 makes the task exciting and interesting as
11 well.

12 Let's move on to a couple of the updates
13 very briefly. I want to run through these very
14 quickly, but the Hague Industrial Design is one
15 that's really significant and gaining strength,
16 and you recall from your briefing in last quarter
17 that this -- from Charlie Pearson -- the primary
18 emphasis here is a single international entry point with
a
19 standardized international application in a single
20 language for industrial design. The status on
21 this is simply that the rules package exists.
22 The rules package is in inter-agency review at the

1 moment. Once through that review, it goes out for
2 public notice and public comment with an eye
3 towards implementing, ideally, in calendar year
4 2014. Do not confuse this with the Patent
5 Law Treaty implementation; which is a completely
different
6 animal even though legislatively they came
7 somewhat together.

8 Brief update on Patent Prosecution
9 Highway: the key message here -- this is a great
10 example, again, of that operational harmonization.
11 We had 24 offices participating in a meeting
12 hosted by the Japanese Patent Office just this
13 past June. Thirty offices worldwide
14 participate in the PPH network, 26 of them
15 have agreements with the United States, and that
16 was the focus of this conversation in Japan in
17 June because each pair have agreements
18 across with each other. The USPTO has 26 of them.
19 That's a lot of bilateral agreements, and every
20 single one of them is unique. That's the part
21 that has to stop. It's unmanageable for the
22 Office. It's a burden on the user, so the topic

1 of the discussion in this June meeting was the
2 "Plurilateral" PPH.

3 That's the next-step PPH. What does
4 that mean? It's not going to change the
5 fundamental essence of PPH, but it will remove the
6 spaghetti ball of unique agreements. We
7 experienced a situation where 12 of the 24 offices
8 that participated in the meeting in June
9 immediately agreed to the principles behind this
10 Plurilateral PPH which meant it represented a
11 significant majority of the world-wide PPH
12 capacity. And there's an aggressive January 2014
13 cutover date for early adopters of the
14 Plurilateral program, but the whole purpose is to
15 have a common PPH from whatever office you look at
16 PPH from, and that the agreements behind the
17 scenes will all be common, and that will simplify
18 things greatly for all involved.

19 Global Dossier: You heard a moment ago
20 of One Portal Dossier -- same animal with a
21 slightly different name. Global Dossier really is
22 the broader accepted term at this point. Another

1 great example of that operational harmonization.
2 That was an initiative built on the fact of taking
3 existing pieces and fitting them together that can
4 be shared by multiple offices. It's never as easy
5 as simply aligning the pieces. There's always a
6 little bit of glue that has to be applied, but the
7 key update here is that the progress is in play.
8 There's a completion of the interoffice
9 connectivity among the IP5 offices. There's the
10 desire if the Patents End to End can gain some
11 steam again for the USPTO to have examiner access
12 to that IP5 data, which would be ideal. The next
13 steps are further meetings by the offices in
14 October to further planning for this Global
15 Dossier and a follow-up meeting with the task
16 force; the offices and user community in January or
17 early of 2014, again, to further the plans and
18 progress in that particular project.

19 An important point I wanted to highlight
20 here for IP5, is the activity that took place also in
21 June. June was a big month where USPTO was
22 hosting the IP5 offices. Again, this is the IP5

1 countries representing 90-plus percent of all of
2 the patent activity in the world. And the idea
3 here is that -- these are somewhat my words but
4 it's also reflected in all the offices
5 perspectives -- that it's incumbent on those five
6 offices that are carrying the weight of 90-plus
7 percent of the patent activity in the world to
8 take a leadership position in figuring out how to
9 make the international patent system more
10 functional and accessible and cost-effective to
11 the world's users, not just big corporations but
12 also the emerging small entities.

13 2013 was the sixth year of IP5
14 existence. That means we're starting the second
15 go-round of hosting these meetings. We felt it
16 was important that we should host the meeting in a
17 satellite office, so we picked our Silicon Valley
18 office. Michelle wouldn't let us host this in her
19 garage, so we had to go ahead and find some
20 facilities, but we were able to do this and have a
21 successful meeting.

22 What was accomplished? Aside from

1 side meetings for bilateral discussions with the
2 various offices, we had a discussion of the
3 trilateral pausing, which is what preceded all of
4 the IP5 activity or actually overlapped by the
5 last five years where we formally acknowledged the
6 transition of all trilateral projects to the IP5
7 context, and we're going to let trilateral sit
8 ready to go if needed in the meantime. That's a
9 significant step. IP5 also transitioned from --
10 the original 10 foundation projects of IP5 are now
11 either complete or functionally set in the context
12 of working groups within the IP5 construct. Now
13 again, that IP5 construct is a set of
14 functional independent working groups staffed by
15 each of the five offices. One key point about
16 this is that for each of the five offices, not all
17 five have to go in lock-step as was somewhat
18 happening with the foundation projects. The
19 lock-step has been loosened to where, as we have
20 different IT roadmaps and funding issues going on
21 for various offices, it's much more efficient to
22 have a couple of offices able to surge ahead on a

1 particular project while keeping in touch with the
2 issues of the lesser participating office so that
3 they can be brought in as soon as possible. CPC,
4 the Patent Classification project, is a classic
5 example of that. Europe and U.S. surged ahead
6 with the opening of that CPC in January, and here we
7 are only six months later, and all of the other
8 three offices are now on board with commitments
9 to, at varying levels, adopt the CPC projects when they
can.

10 Okay, now I'm switching to the final
11 push here. These are the two projects that I was
12 going to highlight. I'm glad that the thunder has
13 been stolen for the Global Patent Search Network.
14 You heard about that. But one thing I wanted to
15 add that maybe doesn't come clear is that
16 it is a translated database. So, in other words,
17 it's no longer a searching of bits and pieces and
18 fragments and figures of a non-native language
19 document. It's going to be the ability to search
20 a translated Chinese document into English so that
21 there can be full-text search of that translated
22 language document, if that makes sense. That's huge.

caveats

1 Again, machine translations are not perfect, all the
2 understood, but that's an enormous step forward
3 versus what I know from past practice. And I know
4 you've probably encountered it as well, of this
5 weird fragment of a Japanese language or
6 Chinese language document out of context
7 , but it had the one word that existed in
8 the claims, and that's no way to make a good,
9 high quality comment on a claim during
10 prosecution. I think this is a huge step forward.
11 We're looking forward to seeing this database and
Japanese
12 appears to be the next language that's on queue
13 for that particular project.

14 Lastly, I'll comment on another project
15 that's been around for a while actually. This has
16 been around -- the Common Citation Document's been
17 around since the trilateral days, but it is also
18 gaining a considerable amount of steam here. I
19 wanted to highlight it in the sense that there's
20 actually a live demo out there that I'd encourage
21 you to have a look at on the IP5 site. Both of
22 those links get you to the same IP5 demo. But

1 take your favorite international application, plug
2 it into this demo, and see the common document
3 that comes out of that that contains the materials
4 in an electronic format for citing of the relevant
5 art in a common language which is English in this
6 case.

7 This is another example of something
8 that's going to fit nicely within the Global
9 Dossier structure. Again, that same theme exists
10 of everybody's doing -- citing art in some way or
11 another. Why don't we do it in a common format
12 that's familiar, that we see regularly, that
13 everybody understands, and it's not going to be
14 confusing from one country to the other?

15 I raced through far more quickly than I
16 wished. I hope that was at least helpful to set
17 up some context so that when we have future
18 conversations we have some context to work from.
19 And to the extent we have time, Chair, I'll be
20 glad to field a question or two.

21 MS. JENKINS: So, as most of you know, I
22 sit on two committees, so I get really exciting

1 talking to the international folks because there's
2 so many just excellent initiatives going on, and
3 then I also sit on the IT Committee (laughter),
4 and I don't get as excited, and then I go -- it's
5 a circle. And then I get worried because they
6 can't do what they're doing. I go back around.
7 They can't do what they're doing, so it's just --
8 it's not all good, so.

9 And speaking of that, one of the main
10 focuses of the meeting last time for us was the
11 effects of sequestration on your activities. One
12 of the things I ask them to do was highlight what
13 they have been able to accomplish, so can you just
14 talk a little bit more. Maybe Bruce can talk a
15 little bit more about -- or draw a straw on that.

16 MR. KISLIUK: Okay. Yes, be happy to.
17 I think you framed it well. We live in a, you
18 know, great possibilities of international and
19 we're kind of grounded by the realities of IT.
20 And I think that I'll just talk to it in budget in
21 general.

22 We had mentioned the last time in terms

1 of international activities, we continue to go to
2 all of the important working group meetings. As
3 an agency, we don't not go. We don't send as many
4 people as we typically do, and it's hard to judge
5 the impact other than to say that I think the
6 other countries notice when the PTO U.S.
7 Delegation is not at full strength. They know
8 that. They see that. But they all understand the
9 budget (inaudible) but it does -- I'm not going to
10 say it hampers our ability to participate, but it
11 is a thing we have to work through.

12 In terms of IT, I think you heard it
13 from John Owens, and there's bits and pieces.
14 There's a bit of cross- over in David Landrith's
15 presentation and some of the things that Mark
16 mentioned. Many of the programs that we are
17 looking forward to that fall under the Global
18 Dossier -- so that's kind of the new -- going to
19 be kind of the IT platform to exchange data and
20 information between the IP5 countries on
21 cross-filed applications. That's actually where
22 you will probably see the One Portal Dossier idea,

1 and then John mentioned that, or David Landrith
2 did, so that's when we share our data with the
3 other IP5 countries. Next step is us receiving
4 their data. Right? But we are going to rely and
5 build that on the PE2E systems. So, PE2E slows
6 down, we're not ready to do that yet. So, that
7 slows down the transition to the next step of One
8 Portal Dossier.

9 The Common Citation Document, same
10 thing. That is a sharing of the IDS prior art
11 that's submitted in cross- filed applications.
12 It's up there now. It will roll into Global
13 Dossier. Okay? Right now it's being hosted, I
14 believe, by WIPO via the EPO. That's one that
15 will be incorporated into Global Dossier. Again,
16 there has to be an IT solution.

17 So, the future, and it's funny because
18 you -- all of the discussions we have about IT,
19 most of the future improvements, particularly in
20 international -- data exchanges where all the
21 information is -- and it's all IT based. So, it's
22 true that everything that we delayed in PE2E will

1 ultimately slow down some of our plans for the
2 international -- although some of the
3 international plans are not as well developed yet
4 -- so the hope is that when we get our PE2E back
5 on track, we get the basic architecture in place
6 and the infrastructure in place that then when we
7 come with the global requirements with Global
8 Dossier that it will mesh, but it's hard to say at
9 this point exact impact, but I can tell you that
10 it will impact the discussions already.

11 MR. THURLOW: Just a quick point or
12 comment I guess. I just wanted to share Mark and
13 Marylee's excitement on international issues.
14 Before the IP5 meeting in California, we actually
15 had a delegation including Commissioner Tien from
16 SIPO and about 10 representatives come into New
17 York, and we organized the meeting for them, and
18 we all had the opportunity to meet and have lunch
19 with them and separate meetings and side meetings.
20 And I was quite frankly surprised how well they
21 spoke English. And it was just a really good
22 exchange of information, and I always know when we

1 talk about international issues a lot of
2 companies, of course -- comes to jobs -- and has
3 IP issues, in particular, in China.

4 The USPTO, starting with Director
5 Kappos, Acting Director Ray have been really
6 terrific. Mark Cohen, so on. I've worked with a
7 great deal of these. Just a great ambassador for
8 China P issues, and it's really been effective for
9 U.S. companies to have the USPTO reach out because
10 sometimes the hardest thing is just getting in
11 touch with the right person and getting their
12 attention, and I think the USPTO has done a great
13 job on that, so thank you very much.

14 MS. JENKINS: Just a real quick. Do you
15 really have to call it Plurilateral PPH? Just a
16 comment, a question.

17 MR. GUETLICH: Right. Yeah, the name's
18 a work in progress.

19 MS. JENKINS: Good. Glad to hear that.

20 MR. GUETLICH: We'll stick that
21 alongside naming the Denver office, naming the
22 PPH.

1 MS. JENKINS: Yeah, wow. Too many "P"s.
2 But one thing I know that's very -- I guess a hot
3 topic is the grace period. So, do you want to
4 touch on that a little bit and talk about what we
5 may do for the next meeting in November?

6 MR. GUETLICH: Sure. That is a great
7 topic. And thank you, also, by the way, for the
8 comments about international, and I'm always
9 humbled to be here because there are so many
10 people involved that add to this topic of
11 international. And grace period, again, is one of
12 those as well; lots of good thinking into that.
13 AIA made a huge step ahead in the whole context of
14 not only first inventor to file but also grace
15 period. It's a big change for U.S. Practitioners
16 that are coming to grips with that right now of
17 what that really means, but also internationally
18 it's somewhat of a surprise to everyone to
19 realize, oh, we really do have a first-class
20 system here in the United States that allows for
21 an inventor to disclose but still have a
22 significant amount of protection against that

1 inventor's own disclosure, whether it's by
2 accident or by theft or by deliberate action, to
3 protect that invention for filing. Now, you
4 better hurry, but it needs to happen.

5 Now, that said -- that's just the whole
6 context that's set up -- you look around the
7 world, and it's piecemeal of what level of
8 protection of that kind of a prior art grace
9 period that exists, and the one huge outlier right
10 now that exists is Europe. And there's a giant
11 gaping hole that exists in the amount of grace
12 period that they provide to users beyond that very
13 core level of the absolute safety net of theft of
14 your invention and disclosure, for example, it is
15 caught and is protectable.

16 But we need to come up with some kind of
17 a uniform grace period that is the baseline
18 throughout the world. That's what we're striving
19 for. There are conversations coming up this fall
20 internationally that will help us focus on that
21 particular baseline, whatever that's going to be,
22 so that we can begin to rally the conversation

1 more broadly throughout Europe, the member states
2 of the European patent community, and the rest of
3 the world to have something that everyone can live
4 with now that we're all working with a
5 first-to-file kind of patent world.

6 MR. FOREMAN: Thank you, Mark, for that
7 presentation, and Bruce, also for the comments.
8 We have just a few more presentations left on our
9 home stretch here, so what I would like to do is
10 call Debbie Stephens to the floor. Debbie
11 Stephens is the associate commissioner for patent
12 information management, and she will be giving us
13 a presentation on call centers, which was a
14 subject that was discussed in a PPAC subcommittee
15 meeting.

16 MS. STEPHENS: So, thank you, Louis. As
17 he mentioned, I'm here to give a quick overview on
18 the quality and customer-satisfaction measures in
19 the patent call centers, and with a little bit of
20 background, in front of you on your slide deck you
21 have why we measure customer satisfaction. Well,
22 the USPTO as an agency receives over 800,000 calls

1 each year, and those calls on average are anywhere
2 from 2 1/2 minutes to 10 minutes in length, and as
3 we, as an agency, understand customer
4 satisfaction, one of our goals is first-call
5 resolution.

6 That is self-reported by our call
7 centers and is, on average, between 20 to 99
8 percent towards first-call resolution, and we
9 understand that that's only one facet of measuring
10 customer satisfaction. And in the American
11 Customer Satisfaction Index in the graphic to your
12 slide on the right-hand side below, it speaks to
13 the satisfaction drivers that are key to measuring
14 satisfaction, results and how customers perceive
15 your responses, and I think on the left-hand side
16 we want to look at the ease in our process, the
17 timeliness, the clarity in which we provide those
18 answers as well as the courtesy and professional
19 nature of our response.

20 And in addition, how useful is our
21 website in providing that type of response. But
22 insofar as measuring customer satisfaction, we

1 realize that first-call resolution is simply the
2 first step, and that we do it differently across
3 the agency, and our current approach -- we are at
4 18 different call centers. There are four
5 separate business organizations that represent
6 those four, so on the right-hand side of the
7 slide you can see the 18 listed specifically, as
8 well as the organization that they report to. The
9 key to this slide is to follow up with our first-
10 call resolution. We do self-monitor our calls and
11 such that calls are recorded, they are sampled,
12 and listened to, providing feedback to our agents,
13 as well as sometimes we actually piggyback on
14 calls and listen to live calls as they are
15 happening. And there's just a limited number of
16 call centers as indicated by the asterisks on the
17 right-hand side that participate in the actual
18 quality monitoring.

19 So, another aspect of our approach is
20 the actual formal customer survey, and there's
21 currently only two call centers that engage the
22 actual formal survey, and that is the Ombudsman,

1 which is the Patent's Ombudsman Program, as well
2 as the OICO Service Desk located there on the
3 bottom- right hand side of the slide.

4 So, with those two particular contact
5 centers or call centers, the Ombudsman's reporting
6 60 percent of their customers are either satisfied
7 or very satisfied from the responses that they've
8 received. And in the OICO Service Desk they
9 report over 91 percent of their customers indicate
10 from that formal survey that they are outstanding
11 or very good.

12 We certainly have room across the board,
13 across all the call centers for improvement. In
14 one way we think that improvement can come as our
15 recommended approach is to enlist the help of
16 experts in this arena. We certainly understand
17 the business of patents and patent prosecution,
18 and we have experts clearly in that arena, but in
19 terms of official customer survey and formal
20 surveys, we don't have that level of expertise.
21 We would like to engage experts in terms of the
22 actual survey development such that the

1 satisfaction drivers and results can be measured,
2 reported. Our preliminary market research
3 indicates that these experts are able to compare
4 results, drivers, to other federal agencies, so
5 that would be helpful in helping us drive our
6 customer satisfaction as well as the entire -- and
7 that's what the graphic on the right-hand side
8 delves into; that entire process of continuous
9 improvement such that the end result is an
10 increased customer satisfaction. So, with that,
11 I'd just like to turn it over. Questions and
12 comments?

13 MS. SHEPPARD: So, a little bit of
14 background. How this came about was -- well,
15 first, I'd like to say something very positive.
16 The emphasis on customer service by the USPTO --
17 there's lots of ways to call in. There are lots
18 of avenues for people who have questions to get
19 input directly from people who have expertise in
20 those areas, not just for calling for questions
21 for filing, but also calling in with comments.
22 There's no lack of ways to do that.

1 Anecdotally, I saw some areas for
2 improvement when I called in and others called in.
3 So, I started to delve into this a little bit
4 deeper and found out that there were 800,000 calls
5 coming in. I still haven't gotten a good answer
6 on how many people are actually fielding those
7 800,000 calls.

8 And another portion of it is the
9 training that takes place for the people who are
10 answering the calls seems to be somewhat ad hoc.
11 And while people are well intentioned -- they may
12 be experienced in substantive law, but maybe not
13 customer service.

14 There doesn't appear to be any set of
15 best practices that goes across the 18 separate
16 call centers. I don't think they speak between
17 them about how to answer questions, and sometimes
18 people get routed between the 18. Although I
19 highly commend the metrics and quantifiable data
20 that came out of three of the call centers that I
21 believe Debbie Stephens -- she was the one who
22 emphasized that this should be done -- that still

1 leaves 15, if I'm doing the math right, that have
2 no quantifiable or metrics to show whether or not
3 the customer is getting the help they need.

4 You can see that some of these quality
5 things are self-reported, so the person who
6 answers the call says whether or not the customers
7 were satisfied when they left the call. This all
8 sounds quite negative, but I do think it is an
9 opportunity for improvement.

10 What I also noticed, that there was no
11 person directly above all 18 of these stove pipes
12 other than the deputy commissioner, and I don't
13 know that she gets into these sort of details.
14 So, I'll stop there because I have some other
15 comments, but maybe we can just start with how
16 many people are actually fielding these calls, how
17 they're trained, best practices, that sort of
18 thing.

19 MS. STEPHENS: Sure, there's roughly --
20 it's a mix of government and contract staff.
21 There's roughly around 200 FTEs that are full-time
22 and roughly 50 or so that are part-time that

1 respond to inquiries.

2 In terms of training, certainly with
3 the, as you mentioned, siloed, 18 call centers,
4 there is clearly individualized, customized,
5 training by each business unit. We do hold, in
6 terms of over-arching type training, we do some
7 cross training with some of the call centers
8 within our own organizational domains. So, for
9 example, from the slide -- if you look at the
10 Application Assistance Unit and the Electronic
11 Business Center, those organizations are within
12 the Office of Patent Information Management and my
13 organization, so therefore I do find we do some
14 cross training and cross-knowledge sharing.
15 Certainly the Office of Patent Legal
16 Administration, Office of Petitions, also likewise
17 -- maybe even the Central Re-examination Unit.
18 Those are all, fundamentally, I believe, under the
19 Patent Examination Policy umbrella, so certainly
20 those organizations tend to have some
21 cross-purpose, cross- training type of materials.

22 And then in terms of, I guess, best

1 practices, I do know that we as an agency have a
2 customer call center forum where all 18 are
3 represented. We do have quite, sometimes lively,
4 discussions about various items. There are
5 lessons learned, shared. Certainly, maybe not
6 proactively, best practices shared regularly. I
7 know that at times there are efforts to share in
8 that type of documentation.

9 And then as to the last part of
10 self-reporting, there is a lack of an
11 enterprise-wide tool that would allow all 18 to
12 effectively, objectively report measures, so you
13 are correct. That is why the recommended approach
14 was to engage in a tool like that so that way we
15 could certainly measure in a more objective
16 manner.

17 MS. SHEPPARD: I'd also suggest -- and
18 the suggestions are fantastic that you have in
19 your document -- but also to generate some forms.
20 And I know that other call-in centers, from just
21 like AT&T or others, have forms for commonly asked
22 questions; that it could be consistent between the

1 people when they come on or off the call centers
2 because as I understand it, people rotate through
3 the call centers, so what someone who's normally
4 doing substantive work has to reinvent the wheel
5 every time the phone rings. Are there any --
6 what's the words for that? The form sheets that
7 kind of give you commonly asked questions.

8 MS. STEPHENS: Yes, certainly each call
9 center has -- part of their call center tool has a
10 knowledge management pack is what it's referred to
11 in call center-ease. That is used or can be used
12 by the agents. I know our particular agents have
13 their own, also, set of documents that they
14 utilize on their desktop at any given time either
15 in some of them in a physical, quick-paper type
16 documentation as well as electronic where we have
17 file folders electronically that they share across
18 their desktops to share that information such that
19 you do get the agent that maybe is there doing
20 different work that you should still see a
21 consistent approach in their response to the
22 inquiry.

1 MS. SHEPPARD: There's been a lot of
2 talk today about the AIA help center and other
3 help centers that are being put into place, and I
4 just think that a more -- I know everyone's doing
5 the best they can with very limited resources, but
6 just adding more and more resources to call in is
7 not the answer until there are some sort of
8 systematic approach to making sure the customer is
9 getting the best service they possibly can.

10 MS. JENKINS: Can I ask a follow-up?
11 So, where -- two questions. One, where exactly
12 are -- if I'm calling, where am I calling to? I
13 assume I'm not calling the Philippines, like, if
14 I'm doing United or something. Right? (Laughter)
15 And I'd like to be transferred to Alexandria,
16 please? And so, are they all local, or are they
17 --

18 MS. STEPHENS: Correct. They're here in
19 the Call All facility as well as they have a help
20 desk in the Randall Square facility which is in
21 Shirlington, Virginia.

22 MS. JENKINS: And then, how -- a

1 follow-up to your question. How are you staffing
2 them? Because if I'm calling or I'm having
3 someone else call, and I'm saying call the office
4 to answer this question on AIA, I'm assuming I'm
5 getting -- I'm hoping I'm getting an expert on
6 AIA. If I'm calling about an assignment question,
7 we know a lot of people in the assignment branch,
8 so -- we're on a first-name basis -- but you know,
9 that's a concern.

10 MR. HIRSHFELD: So, let me -- just a
11 couple of those, some of the areas are in my area
12 as well. We have tiers. Right? And we certainly
13 do have -- and I don't know what the term is. You
14 just said it before, Bruce. But the sheets that
15 provide information and tell you the knowledge
16 packs, knowledge trees, however you want to call
17 them, but we certainly do have ways to route.
18 There certainly is training that takes place. I
19 can tell you with AIA there was extensive training
20 and the knowledge packs for people. The tiers
21 direct people based on, obviously, questions
22 asked, and out of 800,000 you can imagine the

1 calls are wide-ranging, so that first tier is very
2 critical to move you to the right place.

3 I can't speak for all of them because I
4 don't know all of the details, but I think for
5 most of them the staffing is from -- well, I'll
6 speak for my areas that I do know. So, the
7 staffing is from -- well, I'll speak for my areas.
8 Right? That I do know. Right? So, the staffing
9 is from the people who are in my area, so for the
10 Office of Patent Legal Administration, all of them
11 rotate through. So, it's not like -- the rotation
12 might be that you have every Monday, or you have
13 every Tuesday. So, it's people who are
14 repetitively doing this. They're just not doing
15 it full-time. And I think there is some
16 consistency, and that being said, I'm not trying
17 to stand here and say there's not a significant
18 amount of improvement that can take place. There
19 can.

20 A lot of it -- the training is ad hoc.
21 I'm trying to draw the line to where I think it is
22 in the middle. Right? There's certainly

1 significant training, and most of it is ad hoc.
2 There's certainly significant room for
3 improvement. I think your points are very well
4 taken. Did that answer your questions?

5 MS. STEPHENS: Can I --

6 MS. JENKINS: Just a little funny, and I
7 noticed in the materials which was very helpful is
8 that if I want an upgrade, I can ask for a
9 supervisor. Right? And so (laughter) -- so to
10 speak.

11 MS. STEPHENS: Just to Drew's point, our
12 Application Assistance Unit, with the start of
13 AIA, we're working very closely with Drew's agents
14 or staff in terms of when the initial question
15 comes in, they're documenting that question, and
16 then sometimes even during the -- what we refer to
17 as if we're the tier 1, they're the tier 2 or tier
18 3. And they're either staying on the phone to
19 listen to the response, so that way they can
20 understand to better provide a response the next
21 time. Or if that's not possible at the time,
22 we're getting feedback from the Patent Legal staff

1 such that we'll be able to answer that question
2 more robustly in the future.

3 MR. FOREMAN: Thank you for that
4 presentation. So, we are coming to the end of
5 this session, and we always save the best for
6 last. And so, not to disappoint, I'd like to turn
7 the floor over to Commissioner for Patents, Peggy
8 Focarino.

9 MS. FOCARINO: Thank you. Thank you,
10 Louis, and good afternoon, everyone, as we wind
11 down here. I wanted to follow up on Teri's
12 remarks from this morning. I also want to extend
13 my congratulations to Louis and Esther on your
14 appointments as PPAC chair and vice chair
15 respectively, and we really appreciate your
16 willingness to take on these expanded roles and
17 look forward to working with both of you. And I
18 want to reiterate that we will continue with our
19 efforts to foster a collaborative working
20 relationship with our user community.

21 A timely example of this, and you've
22 heard it in a couple of different presentations

1 were the White House executive actions. Dana
2 mentioned that the USPTO has held stakeholder
3 meetings to discuss the implementation of four of
4 the five executive actions. We were fortunate
5 enough to get the majority of them here at the
6 USPTO dealing with patent litigation abuse, and
7 really the meetings were two- fold. One was to
8 provide a status update to our users and where we
9 are in implementation efforts, and the other
10 aspect of these meetings was to get input from our
11 user community on the various legislative
12 proposals, to hear from them where they would like
13 to see things going.

14 And so, just to get a little more
15 specific with you, the meetings were held with the
16 ABA, the IP section; the AIPLA; the IPO; the
17 Electronic Frontier Foundation; Public Knowledge;
18 the Internet Association; BSA; the Fairness
19 Coalition; and the Innovation Alliance. So, we've
20 had several of these meetings and they all, as
21 Drew pointed out, were very lively discussions.
22 It was really interesting.

1 So, continuing on with the outreach
2 theme, I just wanted to mention in October -- it's
3 specifically October 11th and 12th of this year --
4 we'll be hosting our 16th Annual Independent
5 Inventor Conference here in Alexandria; a two-day
6 conference administered by the Office of
7 Innovation Development under Bruce. And these are
8 specifically tailored for perspective or
9 established independent inventors and small
10 business owners, and I know Louis has participated
11 in many, many, many of these. But they're really,
12 really important events, and we always enjoy
13 hosting them, and it's one of our flagship
14 outreach events for both independent inventors and
15 small businesses, so it's a great opportunity,
16 again, to engage the public, deliver pertinent
17 information, and they're extremely, extremely
18 valuable.

19 And again, I should point out that we
20 typically hold several of these a year, and we
21 have not been able to hold the number that we
22 planned to hold or really should hold because of

1 our challenging financial situation, so -- but we
2 are trying to keep this going, but again, with not
3 a lot of individual ones planned so -- but here in
4 Alexandria in October.

5 Then Janet Gongola mentioned the AIA
6 Forum that we're going to hold both here and out
7 on the West Coast, and again, another opportunity
8 to get feedback, to get your feedback, feedback
9 from the user community. Janet referred to this
10 as sort of the 2-year anniversary celebration of
11 sorts, but I like to think it more as a reality
12 check which can lead to future iterations of our
13 implementation framework. And really that was the
14 whole idea to be able to put in place some
15 implementation rules, and then take a step back,
16 as Wayne pointed out, on a regular basis and see
17 how things are working and adjust if necessary.
18 So, we fully plan on doing that. So, the details
19 are still being worked out of the forum, but I
20 encourage all of you to participate. Those should
21 prove to be very informative.

22 And then Drew talked a lot about the

1 Software Partnership meetings. We started these
2 back in January before the White House came out
3 with the announcement, so we were working on this
4 ahead of time, which was very helpful. And so,
5 two meetings coming up; one in Berkeley, which is
6 not in the Silicon Valley (laughter) and one here
7 in Alexandria, and again, discussions about the
8 White House executive actions and claim clarity,
9 functional claiming, and very interesting
10 discussions. The one here will be focused because
11 we have a big examiner contingent here, obviously,
12 on access to prior art by our examiners and an
13 interactive forum for our stakeholders on input on
14 how we can improve access to prior art, which is
15 really critical for us to keep focusing on quality
16 and quality improvement. Both meetings will be
17 webcast. You can sign up, and we will be
18 advertising that shortly.

19 So, we'll continue to work with PPAC,
20 improve transparency, public participation and
21 collaboration, and I think we can all agree that
22 this has been very positive in helping us be more

1 efficient, be more effective, and in spite of the
2 challenging financial situation, we're committed
3 to continuing to do that.

4 And so, I want to thank you for your
5 input today. I also want to thank you for your
6 high level of interest in helping us improve our
7 financial situation, and as we close out FY13 and
8 move into FY14 with what, as Tony Scardino said,
9 is somewhat uncertain right now. But we really do
10 appreciate your support and look forward to
11 another successful year, so thank you. Louis?

12 MR. FOREMAN: Thank you, Commissioner
13 Focarino. And so we're really at the end of
14 today's session, and I think it's been a very
15 productive discussion. I think it really proves
16 that us getting together physically has a lot of
17 value. The value in being able to attend the
18 subcommittee meetings with our counterparts at the
19 USPTO, our ability to gather today and have a very
20 healthy and interactive discussion is of benefit.

21 We all recognize that there's a cost to
22 this, and there's a cost in travel. There's a

1 cost in our time when we have to leave our real
2 jobs to come here. But I think it's an investment
3 that generates a real positive return, and so I
4 would encourage the Patent Office to consider
5 allowing us to get together on a quarterly basis
6 and have these discussions.

7 As we wrap up this session, I think it's
8 important that we thank some people who were
9 instrumental in putting this together; first off,
10 the leadership of the Patent Office for allowing
11 this to occur. It's very important -- and the
12 management for putting together the presentations.
13 A great deal of effort goes to not only share this
14 information with members of PPAC but also with the
15 public, and so I hope the public really
16 understands and appreciates just how much effort
17 goes into bringing all this information to light
18 and keeping them abreast of what is happening. I
19 think it's also important to recognize the staff
20 that allows all this to happen, technology
21 problems excluded. Those happen.

22 And then finally, a special thanks to

1 Jennifer Lo who is the glue that keeps us all
2 together and makes sure that we stay connected and
3 makes these meetings run perfectly even when we
4 throw in a last-minute speaker. So, thank you,
5 Jennifer. (Applause) And with that, if there
6 aren't any other comments I'd like to call this
7 meeting adjourned.

8 (Whereupon, at 3:20 p.m., the
9 PROCEEDINGS were adjourned.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 COMMONWEALTH OF VIRGINIA

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

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