UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Thursday, August 15, 2013
PARTICIPANTS:

PPAC Members:
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CLINTON HALLMAN
PAUL JACOBS
MARYLEE JENKINS
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REMY YUCEL
KATHY MATECKI
JOHN OWENS
MARK GUETLICH
CHIEF JUDGE SMITH
JANET GONGOLA

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MR. FOREMAN: Good morning, everyone. I'd like to call this meeting to order. This is the third quarterly meeting of the Patent Public Advisory Committee here in Alexandria, Virginia. This has been an interesting year for PPAC and for the USPTO. Although this is our third quarterly meeting, it's our last meeting for the fiscal year for the USPTO. And it's been a year that has had some challenges. It's had some obstacles. But it's had some amazing achievements, as well.

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

So let's go back. Small applaud for PPAC. Big applause for those at the USPTO who guided the office through some turmoil, but some opportunities and the final implementation of AIA.
PPAC was established in 1999 to really provide some guidance and support to the USPTO. And over the years we've had a very diverse group of individuals who have represented PPAC. We have a great group today. And so I'd like to take this opportunity to recognize those members of PPAC and those from the USPTO and begin this meeting. So if we can start to my right.

MS. FOCARINO: Peggy Focarino, Commissioner for Patents.

MR. SOBON: Wayne Sobon, PPAC.

MS. JENKINS: Marylee Jenkins, PPAC.

MR. JACOBS: Paul Jacobs, PPAC.

MS. McDEVITT: Valerie McDevitt, PPAC.

MR. BUDENS: Robert Budens, PPAC.

MS. FAINT: Catherine Faint, PPAC.

MR. DWYER: Jim Dwyer, Patents.

MR. FAILE: Andy Faile, USPTO.

MR. HIRSHFELD: Drew Hirshfeld, USPTO.

MR. KISLIUK: Bruce Kisliuk, USPTO.

MS. SHEPPARD: Christal Sheppard, PPAC.

MR. THURLOW: Peter Thurlow, PPAC.
MS. KEPPLINGER: Esther Kepplinger, Vice Chair of PPAC.

MR. HALLMAN: Clinton Hallman, PPAC.

MS. REA: Teri Rhea, USPTO.

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

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

(Applause)

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

So the Trademark side of the shop tends
to be a little bit different today as PPAC, the
Patent side of the shop. This seems to be where
there's a lot of additional stresses on our
system, including, but not limited to the fact
that funding has now become a very big issue for
us. I would also like to thank Esther Kepplinger
for being the Vice Chair of PPAC. Now, that
position, Esther was established in the AIA
Technical Corrections Act just December, so thank
you so much for being so gracious in accepting
that position.
As you will recall at our last PPAC meeting in May, that was actually a virtual meeting. I think it turned out extremely well. We are still working with the logistics in the idea of doing more interactive virtual type activities. So those of you who are watching us right now over the internet, through your computer, you know that the technology has improved significantly.

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

Now, let's see, since our last meeting, we have been extremely busy. We have actually focused our continuing efforts on lowering the backlog of patent applications. We developed strategies for reducing the RCE backlogs, as well. We have trained most, if not all of our examiners on the first inventor to file provisions of the America Invents Act.
And we've been working recently on the announced White House Legislative Priorities and Executive Actions, which are designed to protect innovators from frivolous litigation and ensure the highest quality patents in our system. And, of course, we've been busy reviewing the Supreme Court decision in association for molecular pathology versus myriad genetics. And we're in the process of providing additional guidance to our examiners and our patent examining core on additional training guidance with respect to that decision.

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

As of today, the backlog is 590,668, and that backlog is actually down considerably from May. So we're at 590,668 right now, and in May we were 597,696. And that's with actually an increase in filings. So, to me, our patent examining core is doing a great job at working on
But as you know, as we're continuing on the backlog, we're also looking at the RCE backlog. We have a number of policies and activities, including improving the count system for our examiner. We have made tremendous efforts and tremendous achievements that way also.

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

Also today you're going to get updates
on our Patent Trial and Appeal Board by Chief Judge Smith, a patent quality discussion from the Deputy Commissioner for Patent Examination Quality, Drew Hirshfeld. Dana Colarulli will be with us. He will give us some highlights of legislative issues from our Director of the Office of Governmental Affairs and Budget and Finances. Once again, we'll have a presentation by our Chief Financial Officer, Tony Scardino.

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

And finally, you'll hear from Peggy Focarino with some closing remarks. So we look forward to all of your thoughts right now. We thank you once again for joining us and allowing us to interact with you this way. Each one of the
PPAC members, we hope that you will be open, forthright. We will have a very nice discussion. We will each have an opportunity to learn from each other. And ideally the PTO, we are able to improve our policies and what we're doing and our procedures to give our user community the very best service possible.

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

MR. FOREMAN: Thank you, Director Rea. And I'd like to welcome all of those who are here from the public and those who have dialed in or logged in to participate. We want this to be an interactive discussion. And so what I really encourage is questions not only from those who are here in the public, but also those who are monitoring this proceeding either online or over
So we're going to start off this morning with an update on patent operations from Jim Dwyer, Assistant Deputy Commissioner for Patent Operations, and moderated by Clinton, who will help in the questions and answers.

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

The next slide shows our backlog of unexamined patent applications from FY 2008 to date. You can see it's been progressing downward with the increase in our fire power through hiring
and initiatives. The slight bump you see there in quarter two was the bubble filings from AIA.

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

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

This slide shows our RCE backlog. As you can see, it's been progressing upward almost 2 to 3,000 applications a month throughout the years. However, this year with a lot of the initiatives on our RCE's and RCE backlogs, and that will be addressed by Andy Faile later this 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
from 1,500 to 1,000, and that's that green line on the left. As you can see, this is a predictive model. So if you have less folks on board, your ability to reduce the backlog is hampered to some degree. So if you follow the green line down to April of '13, that's when, with respect to budget and so forth, our thought was -- is not to make offers to some of the examiner candidates that we had in mind, waiting to see how AIA fees came in. So if you take that line and play it out, it's the blue line at the very top, and it would show the months in pendency getting us down to 12 months somewhere in the 2017 timeframe.

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

Now, you might ask, what is it in those out years, what's our prediction? And the thing
that's currently in our model is a 7 percent
growth for this year, a 7 percent growth for next
year, 6 percent in '15, 4 and a half percent
attrition throughout the out years, and the hiring
at 750 next year, 715 in '15, 500 in '16, and
basically replacement hiring thereafter.

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

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

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

Another thing to take out from this, we nearly have 3,000 allowances from track one filings. Another statistic to take from here is that more than half of these track ones had an interview, and that's about 20 percent higher than our normal serial filing with respect to interviews. So a lot of good news out of this
The next slide shows, on the timeliness aspect, the left shows our average time in a regular case, sitting, you know, at 22 months in which the time awaiting first action, about 7 months. The prosecution time with applicant and the shaded area is prosecution time with the office of 3 months. And if you look to the right there, you have the track one, and you can see a substantial decrease in the total time.

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

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

The next slide here shows our third party prior art submissions. We're now starting
to get a substantial number of cases and a substantial number of those cases are now in examination with the hope this fall to do a very fine study to see what the third party submission prior art looks like, how its examiner used it, why did they use it, why they didn't use it. So we're going to do a study this fall on that.

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

One thing that's a little peculiar is in the electrical area where a lot of the software is, we're not getting the submissions that we thought. And one of the questions out there would be -- is, you know, is there a pattern, is there
reasons why the submissions in certain
technologies are lower than others? It's
information we'd be interested in.

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

In FY '13, as of June, we were hoping to
be in the range of 65 to 73 percent and we're just
below that range. There are two things that are
big drivers for this, is the external and internal
surveys that are due in September, and that would
be a big factor in us either exceeding the 65 to
73 percent goal. The internal one last spring was
lower, and we think we had some reasons why the
internal was low at the time. And just as a
reminder, that internal survey, we asked our
examiners is the tools that we provide for
examination, the training that we provide for
examination, is it helpful in doing a quality job.
So we know we've done a lot of training this spring in AIA and other areas and we think that benefit is going to show up in our internal survey. So with that, open for questions.

MR. FOREMAN: Thank you, Jim.

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

MR. DWYER: Yes.

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

MR. DWYER: That's correct, yes. Yes,
those are very vulnerable numbers with respect to when you start doing -- like if you change behavior, for instance, and what Andy is going to talk about is processes that we're putting in place to reduce RCE backlogs, those can cause those numbers to move.

MR. HALLMAN: Okay.

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

MR. DWYER: Yes, in traditional pendency.

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

MR. DWYER: The total.

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

MR. DWYER: The total RCE, that's correct.
MS. KEPPLINGER: -- the total pendency if RCE's are included, so you have that somewhere.

But the number that's normally reported and tracked does not include RCE's?

MR. DWYER: Yes.

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

MR. DWYER: Right. One thing that's happened over -- now we do more cases in that are coming -- that number of actual pendency and predicted pendency are coming closer together because your in and out is the same. When you start -- yeah, I agree, when you start putting stuff on the shelf, then the shelf -- what you report is what you dispose of, and if that's a lot less than what's coming in, that number will be distorted.
MR. THURLOW: Jim, this is Peter. Thank you very much. The information is very helpful.

I have two areas, just quick comments. One I mentioned to Andy yesterday with respect to track one. Maybe we can follow up at the next meeting. But I've clearly been trying to push this. I think we're always mystified at why more people don't take advantage of it.

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

So if the PTO can consider that one minor change in the procedure, that may be one thing that will even further encourage the use of
track one, which based on all the statistics that you provided, clearly, to all of us, is a great program, something we should encourage more of.

The second question I have is with respect to the prior art submissions. My comment is, I look forward to the study that you're going to do. I think the study is going to be extremely worthwhile.

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

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

My last quick question I guess is, why are so many, based on what's up on the board, why
are so many improper? Is that --

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

MR. THURLOW: Oh, okay.

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

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

MR. DWYER: And statement of relevance
is --

MR. THURLOW: Statement of relevance?

Is that it?

MR. DWYER: Yeah.

MR. THURLOW: So statement of relevance?

Does it need to be very detailed I guess, is that
the issue, or --

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

MR. THURLOW: Too detailed, really?

MS. FOCARINO: In drawing legal

conclusions. I think that's part of the --
MR. THURLOW: Oh, okay.

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

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

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

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

MS. KEPPLINGER: I had one follow-up question to Peter's good remarks and that was with respect to the study. As Peter was indicating, I think practitioners are weighing whether or not the prior art gets used against whether to hold off. So while 14.6 percent of the total is references that were used in rejections is a good
number, I guess the question is, are you going to
look at all sort of -- at some sort of a survey of
some random number of them to see from a quality
perspective whether or not there should have been
a rejection made?

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

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

MR. FOREMAN: And a final question from
Wayne.

MR. SOBON: Just a real quick
suggestion. I know we're going to be talking more
later on about anniversary, look backs, and
further assistance on AIA implementation. I think
you may be already thinking about this. But it
would be good maybe somewhere clear where you give
feedback back to the public about what those
improper rejections are, what the primary reasons
why they're being rejected, and tips for people to
avoid, you know, blowing it. So --

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

MR. SMITH: Good morning. Thank you for
having us again. Being distributed to the PPAC
members right now are two sets of materials which
are now available on the web site. They were not
part of the submission for this session. Our
development of them arose actually this week in
response to some comments and requests from Mr.
Thurlow, having provided them to him yesterday and
discussed those with him, and since they're on the
web site, but not part of the slide submission, we
thought we would provide copies to you this
morning. And they certainly can comprise part of
what we address this morning if that's your wish.
Maybe I can speak to them just briefly as a way of
starting this morning.

In particular here we focus on the trial
portion of our operations, and specifically those
proceedings arising from the America Invents Act.
And we provide quarterly assessments of the number
of filings in the different categories, the number
of trials instituted, the number of trials not
instituted, and the termination of proceedings.
Also we indicate final decisions and the number of
trials pending. In the very last sheet of the
three sheet submission, we also have pendency
times indicated. Of course, these are preliminary
pendency times because we are not yet a full year
in the AIA realm and so will not have seen
proceedings, any great number of proceedings
through to their conclusion. The statistics will
be more meaningful probably after we reach the
first year point.
There are some key numbers to point out, however, and some qualifications about the information that may be useful. For example, a caution arises when looking at the number of trials instituted as against the trials not instituted. And here we have not included decisions included in the number, instances where there have been petitions, but not yet a decision.

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

We would caution against drawing any conclusions from that number, those numbers taken by themselves, because even in the several cases, the more than 100 where a trial has been instituted, there are several grounds put forward by the parties which have not formed the basis of the trial going forward, which is to say those grounds have been rejected. So one needs to think
of those decisions along with the instances in which the trials have been instituted or not instituted and the grounds there rejected in total to have a more complete picture of the number of instances in which trials are, or rather in which grounds are being moved forward and grounds are not being moved forward. So that's just one example of some further granularity to what you are seeing there.

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

Last year looking at all the federal district courts in the United States, there were 139 patent trials, which is to say our partial year number, because we still have 2 months worth of data to add here, our partial number for this
year has the PTAB holding as many trials as all
the federal district courts held in the entire
United States last year. And again, this is by no
means a total number, which represents, we
believe, something of a significant change in the
patent landscape.

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

Many of the slides that precede this one
speak to subjects we've talked about before, the
rate of expansion, number of new judges, where
judges are coming from, all those sorts of things.
These are slides we have not shared before but
which go to the types of things I was speaking to
just now with the distributed hard copy slides.

One will observe that in the Eastern District of Texas for 2012, the court had before it 1,266 patent disputes. And it led the country in the number of patent disputes before it. Looking at that number, that doesn't necessarily mean there were really 1,266 individual disputes because there's some consolidation of that number that is possible because of multiple defendants and actions that would be joined or handled together. But essentially, at least as to filings, there were some 1,200 plus of them. And it led the United States, in terms of district courts, with matters filed before it. Coming in second in the United States was the District of Delaware with 995 filings. Next, the Central District of California with 514. Currently, partial year numbers for the PTAB for 2013, we have roughly 430 matters already filed. Again, that's a partial year number, which means we are almost certain to pass the Central District of California, at least based on the number of
filings it had last year, which would put us behind only two federal district courts in terms of number of patent disputes that we are facing, which aligns with the number I was giving you earlier.

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

And the number of filings, for example, if we were to have 600, and if only 300 of those filings resulted in a trial, we would, nonetheless, have more trials than all of the federal district court combined, as I mentioned, because the settlement rate, for example, in the Eastern District of Texas, or rather, let me put it the other way, the number of cases which result
in trials, typically not more than 5 to 10 percent
of the total number of actions filed, it's
probably the inverse for the PTAB.

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

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

Let me as initial remarks just leave it
there and allow whatever dialogue you would permit
on whatever portion of the materials you think
best to spend the time on.

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

MR. SMITH: Posted already.

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

MR. THURLOW: So a quick comment I guess before I have just a few questions to follow up.
Yesterday we met for several -- for more than an
hour I had the pleasure of meeting with Chief Judge Smith and then Judges Tierney, Horner, and Boalick. I sent them a list of questions early
yesterday morning, and by the time we met at 1:00, they had most of, if not all the responses. So transparency and willingness to work with PPAC are greatly appreciated and sharing the information.

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

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

The issues that are still going to be daunting as a procedure is new. Of course, estoppel weighs greatly in many peoples' minds.

The settlement, we've seen some settlement so far.
That's going to be significant. Real party in interest is particularly important. I think the White House, it was one of the things in their initiatives. Discovery, I learned yesterday, and that continues to be a developing area. I believe Judge Horner mentioned there are some cases that were put in the PTAB web site dealing specifically with that.

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

So maybe just discuss in general ways that we can increase the flow of communication to the public, whether by providing the statistics that you gave us this morning or by making more
information available on PTAB so that the public
has that information when making their decisions
about whether to file an IPR or not.

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

Judge Horner also serves as the
Chairperson of our Published Opinions Committee.
And that Committee has been very focused with the
trial sections in looking at decisions which are
representative, informative, or presidential, and
those are posted as such on our web site. And we
think the collection of those materials, those
decisions, will help the people who are interested
to get some sense of what eventually may comprise part of a best practices description for practitioners.

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

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

MR. SOBON: Chief Judge, thank you very much. And I found especially your comparison to the district courts evocative and interesting. I think that, as you develop it, both highlights the magnitude of what you're facing and what you're
working to achieve, as well as it is a very
interesting comparison to the other available
routes for patent adjudication. So those are
interesting slides.

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

So I think the user community is very
concerned. And maybe you could comment a little
bit more. I know it's a little early in the day
again still in terms of statistics, but if you
could comment a bit about your ability to meet
demand, because I look at your statistics and a
lot is flowing in, and to be able to meet the 12
or 18 month deadlines are difficult.
MR. SMITH: I can tell you we are no less concerned than the user community. We see the work accelerating. And, of course, doing the work requires resources. This morning so far we've really talked only about AIA trials. That's our new and less substantial jurisdiction. We bypassed the slides that show the still 26,000 ex parte appeals awaiting us. Let me make a note about that portion of our jurisdiction for which we also need at least adequate resources just to hold our own and more than barely adequate resources to make any real gain, notwithstanding the tremendous upswing in AIA work. The hard work of the judges and others at the Board still leave us in a situation where we were able to bring the backlog below 27,000.

If you look at one of the slides which shows the numbers with some more granularity, we actually took the number below 26,000 for the first time in 18 months. It's a significant dip of some 1,100 cases in the backlog which we feel very good about. The number is now slightly above
26,000, but looking at our last 30 day report, which we take every 7 days, it will drop below 26,000 again in the very near future.

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

Our pipeline is filling with AIA cases now, initial determinations to make and being made. Beginning October or November of this year, we not only will have to deal with the inflow of
new petitions, but we'll have to deal with all the
trials and final hearings and final dispositions
that come about from all the filings that began
last fall, which means we will be double tracking
with new and existing AIA work with no delay
because, of course, the statute requires us to
complete the proceedings in a year.

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

MR. SOBON: The follow up I have to that
is, I'm sorry, one second, that with less judges,
it's still early days, but I've had a number of people comment to me who are facing trials right now at the Board that some of the things we were concerned about during the implementation of the rules and procedures for the Board are coming possibly to fruition. The patentees in particular are feeling they are not getting enough or fair discovery to have fair adjudications in their trials.

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

MR. SMITH: Yes. At this stage, I don't think any constraint on judge resources is impacting our discovery decisions. I think what parties are finding is that discovery before the PTAB is different than it is before district
courts. That's not a function in either the
constraint of judge resources at the Board or I
think a failure on the part of the Board to give
those parties seeking discovery what they're due.

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

I don't think we have made it that way.
And at any point -- well, we will be in a
difficult situation when judge resources in any
way impact the discovery decisions. We haven't
seen that yet and we will scream loud and hard for
the resources before we ever reach a situation
where any such decision is impacted by the amount
of judge resource available.

MR. FOREMAN: And a final question from
Marylee.

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

MR. SMITH: I will say this, we have
considered and reconsidered that matter a great
deal. At this point, I think we are fairly
definitive, at least for our new judges, no
hotelting and no telework. The judges are new, the
work is new to them. None of them have been
administrative patent judges before. And in
keeping with the policies of the agency generally,
we want new probationary employees to spend time
here and with us before we allow them to hotel or telework, which we do envision them doing at some point, but not initially.

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

MR. FOREMAN: A final comment from Christal Sheppard.

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

MR. SMITH: It would give us a lot more
work. We hope that Congress will see the wisdom of more resources to do more work, that to use ancient analogies, if you're going to ask more bricks of us, please give us more straw.

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

(Recess)

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

MR. FAILE: Thank you, Louis. Good morning. So we've got a lot to talk about today with respect to RCE's. First of all, I would like
to continue my thanks to PPAC, in particular Wayne
and Esther for their leadership on our
subcommittee in RCE's. We've had a monumental
effort so far. We've uncovered a lot. And we
have a lot of different plans to share with you
today on RCE's. So hopefully we'll have a very
good discussion.

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

So as a quick update on that large
piece, we are currently working with Robert in the
Patent Examiner's Union POPA. We think we have a
pretty fruitful path going forward. And what
we're seeing is kind of a steady state RCE situation that allows us to bring the backlog down, cage in those timeframes, help us conform more to 1444436 statutory timeframes for PTA.

It largely consists of two pieces.

We're looking at the work credit given to examiners for moving that work. And we're also looking at our work flow or docket management system. So we have a series of initiatives that we're working with the Union very productively now to try to get a steady state backlog for RCE's.

So that's kind of large piece number one, concerning with the RCE backlog and the age of that backlog.

Large piece number two which we're going to focus on today are ways to reduce RCE filings at the beginning, making prosecution more efficient. In looking at the data, our 1,100 or so comments, we've kind of drawn up a number of themes. We're going to focus today on four of the main themes. And the data repeats itself a number of times in comments on these themes. We think
there's some actionable items in each one of these themes. You're going to actually see a demo
today, a real tangible, concrete, first delivery
for one of the themes in the education part of it
that we think will be helpful for applicants on
the outside. So we're going to move through the
themes from very concrete and tangible all the way
to a very high level discussion on what we're kind
of characterizing as prosecution flexibilities.

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

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

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

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

So there's four of these high level themes, the first one of which is the quickest deliverable that we're going to be able to do.
And the basic general theme is, there's a lot of initiatives out there. It's not really clear how they work. We're busy. You know, the office does a great job announcing them, but then doesn't do a sustained effort for education and outreach in terms of what is available, how it's to be used. And there's, you know, confusion on the outside about what programs are in effect and how best to use them.

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

So we're trying to do a better job of getting people to understand that, both internally
with our examiners so they can make appropriate
suggestions, only suggestions, as well as the
attorneys so they can make appropriate decisions
about what initiatives to use when.

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

It's going to have several components of
it. We're going to do a quick demo. Let's see,
next slide. And there's no mouse. There's no
cursor. Okay. So we have a number of ways we're
presenting the material. This will be the first
page that people will see. What it does is, it
clearly has a horizontal timeline, if you will, of
prosecution, right. So you've got the salmon
color that goes prior examination, during
examination, and after close of prosecution. And
so underneath each one of those stations, if you
will, and prosecution, you can see all the various
different initiatives that are available during
that period of time. So if, for example, you want
more information about track one, all you have to
do is click on that box and you go directly to the
track one page. Could you go back?

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

Now, if you can click the salmon arrow
that says "prior to examination", please. Top --
there. All right. So here is an initiatives
matrix. Again, different people take in
information in different ways. And this is
showing this information in more of a table format.

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

If you hit the link at the top of the column, for example, track one, it'll take you back to the in-depth page for that particular initiative. So you get quick hit information, you get timeline information, and you also get a quick way to get to the track one, because another one
of the comments was, well, we know there's information on the web site, but it's really hard to navigate. So this is kind of an overall portal to all of this information, putting it all into one piece.

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

We plan on building more off of this, maybe have particular sites for paralegals, for information that is pertinent to their jobs, and just keep building on this. And hopefully this is an iterative process. As more people use it, they can tell us what is helpful about it and what we
can improve so we can keep changing this and improving it so it becomes as user friendly as possible.

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

Okay.

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

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

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

So you may remember that we have
launched this pilot called Quick Path IDS QPIDS.
And admittedly, this is helping one particular
pressure point in this IDS consideration puzzle.
And namely, it alleviates the pressure point for
IDS' that become available to applicant within a
certain period of time for which they can do a 197
E certification, but it comes from a foreign file.
So that's what the rule allows applicant, to go
ahead and file their QPID's fee, their IDS fee, as
well as a conditional RCE fee. If nothing in the
IDS changes, the patentability, then the case is
returned back to the publication cycle and the RCE
fee is refunded.

So that is working very well. But it is
admittedly, for a very small percentage of the
cases, namely for those IDS' for which -- that
come from a foreign filing. So a bigger universe
of IDS consideration cases come from IDS' that are
from domestic violence. And right now there's no
rules or regulations on the books that allow for
any kind of Quick Path IDS type, you know,
initiative for that. So we are looking into, you
know, what the ramifications could be if we were
to make a rule change and see if we could modify
197 E. Would there be a fee involved or not?
Because now we're talking about many more
references than what you're likely to get from a
foreign application after allowance. We have to be fair and equitable. And really, you know, the IDS or the information disclosure really stresses to get that information in front of the examiner as early on in the application prosecution process as possible.

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

There's also an IT component of this where it would be -- try to make it a lot easier for both examiners, as well as practitioners to see all the IDS' that are filed for a patent family. Because many times these applications are handled by different firms. One firm will have three or four of the family, another firm will have the others. And, you know, there isn't a lot of good coordination as to what information
disclosure statements have been filed. So if we could have them all in one place, the examiners would have access to it, as well as the practitioners. And then from there, there could be hopefully a judicious, and I really do stress the word "judicious" selection of which IDS' would be transferred from one case to another. So these are all very high level concepts. We need to see what the feasibility is for the IT business. And certainly there's fairly large ramifications rule-wise. But we're starting the initial feasibility research on that aspect of it. So that is a direct response to the second group of very high level comments that we received from the outreach initiative.

The third grouping here is a big umbrella term and it's really training. There was a lot of different components to this. Some people felt we needed better after final training. Some people felt we needed better clean construction training. We needed better training of our supervisors on how to be effective in terms
of reviewing cases and giving good guidance for
their examiners on how to best proceed with a
case.

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

So we have a number of high level
topics. I went through some of them, like how to
effectively review a case, how to better and more
quickly identify allowable subject matter and relate that to the attorneys after final compact prosecution practice, broadest reasonable interpretation. A lot of these we can also do mirror modules for the outside, if you all would be interested in that. And certainly if there's any other topics that you'd like for us to continue working on, please, we need your input on that, as well. So the sustained training will be another big pillar of this entire effort.

MR. FAILE: So just to jump in real quick on the training part, we're kind of looking at this in a couple different ways. There's a couple different themes, sub themes within the training theme, and one is training on patent practice and procedure. Remy noted a number of the different courses that we're thinking about, after final practice, better identifying allowable subject matter early. Broadest reasonable interpretation claim interpretation is at the heart of a lot of this. Drew Hirshfeld will get into that in the second top, the topic after this
topic. The other thing we're looking at is also, once the training is out, examiners have been trained, and we're actually doing the review of the work, mainly for the junior examiners, there's a big component there and a lot of different comments that were, or threads of comments that loosely kind of go into the oversight, management, supervision, the reviewing of the work, things of that nature. We had a very good discussion yesterday on this kind of high level part.

So the training has both the courses, the education of examiners on patent prosecution. The second part of that is the follow through, the oversight, reviewing of the work, a little bit more nebulous than actually putting the training classes. But there were a number of different comments that added into that execution of the examination once the training has been out there, taken root, et cetera. So that's another theme, kind of a sub theme that we're looking at under the training theme and starting to kind of develop some action items around that.
So any discussion or input on the training? I think this would be a good time while they're working on getting the slides back up, which they look like they are now. This would be a good time to break for that if you guys had some input on that theme.

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

That timeline that Remy showed I think is excellent. I think that's going to be a great addition to the web site, because I do think that people don't know all of the things that are available. People are busy and they miss the
announcements and things. So I think that is
going to really be embraced. And, you know, we
just look forward to working with you on all of
these.

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

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

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

It's really, really -- I think it's been a great partnership for us to work with you and I'm really pleased with all the efforts you're coming back with.

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

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

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

MR. FAILE: Thanks for that, Wayne.

That would be a good addition to have. Again, the
general theme of trying to present the multitude
of programs and the multitude of different kind of
help centers to some degree that we have at the
office where one can navigate through that as
easily as possible, it's right along the same
theme we're thinking.

MR. HALLMAN: I was sitting here trying
to think of something pithy to say. And the one
thing that comes to mind is, an occurring comment I hear from practitioners when I talk to them about RCE's, and one thing I would want everybody to keep in mind is that -- one of the concerns I hear expressed is that, for those people who represent smaller companies that don't have a lot of resources, anything you can do to prevent a filing of an RCE really makes a significant financial difference to some small companies.

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

I think the things that the team has been doing on RCE's has been very creative. I think there's been a real effort to, you know, really come up with some ideas that are going to try to help push against this issue.
This is not to say that we on PPAC are probably going to go away. I think we will continue to be like hopefully big bees buzzing around this whole issue. But I do want to say that, you know, some of the things that people do really do have significant financial impacts for small companies.

MS. KEPPLINGER: Just to reemphasize that, one of the things that I have realized over the last few years is the significant difference that it can make with the track that the examination takes based on the examiner. Because one examiner could be very efficient and understand all the arguments and get to allowance quickly, where another can be not quite getting the invention, not willing to accept the arguments or take the, at least from our perspective, the correct legal approach. And it is dramatically different outcomes in terms of economics, which I represent mostly start-up companies, and that is a significant difference and one that's outside the control of applicants. So anything that you can
do to address a more even prosecution within the
office such as some third party arbitration, other
than having to go to the board, would be great.

Thanks.

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

And it may not be that person, but when
you're thinking about training for the examiner
core, in a similar way, making a human face to the
face of the applicants who are actually filing for
cases, and maybe having some filmed vignettes with
some small business people of how important
going to patents efficiently and effectively and
quickly is to their ability to get funding. In
her case, it made a difference. She had to fire
people because the funders would not give her
further bridge financing because she couldn't get
patents issued that demonstrated she had a viable
technology. This has a real world effect on real
people, because I think it can be -- on both
dimensions it becomes more of a paperwork and
exercise. But there are real people below the
surface of this. And I think conveying that to
the examiner core in an effective way, I think it
could be very powerful that they remember that.
Maybe that already have that opportunity, but that
would be very useful.

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

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

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

And as an examiner starts to learn their
job, the hope would be that they have a good appreciation of the actual work they do and how it reverberates out into the community. It's an excellent suggestion.

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

MR. BUDENS: I can't let this conversation go by. I must be tart and pithy. I got you both. A couple points. One is, you know, Remy made the comment that we can make this, you know, these kinds of training things available to both sides. And I hope like the dickens that all of you on the outside will take advantage of doing that training, too. Because I sit here and I hear all your comments and stuff and I know, you know, from many years of experience in this job that there's problems on both sides of the table. There's attorneys who don't know how to argue.
There's attorneys who don't know the science. There's attorneys who couldn't, you know, argue their way out of a biotech case because they were trained in electrical engineering, whatever. I've seen that kind of stuff, too. So I think training is good. I think it's much needed. I agree on that point. I hope it goes on both sides of the table.

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

Our decisions are based on the statutes, and, you know, none of the 1012, 3, or 12, you know, stayed. And don't forget that there's, you know, people on the other side of that coin. We're all interested in wanting to stimulate the economy the best we can by getting patents out as
fast as we can and getting to allowable subject matter, but we also can't lose sight of the fact that, you know, our position as examiners is, we have no vested interest, you know, pro or con to the issuance of a patent.

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

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

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

MR. THURLOW: So again, I echo all the
comments that were made -- I think the success is
in the numbers, from 110,000 to 96,000. It's
clearly a significant drop. I'll just follow up
on one main point that we discussed yesterday that
Marylee mentioned. The after final pilot program,
I think it's been a success overall. But the
feedback that we're getting from the field is
still that people on both sides, as rather
correctly said, aren't familiar enough with the
program. And then the feedback we're getting from
examiners is that three hours is not enough. So
as the PTO reviews the program, considers changes
with the Union, maybe upping that three hours, if possible, I'll let you deal with those specifics, to more time, whether it be, four, five, or six, I don't know what it is, I think that would be really beneficial for the examiners to use the program because we are finding that, in many instances, that three hours is not enough.

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

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

MS. KEPFLINGER: Just one final comment.

The goal of working the 14 months for the RCE's is an excellent one, and hopefully you can get something accomplished there. One concern I have is the tail of RCE's. As an average, you could still have significant numbers of cases that are far older than that and that's a concern. Thanks.

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

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

MS. SHEPPARD: I just hope there's
enough time to go over your last slide. One of
the things is about the PCT style search. We
talked about that last time. And I'm wondering
how you're going to implement that.

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

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

So what we mean by Lego pieces is that
there is an understanding or a perception, a
feeling, whatever you want to call it that for
certain applications, not all of them, but for
some of them, there needs to be some increased
flexibilities in order to get both the applicant
and the examiner on the same page earlier on in
prosecution so you don't get to that final before
all the issues have been fully developed.

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

And there's a number of difference
pieces. We're really not sure how they can all
fit together. So we're really looking for input
from you all on this. But some of the high level
concepts in order to increase flexibility, and
again, some will be better for certain cases and
others will be better for others. For example,
we'll start with the one that Christal brought up.

This was in Dallas, but it played out in other venues, as well. And the comment was, well, sometimes we write out cases or our claims, excuse me, kind of in the dark because we don't have the benefit of a search report before we file the case.

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

So all of a sudden there's a better synchronization closer to the beginning of the process as opposed to now you're at final and, oh, now this is what you're claiming and this is what
you really want. So this is one avenue.

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

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

So it's not necessarily always, in my
mind, the attorney coming and telling the
examiner, well, this is what it is, this is what
it is, it could also be a two-way conversation,
well, I see these claims at a very high level, I
see what you're trying to claim, but this is really not saying what you intend for it to say, you know, let's start from there.

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

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

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

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

So this would be another way to kind of break out of that habit cycle, right. So you get a final, oh my gosh, the only thing open to me now is an RCE. So maybe have a concept in there where you can file your RCE, nobody is saying you can't,
but give that after final amendment a try and work very closely with the examiner on how it's to be crafted so when it comes in, there's no big surprises on either side. So those are a lot of Legos, Tinker toys, whatever you're, you know, set from your childhood was your favorite.

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

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

I'd like to turn the floor over now to
Drew Hirshfeld, Deputy Commissioner for Patent Examination Policy, and Janet Gongola, Associate Commissioner for Patent Examination Policy, to give us an update on patent quality and the AIA training update.

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

The first meeting looks like it will be in mid October. It looks like October 17th is the date we have slated for that, and we'll be in Silicon Valley. The second one will be here in
Alexandria, and it looks like it will be on October 28th. We are still finalizing the plans for those, but there should be notice out at least for the October 17th one in Silicon Valley very shortly -- partnership meeting, we will plan on discussing some of the White House initiatives. I'm going to get into some of that here today, specifically the tightening or the scrutiny of functional claims. And we'll get into the rest of the White House initiatives, as well. We'll also give some feedback from the prior roundtables, themes that we heard, what we are doing to address that. And incidentally, the White House initiatives mesh very well with what we heard from the public, much about tightening functional -- excuse me, scrutiny of functional language with the use of 112, et cetera; all avenues of 112. So we will address those at the Silicon Valley roundtable. And then, we'll get into a discussion of the potential use of glossaries in prosecution. That's something that the White House specifically mentioned in the executive action items that came
out from the President. And I will talk more about the glossaries in a couple of minutes.

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

Okay. I'm going to turn to one of the executive action items from the President's statement, and this is to tighten the scrutiny of functional claims. And I've talked about this
with PPAC many times. Actually, functional language was, even before the White House statement was -- it's one of the topics of the original roundtables, and we envision in the big picture, training to be ongoing and continuous as it always should be. But we envision, with regard to functional language, a whole number of training modules that will come out over the course of time that will address all aspects of functional language.

It will get into all avenues of 112, (a), (b) and (f). It will get into when you have functional language where 112 (f) is not invoked, for example. It will be very comprehensive, ongoing. We've started that with 112 (f) training, which has been underway for some time now. We've just completed training for all examiners on 112 (f), specifically identifying when you have a 112 (f) limitation, and then a second training module on steps examiners can take to clarify the record regarding whether they've determined you have a 112 (f) limitation or not.
I'm going to pause and hesitate on the clarifying the record issue, because that's a theme that we want to work into all of the training. The clarifying of the record is very critical, very important. And actually, we've created to the theme of jointly working with Robert and his folks -- we've created a team of management and POPA members to exactly address this issue. Where can we best clarify the record? How can we do it? How can we be most effective? If you take into consideration some of the ideas Remy was considering with the shorter office actions; how do we be efficient in doing this? Those are all issues that we're considering.

I also would like to make it clear that all of our training materials, we are posting on the web. And so, what we have done for the 112 (f) for the two modules that are out there is created Computer Based Training modules. Those went to all examiners, and one of the reasons for doing so is the consistency issue we've heard here today and elsewhere. We want examiners working
from the same materials, obviously, though
tailoring examples for their technologies, but the
same basic materials are going to everybody. And
all of those are available right on the USPTO web
site.

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

Okay. I've mentioned improving claim
clarity. We're attacking this in a number of
avenues. As I mentioned, 112 (f) came out with a
separate module on clarity. As we continue to
roll out training, we envision including what
examiners can to do to clarify the record. We're
also looking at other avenues of how we can do
that with focus groups, et cetera. And I know at
the upcoming AIPLA partnering in patents event
that will be on October 23rd, there will be a
section devoted to exactly getting some more feedback on what we can do to better clarify the record.

Previously, I mentioned the glossaries. I also mentioned with clarifying the record -- we're working with Robert. We also have another team which is joint management and POPA members working on the glossary issue. And again, the White House has asked us to consider this as one of the potential initiatives for improving claim clarity. So we are exploring the possibility of use of glossaries in prosecution through that team that I just mentioned with Robert. This will be a topic, as I also said, at the Silicon Valley roundtable, and I envision there will be some sort of pilot that we go forward with where people can opt in and have a glossary and we'll evaluate the effects of the glossary. What we'll have in the near future will be a notice that will come out announcing the roundtable, and then also seeking some feedback on the glossary issue. And there will be a number of questions trying to get some
specific feedback and guidance of how we can best
incorporate a pilot program.

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

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

MR. SOBON: Can I ask a question?

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

MR. HIRSHFELD: Yes. So there's a number of ways that we have approached exactly that issue, one of which is some of the roundtables, like the software partnership roundtable. We started to get feedback from people in the room about topics we should train on and some specifics. We've also -- you know, I've
had many people come to me -- Back when Dave Kappos was here, we had actually reached out to a number of people to get input on some real world examples and where we can help focus.

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

I know also, with some of the Bar groups we've explored this, and even as late as this morning, Andy and I were just talking about some work with the ABA IPL section where they are looking at creating potentially some companion documents that would work with our training and that we'd be able to take a look at those and be able to see -- you know, just have a two way back and forth. We can see what they're pointing is the hot points that they're seeing, et cetera. So I think what you're saying is great.
112 (f) was something that's been in the works for a while. As we proceed down other avenues, we are going to need to get increased input. Like I see certainly, 112 (a) in the electrical areas is more of a controversial topic, I think, certainly than say, 112 (f) is. And I certainly see us you know, working with the public through the roundtables and other means to make sure we're getting the right feedback.

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

So to the extent you can provide an update on that and some discussion. The reason why it's important, it's just not functional language or functional claiming and so on. In my
opinion, I think the majority of examiners do a very good job examining the claims in light of Prior Art. But sometimes, you know, in litigation, what we do with the post-grant work, each and every word is really scrutinized and reviewed. And I'm not sure what level -- the examiners do that, but that's part of the litigation world, I guess. But I guess my comment is, focus on all of 112 and the use of that is something that should be emphasized even more.

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

One of those next steps, in addition to being training on things like 112 (f) was to better track the data so that we can take a better
look down the road. So we actually are in the final stages of improving our data capture, so when our Office of Patent and Quality Assurance specialists are reviewing cases, they're better capturing the types of errors, where they are, how they were made, et cetera, where good office actions were made. We're trying to just get a much more comprehensive view of the statistics that result from the actual office actions, so we can better inform what to do next. So we have certainly changed that.

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

MR. HIRSHFELD: Yes. And I agree, and the 112 (f) was a starting point, not an ending
point. And there is much more to follow, and as I said, you know, we envision -- you know, Peggy, Andy, Bruce and I have had many, many conversations about the ongoing nature of training in this area as well as other areas. But certainly, again, 112 (f) is just the starting point, so there will be training that will continue on all of these topics.

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

MR. FOREMAN: Louis?

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

Another question I want to go to is the glossary and the clarity issues. And at the outset, we are trying to work with the agency on this one. We have a team, you know, trying to figure this out. For the life of me, I have not figured out why the White House is getting this far into the weeds, but on stuff like this glossary issue -- before we go down the path of a pilot of some sort, has the agency gone back -- and I'd raise this at the team, but -- has the
agency gone back and just done a search of patent
applications that already had glossaries in them,
and tracked the history of those cases
retrospectively to see, you know, did having a
glossary in the case affect the prosecution
history of the application?

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

MR. HIRSHFELD: I think Robert, you
raise a very good point; a point that was raised
to me after you raised it with the team. And so,
we are certainly going back and trying to identify
cases where we can get helpful information from
glossaries, either ones that are completed or
cases that are pending right now. So I see this
moving in parallel, you know, based on your
feedback, to go down that path. We see that going
in parallel with the team's work as it proceeds
forward to try to see how we can also move
forward.

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

And I know a number of the PE2E to the
tools are intended to provide that for the
examiners to have an easy way to find terms that
aren't found anywhere in the specification to do that, which is also very useful, I think. But I think that's the simple answer -- not that we have to put up some sort of table that war equals peace and love equals hate (Laughter) and make those infinitely regressive sort of things. But just sort of have that on the record. I think that's the simpler answer. But anyway, that's me.

MR. JACOBS: Yes, very quickly. I need to clarify the record on behalf of all the UC Berkeley alumni here, that Berkeley is not actually located in the Silicon Valley, although it may be near the Silicon Valley office. (Laughter) And then, to build on Robert and Wayne's comments, I think the same thing may be happening with the glossaries that happened a little bit with the 112 (f) discussion, is that the 112 (f) discussion was one idea of a possible approach to a much broader problem, which had to do with section 112 issues related to claim scope. Right?

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

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

MR. JACOBS: Right.

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

So I'm going to move on to my last two slides, and interestingly, going from a discussion of clarity to the CLS Bank case (Laughter). So I'm going to go quickly through the last two slides, more to say that guidance on these two cases, the CLS being one and Myriad being the other case, initial guidance was given and is also on the web site that you can locate through the same link that I spoke about earlier. As Terry mentioned this morning, certainly, with respect to
Myriad, we are looking at additional training. We envision in the near future to have training on the reach of Myriad, since there's been numerous questions, of course, about you know, does it reach past nucleic acids? If so, how is that accomplished, et cetera? So we do envision the next step will be to address that issue in training, and then followed by more TC specific examples of both Mayo and Myriad and how they apply to specific technologies.

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

MS. GONGOLA: Thank you, Drew, and good morning. It's always a pleasure to speak with
PPAC. May I please have -- thank you. So this morning, kind of I have taken that a couple of themes have emerged. One is training and another is -- training internally and another is education of the public. And coincidentally, that's what my presentation about AIA implementation focuses on.

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

There seems to be a problem. I'm not quite sure where the training slides are, so I think those in the room -- there are copies available. PPAC has received a copy, and apologies to those on the web site. We will have those slides posted for you over the lunch hour.

So, maybe if we -- for those of us in the room,
I'm going to start on slide 2 of the handout. On that slide, we want to provide an overview of how we're handling the First Inventor to File training --

MS. FAINT: Is this it?

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

Additionally, we've chosen to do the training in a variety of ways. Lectures, practice exercises and then, a hands-on workshop involving a discussion with the examiners where they apply the framework to a mock examination case. Further, we're making all of our training materials in computer based training form or CBT
form, so that they can be stored in a library and accessed after the fact, both by examiners as well as the public. And I'll show you how to access those materials momentarily.

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

Further, we've made a series of videos available to the examiners. These were videos that they had to watch before attending the training sessions. They dealt with kind of a high-level overview of the framework, new definitions that the AIA introduced, as well as
other AIA related topics like Inventors Oath or Declaration. And we've provided, lastly, examiners one set of practice exercises where they took mock fact patterns and had to analyze it under the new statutory framework, and then we walked through the answers with them.

Moving to slide 4, this slide lists out for you future training that is expected. We are planning for a workshop, as I indicated, and this workshop takes an actual case -- or a mock case and allows the examiners to apply a variety of different Prior Art references to the claims in that case to determine whether they are indeed, Prior Art, or they fall out under an exception. The workshop also gets into the issues of how applicants might raise exceptions for the examiner's consideration, so the examiner will know what to expect in actual prosecution. We will roll out this workshop next week for the design examiners, and then, throughout fiscal year '14 for the remaining examiners. We likewise have a few more videos being planned to cover for
examiners how to do know if they do have a First Inventor to File case on their dockets, and how to handle affidavit and declaration practice under the First Inventor to File provision.

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

The second way is, we have a team of TC AIA specialists. There are 60 members of that team that we've armed with additional training to handle the First Inventor to File issues and questions that they may resolve. And then lastly, we've created a First Inventor to File e-mail that examiners can submit a question to and receive an
answer within 24 hours.

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

The slide gives you the address, and then I have a screen shot showing the micro site. The circle highlights the examiner training section, and at the very bottom of that section, so that the public can provide feedback to us on the scope of our training, any missing information, we have contact information so they e-mail directly to me to indicate here's what we think of the training. Here's what we'd like to
see next. So that kind of gives you an overview of First Inventor to File.

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

So on the patent side, we plan to cover prioritized examination or track one, pre-issuance submissions, supplemental examination, the Inventor's Oath or Declaration provisions as well as the micro entity discount. And we'll be doing that through a series of short vignettes on those topics; some slides, some little hypothetical fact patterns to walk through, some true/false exercises with the audience. Then, we'll move in to demoing our First Inventor to File workshop
that I just talked about, so that all of you can understand exactly how examiners are being trained to handle a mock application.

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

And now, my last slide, 10, to the extent that you can indulge me for even 30 seconds more, I'd like to kind of open the floor for your feedback on AIA topics where you believe the agency might need to do further work, or future AIA events that you think might be helpful, like roundtables for the public, either to provide education outward or perhaps, to collect feedback into the agency about various proceedings that we
have in place. So, I welcome any suggestions on this front.

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

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

MS. KEPPLINGER: Two quick things. You have an e-mail address for examiners to ask questions about First Inventor to File. I think
the public might also benefit from something like
that -- a help desk or something as it starts to
be put into place. And also, you mentioned that
the training materials will be put on the AIA web
site. Hopefully, also consolidated onto the -- I
think they have a front page training area, so
also consolidated there so that everything is in
one spot and it can be quickly found there, as
well.

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

MR. SOBON: Really quick. We talked
briefly, you and I, about this yesterday. This is
great stuff, and I think it's great to have this
two year anniversary -- two years in person and
meeting. I think the PPAC, my sense of it personally would like -- and maybe some rolling basis based on when the provisions were implemented in terms of we reviewed and helped you craft the implementing regulations on the various provisions, to have some sort of orderly look back at one year out for each of those provisions as we're moving forward, to collect feedback from the public about how well those regulations are working.

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

MS. GONGOLA: Thank you very much. Yes. We always had indicated when we were implementing that this was an iterative approach, and we would go back and look over time, so that your suggestion feeds nicely into the approach we plan
MR. FOREMAN: Any other comments or questions for Janet? Well again, thank you Janet, for your time this morning, this afternoon, and this brings us up to the lunch hour. We're a little bit behind, but that's okay. No one wanted an hour for lunch, anyway. We are scheduled to pick back up at 12:50, so we've got a little bit less than 50 minutes for lunch. And if I could just remind the members of PPAC, we are going to get a briefing from Richard Malsby and Elizabeth Daughtery on some of the initiatives with the Smithsonian, and that will be over our lunch break. And members of the public are welcome to attend that, as well. So right now, we are going to adjourn. It will be in here. Please grab your lunch, bring it back at 12:20. And so, from 12:20 till 12:50 we'll have that presentation from Richard and Elizabeth. Thank you.

(RECESS)

MR. FOREMAN: We're back from our lunch break, and hopefully, some of you were able to
listen to the presentation by Richard Malsby and
Elizabeth Daughtery on the Smithsonian event.
Additional information on that will be posted
shortly online, but for those of you who are just
joining us back from the lunch hour, we have a
slight change to the schedule. We are going to
lead off in the second half of our session with
Tony Scardino, Chief Financial officer, and then
Dana Colarulli will give us a legislative update
immediately afterwards. So with that, Tony, I'd
like to turn the floor over to you, if everyone is
ready, and we will allow Tony to give us an update
on finance, budget and the all-popular
sequestration.

MR. SCARDINO: Well, with that opening,
I'm going to have to rethink what I'm going to
say. Well, thank you. It's a pleasure to be
here, as always. It's an interesting time, as
always in the finance world of the Federal
government when we're nearing the end of a fiscal
year waiting to see what's going to happen October
1st for the next fiscal year while we are busily
preparing a budget to go to the Office of Management and Budget next month for the following fiscal year.

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

So, what we did to manage this year, of course, is we made several budget reductions as we were dealing with sequestration and some lower fees earlier in the year. And a lot of that, I think we explained earlier or previously was in the area of IT. Those things are a little more discretionary, not that they're not very important
and critical for our future. They were things that we could cut rather than doing things like RIFS (Reductions in Force) or furloughs or cutting overtime -- all things that were producing revenue that were in the plan to get us to the workload that was coming in.

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

So where we are now? On the plus side, actual filing rates have been trending 7.5 percent above last year. We had predicted closer to 5 or 6 percent, so 7.5 percent is really, really, really positive. The flip side to that is, of
course, with the filing rate comes work. So with the money that comes with that work, 8.6 percent of those fees are sequestered, but we still do a hundred percent of the work. It still sits in our queue.

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

We're currently running about $30 million ahead of our revised plan levels. In other words, after sequestration and after the new fees went into effect, we took a snapshot to say, what do we think is going to come in by the end of the year. That trend, we're running a little bit
above that. That's very positive. That's enabled us to turn on some limited, things that we had turned off, or I should say that we kind of reduced from our budget line activities, and it's also helped us to prepare for fiscal year 2014, which I'll go through in a minute.

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

As proven this past year, it was only because we had an operating reserve that we were
actually able to kind of survive through some of
the bumpy times that we had earlier in the year.
So at the same time, we're trying to prepare for a
continuing resolution. Now, everyone who follows
this closely knows we've had continuing
resolutions something like 32 out of our last 35
years. They almost happen every year, so we
always plan for them. This year, everyone is
saying we're going to have one. It's literally
impossible for them to pass all the budgets before
October 1st.
So we'll have a continuing resolution.
But does that mean we'll have one for two months,
six months? We know there won't be a full year
CR, at least not right off the bat. They may
eventually get to there. So to give you some idea
of what that means, a continuing resolution means
we live at last year's operating level. Well,
what level will that be for fiscal year '14?
We're not really sure. Is that the post
sequestration number or will it be the
appropriated number? We're not sure. No one is
sure, because sequestration is something that hasn't been decided yet.

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

So that's a positive.

And then fiscal year 2015, as I mentioned, in the next month or so, we submit a budget to the Office of Management and Budget for fiscal year 2015. We will be providing you a copy to review before that, so you know, we asked for a kind of due diligence and we're willing to have a
conference call, whatever is necessary, to go
to anything that's in there. We don't
anticipate any surprises. I don't think you'll be
surprised, because it's kind of the same direction.
Right? We're trying to get pendency and backlog
back to where we want them to be.

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

And the last thing I kind of want to go
through is the Strategic Plan. We're not sure if
we've mentioned this to you before, so we
wanted to be sure to do so today. You will be
seeing a draft framework for our Strategic Plan.
Now, the Strategic Plan has to be updated every
four years, typically about a year after an
administration starts. So, our new strategic plan
will cover the years -- fiscal year 2014 to '18, a
five-year period, and it's due to Congress with
the President's Budget the first Monday in February. So, roughly six months from now.

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

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

If you were around four years ago, it was a very studied process and we went around and had road shows and sought comments everywhere. I don't know if it will be that extensive this time around, because it's a continuation, like I mentioned. Our vision and mission is not changing. Our strategic goals won't be changing, but some things that were in our plan four years ago, like getting a sustainable funding model or
you know, authority to set our own fees, we've accomplished those things. So they come off the plan and we can put some new things on that have to do with maybe IA implementation. So we don't think you'll see any surprises, but we'll be talking certainly in the near future. That's pretty much all I've got.

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

The problem is that what we're going to see -- there are short-term effects and long-term effects. And the long-term effects of sequestration and the fact that all the user fees are not being put into the system are going to be hurting the people who are actually paying the
increase in the fees right now. So that
additional 7.5 percent increase? Those are the
people who are going to be on the losing end of
the 5 percent decrease in the user fees going to
the PTO.

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

MR. SCARDINO: It's a great question.
And I mean, it's obviously something we struggle
with every day. I mean, the last thing we cut,
obviously, is people, because people help generate
the income that keeps this place going. Right?
And that's our mission is to provide services to
the folks that request patent applications or
trademarks. So you know, once you figure out what
of your budget is fixed, i.e., salaries,
comp, rent -- those are your fixed expenses. That gets to about 90 percent of our budget, if you include the maintenance and operations of our IT systems.

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

Some of these systems, of course, were scheduled to replace aging systems. And if the aging systems start to fail, that's where we have a real
problem, on the production side of the house. If PALM or something like that goes down, we have a real problem. So it's great that we started this conversation really positive. I'm trying to get back to that point.

(Laughter)

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

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

MR. SOBON: Yeah, great.

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

So when I say the operating reserve, it's different than the fee reserve fund, of course. The operating reserve coming into this year was about $111 million. We think -- when I say it's growing, it'll probably end the year at 120 million or 130 million or some number like that, because what happened was, we cut spending
back in March when sequestration hit, and then fees have come in a little stronger than what we thought they were going to between now and then, so we didn't turn on the spending as fast. It's just not possible to do with things like IT development. So the plus side to that is the operating reserve grows a little bit, which gives us a little more leeway in fiscal 2014.

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

So to take fees that users are paying into this office that were intended precisely by
AIA to provide examiners, judges and IT systems to exactly (inaudible) but not arguing to do over the last five to ten years, which is improve the basic infrastructure and plumbing of the organization to create even better final products and better patents of higher quality. So you know, it's a matter of some irony, if not tragedy, that this is happening right now. And so it's of extreme anguish to a number of observers in the external community about that this is happening, and obviously, you know, again, I just echo you are doing a valiant job in the face of this headwind to keep what you have been achieving, achieved.

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

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

MR. SCARDINO: Yeah, we recognize that,

too.

MR. FOREMAN: Other comments for Tony?

MS. SHEPPARD: I could just follow onto
that to say that an area of additional concern in
addition to the President's requested, it put
additional burdens on the PTO are things that are
going on in Congress that may expand the role of
the judges, et cetera, that are just going to have
additional when AIA implementation is still not
complete. There are some other things that still
need to be done that probably are going to be on
delayed timelines, but I understand are still in
the process.

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

MR. FOREMAN: Satellite?

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

MR. SCARDINO: To a certain extent, it
depends on the office. But I will tell you, in
fiscal year 2013, we've delayed some activities
that would have supported opening the offices, not
because they're not a critical initiative, but
that they were new recurring costs, and our first
priority was, like you said, to take care of
mission related activities here in the core. We
are hopeful to open all of the satellite offices as directed in the near future. And having full access to fees is going to enable us to do that.

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

MR. SCARDINO: Thank you.

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

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

MR. SCARDINO: Anytime, broker. (Laughter)

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

MR. FOREMAN: I'm sure there are more
questions than what we had.

SPEAKER: He just left you (Laughter).

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

Let me start with this one thing I just want to add to, based on Christal, your question to Tony on the satellite offices. You know, I think it's fair to say from the PTO, we don't necessarily see these offices as you know, an
additional thing to do, simply focused on outreach
or even establishing a presence. The intent of
them even from the beginning, was to add to our
operational capacity.

So it really is unfortunate. It's
certainly the right decision to make, but
unfortunate that we had to delay some significant
things with the satellite offices. I say that not
only because there's great interest on Capitol
Hill, certainly for us to at least have a
presence, even with the relatively minimal jobs
that they would create in those areas. Certainly,
they see the PTO in those regions as playing an
important role to building the resources they have
to spur innovation in their areas. We certainly
see that, as well, but there really is a core
operational context, too. So enough to say from
-- at least from the seat I sit in. Certainly
again, right decision to make, given the budget
that we're dealing with, but unfortunate, because
it really will continue to support a lot of things
that we've been doing over the last four years.
So with that, let me give the legislative update. Many have called this Congress the greatest do nothing Congress, or at least it's shaping up to be. We're only in the first session, so hold your judgment until the end. I've been told the exception to the do nothing is IP. I also think that if you're trying to rate do nothing on the activity, well, there's been a lot of activity in the IP space; at least a lot of conversations. And conversations about patent issues stemming from or flowing from some of the changes in the AA, but then focused on patent litigation have dominated a lot of the discussion.

The White House has certainly weighed in. We've been at the table helping to think about the best ways to address some of these issues that were addressed in the AIA, but maybe there's more that can be done both here at the PTO and in the courts. So, from the Hill perspective, they've held a number of hearings, four, at least three of which really relate to -- specifically
relate to patent litigation abuse. A fourth one in front of the Small Business Committee really focusing more on AA implementation and resources we provided for small business.

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

Continuing with hearings -- hearings on the copyright side. Again, a large number of discussions and hearings focused on reviewing the copyright statute. And I wanted to give a sense of the split attention span of at least the House judiciary committee. The first hearing I list there is not in the judiciary, which is our core committee of jurisdiction, but in front of Energy and Commerce. There is a split jurisdiction here, especially as they relate to issues -- copyright
issues related to the Internet and regulation of
the Internet. And this one in particular was
regulation of a satellite television law.

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

Like in the patent context where the
White House stepped in and gave some fuel to some
of the proposals that we're seeing proposed in
legislation -- in this area, the Department of
Commerce, and the engine of which being the USPTO
and our colleagues at NTIA issued a copyright
green paper just a few weeks ago. We hope that
that will be fodder for some of the additional
congressional hearings that we are expecting,
probably in the fall on the copyright issues. We
don't expect legislation necessarily to be
introduced right away, but certainly, hopefully,
our report will be a contribution to the issues
that they're reviewing upcoming, as I said, in the
fall.

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

So at the last PPAC meeting, I started
to talk somewhat about these issues. This is the
White House announcement, and I wanted to spell
out the content of that announcement and talk a
little bit about what we've been doing in terms of
outreach. Five executive actions, four of which I've listed here which fall in USPTO's homework assignments list; various folks from around the agency, certainly patent operations, certainly our legal counsel, the Office of Policy and External Affairs and many others helping to implement these seven legislative recommendations. And I'm going to show in the next slide how they have translated it into some of the legislation we're seeing up on the Hill.

On the executive actions, we've been at the agency beginning to do more outreach, meeting with a number of trade associations and organizations that have been looking at the legislative proposals. Our goal is really to update them on where we are on implementing the four executive actions. And we've gotten a very good feedback from that; I think very consistent with the other announcements that the White House has made. They've given support to things that Congress should spend their time focusing on, things that Congress could do and consider to
improve the system as a whole. That's the case here. But notwithstanding potential congressional action, there are things that the agency can do. Those find their way into the executive actions. We agree with those and we're moving forward on them quickly.

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

This is a little bit moved in the direction of, well, what's the actual abusive activity that we're trying to stem or limit that's really manipulating the litigation system and
making the value of a patent not what it used to be. Well, that's what this list reflects, I think. It reflects a look at various litigation related provisions that go to costs. Fee shifting certainly is still there. Pleading standards, limiting discovery where appropriate, even giving some additional fuel to imposing rule 11 sanctioned where appropriate. We've seen those proposals, as well.

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

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

So that's your quick, at a glance of the legislation that's been introduced. I do expect additional bills to be introduced. I think there are, as I said to the legislature subcommittee yesterday, there are some primary vehicles. We have certainly one on the house side, and eyes are on the Goodlatte bill. I think we can expect at least a new draft, if not a bill introduced come
fall to move the House process forward. The other
bills that have been introduced, certainly they
represent members that care about these issues and
would like to be a part of that discussion going
forward. I think you'll see a lot of those issues
that they raise included in whatever vehicle goes
forward, or at least offered as amendments when
these bills move to markup. I think, as I said,
the next phase in this at least on the House side
is going to be moving these bills to markup.

A couple slides on just other
miscellaneous issues that we're -- initially in
this legislation that we're following. Certainly
budget, the bill that Representatives Honda, Eshoo
and Lofgren introduced to remove PTO from the
impacts of sequestration. It doesn't seem as if
that bill will go forward. I know Mr. Honda has
approached appropriations Chairman Wolf about
amending his bill to include those provisions.
Again, unclear whether those would be adopted, but
certainly there has been some active discussion on
the California delegation interested in us moving
out to their home sooner, rather than later. And
I expect some of that to continue.

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

Another promoting startup innovation act
by Representative Chabot. That's a simple
expansion of the micro entity category of
applicants that was created under the AIA
increasing the number of relevant patents from
five to seven, increasing the gross income limits,
as well. So expanding the scope of that pool
slightly. Equally, issues related to trademarks
-- anyone recognize what that bill is? Any trademark people in the room? That's the Redskins bill.

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

Other issues and other considerations, at least for the 113th Congress for my staff in terms of outreach and in terms of other issues that we've being asked about -- I mentioned the green paper already, and that we're briefing the Hill on the contents of the paper. This will be a multiyear process, but it's a good restart of the discussion, we believe. Continuing interest on the satellite offices and continuing pressure to
us, even in light of sequestration, to really identify a timeline. It becomes very difficult for us for the reasons that Tony had mentioned, given that it's really unclear what will happen in the remainder of the term that sequestration may impact both this agency and the rest of the federal government. We like the attention, but difficult to give a definitive answer when we may be able to move forward. There are things that we can move forward with, so we're looking at those.

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

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

Nominations. We have a new Secretary of Commerce. We have a new, very esteemed judge on the federal circuit. He has great background. We're very happy about that, as well. You had a presentation earlier from Richard Malsby. I won't talk too much more about the partnership with the Smithsonian but to say that we have been trying to engage Hill staff in understanding the role that we see and the benefit of the partnership, and particularly, bringing folks up to see the exhibit at the Smithsonian right now. Actually, it's not build a better -- it's actually inventing a better mousetrap, and you know, to up their traffic, I encourage all of you to go visit if you haven't. It's a great exhibit. We brought some Hill staff up there. It's a good way for us to engage them
in a very different environment, something interesting but also enforce the importance of our well functioning, our operations, access to fees certainly is an issue that always comes up.

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

MR. FOREMAN: Great. Thank you, Dana. Comments or questions for Dana? Christal?
MS. SHEPPARD: A couple of quick comments. One is, I mentioned earlier and I had forgotten to mention this to probably the appropriate person, but the AIA is not completely implemented yet, or just the things that were required of the PTO to do have not all been done, one of which is the gene patent study, which is what, over a year and a half overdue at this point? I'm wondering what happened to that.

The second thing, and I'm just going to end here is that I want to correct Chief Judge Smith. He's never wrong, but I'm just going to -- he had this analogy that for the Hill, if you're going to give more responsibilities, if you wanted to make more bricks, give us more straw. And I thought about it, and I thought, no, it's let us keep the straw that is coming in. And so I just wanted to correct the record on that (Laughter).

But going back to the gene patents, where is that report?

MR. COLARULLI: Can I start with the second one and I go into -- So no, I -- and
correct the record for the judge's statements. I think that's absolutely right. The vision for this agency was to be self-sufficient. That's a vision that was continued in the AIA and is somewhat being undercut at this point. So I'm sure that's what the judge meant. The fact that he can actually assemble bricks with straw is a whole other topic and very impressive.

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

It was not an issue patentability, but really, it was access. I think one of the challenges for folks externally and internally has
been getting their head around that distinction.

Does the patentability of genes affect this report at all? I would argue no. Does the recent Myriad decisions -- and there's now been, I'll count two or three times during the course of development of this report where Myriad decisions have caused folks internally and externally to take a new look at the report and as a result, it's actually slowed down the process.

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

MR. THURLOW: Okay, Dana. Thank you very much, as always. At least I know it's August, it's a tough time, but are there any Senate or House Judiciary Committee meetings
scheduled or hearings schedule for the fall? Or
I'm sure the feeling outside is that something is
going to happen, because the White House
involvement and all the so-called discussion, I
guess that's been going on up to the -- what that
actually entails is the subject of much debate
that you're in the middle of, of course. I guess,
so much question is, I assume there's going to be
some hearings and so on. Is anything scheduled
yet? That's the simple question.

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

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

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

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

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

MR. COLARULLI: Yes.

MR. THURLOW: And there's a lot of issues out there that need discovery. I guess my
question is, in the materials I've read, I haven't seen much discussion on discovery. And please correct me. I also -- my question is, are they trying to limit discovery or are they saying for the certain core aspects of discovery, we'll permit -- if you want outside of that, you can get it, but you have to pay for it.

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

I think Hill staff are looking at, well, we should do both. That maybe there's some
reasonable short-term changes we can make to try
to limit or at least time out discovery and
provide some guidance or request the federal
judicial conference to provide some guidance or
guidelines. You know, a lot of the discussion,
and discovery is a good example, that we're seeing
up on the Hill, I think in a very good way are
looking at local model rules and trying to mirror
some of that discussion. I don't think they've
been fully successful. I also don't think there's
necessarily consistency across what we would all
consider the good local patent rules that were
around the country.

MR. THURLOW: Right.

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

MR. COLARULLI: Sure.

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

But is there any discussion at the legislative level of revising the level of deference given to district court judges at a sort of statutory level? Because I think one of the biggest drivers that you can -- parasitical activity where you can actually hit people up for below cost of defense thrives the longer uncertainty and costs -- costs from the discovery and uncertainty from frankly, Cybor, exist.
And to the extent that a patent is not necessarily valid or invalid, or the claim is maybe or maybe not infringed until cert is denied at the Supreme Court level, extends that for three to five, seven years. And that is precisely what drives the ability to use that risk as value. And I wondered if there's anything legislatively people are discussing about this. I mean, obviously, the best prudent thing would be to wait and see what happening with the federal circuit, but assuming they don't revise Cybor, is there any discussion about that?

MR. COLARULLI: So I know there had been legislative proposals in the past on this. I haven't seen in the current round, discussions of legislative language that would say deference to the district courts. But the topic of certainty in path litigation certainly underlies a lot of this. I think, you know, this is one of the topics that we had hoped to have any expansion on the executive order -- we're asked to expand our Edisons College program. To the extent we're
1 bringing in folks to help us look at some of the
dynamics in the patent system, certainly, this
would be one of the areas. But I mean, to
directly answer your question, I haven't specific
language this round, although I had seen it during
the AIA discussions.

MR. HALLMAN: I had a quick question.

Could you remind us again what the office is doing
around the executive action titled Empowering
Downstream Users?

MR. COLARULLI: Absolutely.

MR. HALLMAN: Exactly what does that
involve?

MR. COLARULLI: Empowerment is a great
thing. (Laughter) So we have been translating
that as education. The way to empower this group
of individuals, and I described this as,
traditionally, the PTO has had a role of educating
and reaching out to applicants, certainly
inventors, those seeking rights, and to the
extent, although limited at the door of providing
legal advice, providing some guidance to those
pursuing rights, holding rights to make their way
to the system and make use of the rights.

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

Well, in this case, we can play an
equally positive role, and this is the thrust
behind the White House executive action, to
educate that audience to say, you know, this is
what a demand letter does. Here are some
resources that you have to find out who owns that
patent and what it covers. So you can start that
process of determining how you might best respond. We're not going to give you legal advice, but we're going to at least help you to get to that information level so that you're making knowledgeable decisions, and maybe your hair is standing a little less on end. Maybe you're screaming a little less. You can start going through that thought process a little bit more rationally.

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

And then, a third category of data. So if you come to the PTO web site, very quickly, you
can -- if you hate a patent number, you can search it. You can find out whatever information is available on the patent, potentially on the owner, to the extent we have updated ownership information. That's also helpful. To the extent it's been in litigation, and that information (inaudible) will make that available, too. So short-term and long-term here, but primarily, developing a web site here in the short-term that provides more ready access to this information.

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

MR. FOREMAN: Great.

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

MR. COLARULLI: Legal advice (Laughter).

MR. HALLMAN: -- real legal advice.
Because what you've described is just right on the
cusp. That will be an interesting thing for you
to work out.

MR. COLARULLI: Thank you (Laughter).

I'm going to just send them to Peter, I think.

That's the answer.

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

MR. COLARULLI: I never trust rumors,
Wayne.

MR. SOBON: I end rumors. (Laughter)

MR. COLARULLI: Not an issue we backed
off on, an issue that we went out with the federal
registry and have sought comments. We're still
looking at a lot of those comments. There has
been additional discussion even outside of this
office. I think there's a question of the next
steps here, and I know there are some in the Bar, certainly ABA is very interested in furthering this discussion. There's a parallel discussion on the copyright claims court ideas, as well. So you know, we're certainly looking at both.

You know, I will say about this issue, because I've gotten into it recently a little bit more, a number of folks have looked at this issue as, well, does this really solve the abusive litigation issues that a lot of the rest of the focus is? I would say this really is a separate issue and focused on different parties than we're seeing are engaged in the NPE type of lawsuits.

This is really small guy, small guy. Small inventor, small manufacturer. Imagine the capped limitation on damages. It just wouldn't be attractive to that current, somewhat abusive business model that we're seeing, or abusive activity that we're seeing.

So I think that's a good way to think about this. This is really addressing a separate problem. At the same time, it actually could help
some of the backlog in the courts by taking off
the table some of those issues. So, I think there
certainly is some merit. I've heard some very
good arguments against the idea. You are creating
another forum, and you know, our end goal really
should be to limit the costs so you can resolve
disputes quickly. So I think it's a great
discussion to have, certainly not over. Unclear
to me what the next steps are, but at least that's
how I've been thinking through that issue.

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

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

MR. LANDRITH: Thank you. So, to start with the status of where we are with the different projects in the portfolio and the examiner tools and infrastructure project, this is the core project for the examiner to handle patent applications with as well as their work assignments. And also, is the project that we use to integrate functionality from other projects. It's being used by 29 examiners. Half of the list here represents functionality that you've seen demoed here. The case listing down through
reference management tools; those have all been improved, optimized. We've also added additional functionality to the abandoned Office Action and workflow. The next step is to continue to enhance and we have a lot of prioritizing to do as we resume activities in fiscal year '14.

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

So, CPC is the patent classification harmonization effort between the USPTO and the EPO. We have met all the deadlines through international agreement. We continue to improve the tools, and it's going to require substantial changes to Legacy systems going forward in order to make sure that we're covering all the bases, both in terms of examination activities and
classification activities, as well as publication needs and USPTO/EPO collaboration.

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

So, the next steps for that, we are looking to improve the quality and expand the scope of documents that we cover. The ones that we are resuming are the remarks in the IDS documents, and then we're looking at ways also to capture other documents.
The other thing that we want to do is we have an archive of office actions that is in DOC format or DOCX format, and we have a project that we are resuming in order to facilitate the conversion of those into XML.

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

So, One Portal Dossier, this makes the U.S. patent data available to IP5 partners. That was completed as of July. We're looking at
exploring ways to best implement our use of the
IP5 or accessing other IP5 partners' data to begin
implementation in fiscal year '15.

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

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

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

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

We talked a little bit about converting
the existing Office Action data to XML, taking the
archive of Office Actions that we have in.doc
and.docx format and converting them into XML for IP.

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

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

The challenges that we have for exhuming projects are many. There's a 6-month calendar delay due to the suspension of projects. This is just the number of months from April through September. Restarting projects and procurements will take between 60 and 90 days, and has to be phased to accommodate USPTO capacity. We normally stagger these over the year so they have a
constant level of work rather than one month of
intense work with little else to do. We are
working to get a head start on this so that we
have the pipeline seated.

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

MR. HALLMAN: I had a question. With
respect to the contract staff, I take it that the
people who we had to sever a relationship with
because of the sequester, do those people
disappear? They're not in a position to be
re-hired? I'm just curious that -- I understand
people with certain backgrounds can be hard to
find, but again, once you sever your relationship
with them, do they simply drop out of sight and
they can be rehired?

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

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

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

MR. OWENS: It's like climbing Mount Everest. You never know what you're going to find, but you just go through the -- we have a good process for it, but you never know. You could get -- a miracle could occur, and you get all fantastic people and things go very easily. My experience has shown that that's not accurate (laughter) as much as we hope to have that happen,
but we have a good process that's as good as anywhere else, and we will trudge through it to get the right people on the job again. It's all about keeping them once you get them.

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

MR. OWENS: We're working very closely with the CFO Shop. This year things have changed slightly given the fact that we do have a different level of expected income given our fees adjustment that kind of hit us mid-last year. Of course, never going to say that I have a crystal ball on how the economy's going to turn, how patent filings are going to be, on how sequester
will or will not affect us, so on and so forth. I mean, you could certainly paint the world's worst possible scenario, and then this agency would look at slowing down IT projects again.

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

Now, long-term, that is really going to take its toll. Right? Our systems aren't the most stable. I think people point that out to me all the time. We are largely in fire-fix mode when it comes to dealing with issues that crop up,
and the real solution is replacing those long-standing very old Legacy systems, as we had in some areas, with newer ones. Patents End to End was the primary mode of doing that for patents. So, I can't really tell you.

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

What I can tell you is that we work very closely with patents, with the estimations for fees and our brothers and sisters over in CFO to
build the best plan humanly possible to maximize our ability to execute for this agency and provide the IT. That's all I can really do.

MR. HALLMAN: Thanks.

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

But to move on from that, at each update you remind us of certain projects involving XML, some of which have been ongoing like PATI and
others that have been put on hold and may resume
such as Text to PTO. Can you comment on why
replacing -- and just to give people some
perspective on what we're talking about -- is
moving from a basically image-based infrastructure
in which everything is stored in images. It's not
searchable. It's not indexed. It's not
interoperable in terms of exchanging data from one
application to another, et cetera, et cetera. Can
you comment on why moving from an image-based XLM
infrastructure is important to the constituents
including the efficiency of operations, as well as
the impact on the user community?

MR. OWENS: Sure. So, I'll take a step
back. IFW, the current storer of data, as you all
know, is image based. Their examiners see
pictures. It is a core foundational fact that
computers don't deal with images very well, but
structured, tagged, text data, computers can read
and understand on their own. This would further
help facilitate an examiner with the ability to
not only search text instead of trying to search a
picture, which is incredibly inefficient and almost impossible, when comparing to millions of other pictures of text.

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

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

Now, all of that being said, we've had a bunch of thoughts along these lines of things that we've done. One of them that was mentioned earlier was Text to PTO. The initiative or the
thought that instead of getting pictures from everyone, if we could start receiving tagged text, that would be really nice because then where there's no errors in conversion, the tags are there, and we don't have to guess at where the tags are. And then on top of that, we know that there's no difference in OCR and no misplaced letters or words or whatever, and that increases our quality, and you saw a demo of that.

Patents End to End SE, the first implementation of Patents End to End -- the scope of that project ended with the prototype and the demo. We were then going to plan and then execute in Patents End to End, the next phase Text to PTO. Unfortunately because of sequestration and the delay, we've had to push that out. Remember, things that should have finished in the last six months, Patents End to End SE was finishing in the very beginning or first half of '14. It's now going to finish in '15, and therefore everything slipped to the right, so there's a delay in continuing to do that work.
On a second side, we have a massive amount of data today that we have to convert; not only the incoming data that we're constantly getting every day, but also the data in our very large repository. As you know from a few months ago, we figured out how to automate the conversation of claims spec and abstract. That's pretty basic and fundamental. I know that that doesn't go far enough to help the examiner, and we have other initiatives underway to convert the other documentation types. Unfortunately, no one that we have approached, no contractor, no technology organization, no one has a way of doing that appropriately, and the cost of doing it through human beings is prohibitive, as we've discussed previous, being thousands of dollars per complete patent file wrapper.

So, we have the technology base with Patents End to End, as we discover ways and work with contractors, to build systems to appropriately tag the text that we add them to the repository of available data to the examiner as we
discover ways of doing that. And so, that, as I described previously, and Mr. Landrith had describe previously, we originally thought was going to be the easiest part of this project. It is, in fact, the most difficult part, and the easiest part has actually been the ability to build the completely modern redundant tools, which also adds a layer of stability for an examiner, quite honestly they don't have today and desperately need.

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

MR. FOREMAN: Yes, Robert?

MR. BUDENS: I want to pile on that one a little bit. Actually, I'm going to let you off the hook, John. I want to put the rest of the
team on the hook because we have been having a lot of dialogue over the last several weeks, much to John and Dave and Debbie's dismay and what have you. We've been talking a lot about it, but I think this is one issue that you brought up, Paul, that I think we need is a PPAC need to look at and probably need your help. We've clearly established that we can't just go out and get a contractor to convert all of our past files. It doesn't do us any good with every passing day as all the files would come in. I think one of the things that I've been talking with these guys about is the fact that we've got to get, at some point, Text to PTO up and running, and we've got to convince the applicant community that you all need to step up the plate a little bit, too, and help this project along by getting on board and starting to submit documents in XML instead of just PDFs and images that leave us pretty much where we're at and can't make this conversion. And I would just say that that's, I think, someplace where you all can do a lot of
work is trying to spread the word that we've got
to get Text to PTO up and running. We've got to
get some tool that will allow you to put together
your applications and stuff, but when you push the
send button, it comes to us, and we can sit there
and watch it go spin around in the computer for
several milliseconds or whatever and spit out in
an already formatted and tagged and whatever
documents that go right up to the pool enough for
the examiner for examination. So, just my plug to
you all.

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

And I was just looking real quick, I
mean, if you try to translate sequestration, it
doesn't translate very well in other languages, so
other countries really don't understand what we're
going through, and yet we keep implementing all of
these new projects, all of these new developments,
and it's just straining and straining and
straining the system that they use.

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

The IT system is vital. It's so vital
to everything that we do. Wayne won't get his
videos. I mean, we can't have that happen.
(Laughter) So, we really need to do more and to
be more vocal about this and be more pointed in
expressing the need for the growth in all the good
things that we've been doing over the past couple
of years and before that, of course, but more
recently, and to keep it going because we need to
remain a global leader, and we're not going to if
we don't support our IT.

MR. THURLOW: I'm sorry, just a very
quick question. So, next week I have meetings on
electronic filing. A big law firm -- we do all our filings electronic. We put the document in PDF form. We submit it, and that's been our understanding of the process. Now if the PTO recommends it, I'll have to check it. I mean, if you want to know the format or want us to do something else, I'm all for it. But quite frankly, I think what we've been doing, whether it's new applications, amendments, and so on, they've always been in PDF. If the message is put them in HTML and it's not difficult for us to do it if there's an option to do it, we want to submit it in Word, I'm all for it, I think, unless something's telling me wrong, but my understanding with electronic filing, it's always been PDF. If it's something else, let us know, and I think we'll help get the word out.

MR. OWENS: So, I'm actually in a second going to hand this over to Debbie because I know OPIM has reached out to our constituents and asked their opinions about using things like a Word formatted XML document, and there are some issues
surrounding doing that that make people nervous.

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

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

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

And that's hard for him to hear because
there's the physical issues about the system's
availability, and I'm sure you all lived as our
Legacy systems have not met your needs. Various
systems crashed, and part of my organization plays
the fire-fighting role where we go and put out
fires, and I know Debbie has a list of them
because she reminds me of all the failures.
That's kind of her team's job, and -- to hold us
accountable, and we work very quickly to fix them,
but we live in a world where Google doesn't ever
go off line, where your e-mail through Microsoft
or Google or your local cable company doesn't ever
fail.

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

So, there's a lot we're trying to fix
here, but fundamentally what I do not want to do,
and I've stated this right from the beginning, is
just hand you a new car that's the same car with a
different paint scheme. That's not what we're
about. We're about evolving, using the modern
technology to evolve the efficiency of the office
because at the end of the day we're only as good
as the IT can provide the facility to examine.

So, to do that we have to work together to embrace
the new technology, accept it into our
environment, have our constituents accept that new
technology, and work with us to deliver the product that we need to efficiently examine and that is tagged XML text.

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

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

MR. FOREMAN: So, we're running a little bit behind, but I think all this is very important information, so if no one has any objections,
let's just go through the break. And, Debbie, if you just want to carry on, we'll just keep going.

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

And then, as well, just fundamentally, when they submit images, as you know today, they're static. They're in place. They can go to a private payer. They can look at it. They see it's uploaded. Everything's good. When you submit text, there was some concern that it's no longer static, that there could be some conversion issues of the nature where introducing material that is not intended from the applicant's point of view, so that was just a couple points to John's point on Text to PTO.
And the other thing I would like to say is that in terms of our sequestration and budget and the fact that we couldn't stabilize our Legacy system -- so if it's not outwardly apparent to the user community, all Legacy systems, that is the -- what we refer to as our patent application system, our finance system that records the fees and the payments that we receive with each application, as well as those images that John mentioned. IFW, that's the image file wrapper. Those contain all those images. Those are the fundamental Legacy systems that drive and support your EFS web filing system and private payer. So, when any of our internal systems -- and John hates this word -- go down, then you, too, are impacted. It might be for short periods of time. Sometimes, some durations where we're just restarting those systems, and they're simple, I'll say, reboots. But if they are longer term, and we work closely with John on those outages as we call them, or down times, you do see them. You do see them in terms of EBIZ alerts and notifications on
our website that the systems are down.

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

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

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

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

MS. STEPHENS: Yes.

MR. FOREMAN: Thank you for your time today. At this time I'd like to call up Mark Guetlich, Senior Counsel for International Patent Policy and Government Affairs, the Office of Policy and External Affairs for our presentation on international harmonization.

MR. GUETLICH: Thank you and good afternoon to everyone. I understand we are working right through our break here, so I won't be offended if somebody has to run out. I've some international topics to share with you. It's a topic that's near and dear to my heart. I've spent a career in industry, and part of the reason some of you may not be too familiar with me is because I had been out in industry, not in the Patent Office. That's a recent step of mine, but the attention to international issues has always been part of my practice in
The one thing that brought me in though from industry into government is precisely this topic we're talking about, the America Invents Act, which has set the stage for tremendous change internationally that was not possible, wasn't even heard of, only a couple years ago. So, that really was the stimulus for me to say it's time to either put up or shut up from pushing on the industry side to really moving upstream and push from a chair in government where I can actually facilitate some of these changes.

So, that's just a little bit about me so that you understand where I'm coming from and why. Also recognize a second piece that I want you to keep in mind throughout all of my comments, that although I was in large corporations through my corporate practice, I want one of the changes that's absolutely significant is the research and development that has disappeared from industry is
being absorbed in the SME community and the university community, and is growing fast. That means this is no longer a big business game in the IP business and in the economic structure of the world. SMEs really are the growing part of the economic engine and of the IP engine for research and development that industries seed, cultivate, and absorb as they build new products and systems. So, bear in mind, I'm a huge SME advocate. That permeates all the comments that I have here, even though I may be upsetting some of my former big industry colleagues.

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

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

On the other hand, the vast majority of perspectives of international harmonization is much more of the appreciation of the convergence of common operations and activities and practices that are performed by all offices, and why are we all duplicating the same things over and over again? Why can't we collaborate and coordinate on some of these? That's the harmonization most countries are talking about. That's a
much more prevalent view, and that's the harmonization
that I'm speaking of generally here.

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

But what does this really mean for
patent offices, specifically? It's this need to
carefully consider the harmonization opportunities
that specifically facilitate this mass production
of a unique product that pays attention to the
balance of cost, quality, and timeliness.

Every single project you've heard about today,
I can
draw a line to some aspect of paying attention to
the balance of how this impacts lower costs,
not only for the office but for the user. How
does it impact higher quality, which everybody
wants? That the office wants to provide? That the user
wants to obtain? And also have some reasonable
balance of timeliness? This is why we do things
like implement the three-track systems, so if you want
more timeliness, it's available not only at an
affordable price but a
reasonable approach, just as well as if you want to
slow things down. We haven't gotten to the slow
things down part, specifically, but that's also
available.

Those are the kind of systems that we
need to build worldwide. That doesn't just work
for domestic environment because we're in an
environment now where a couple of smart people
with a reasonable computer and a FedEx account, can be an international business and should have a chance to take advantage of international protection of intellectual property rights.

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

Let me break this further down into two pieces that are on the right side of your screen here. What we're really talking about for harmonization is we have the practical, operational, technical harmonization; things the Patent Office can decide to do on its own power. Things that don't require anything but our own rulemaking authority to make changes that we can implement. Those are items that are in, for example -- the Patent Prosecution Highway is a
great example of this. Global Dossier is another
great example of this category of work.
Each have their processes and formalities. Also with
the common
citation document project which I'll talk about in just
a
moment. Priority document exchanges too.
There are language and search efficiencies that can
come out. Also with the CPC, the Cooperative Patent
Classification system that you heard about - this is one
of my favorites. There's a huge step in the
harmonization direction when you consider that
everybody's going to be using the same library
indexing system, if you will. This generates all kinds
of collaboration opportunities in examination, as
well as the Global Patent Search Network that you
heard about a moment ago.

But then also we have this other
category of harmonization, which is a little bit
tougher nut to crack, which is the Substantive Law
Harmonization, and that's when we're talking about
applicable law -- it requires law changes, treaty
changes, or government policy changes. Those things
don't move quickly. They don't move overnight,
but that's the other category of harmonization that exists. That's where our Hague Industrial Design started. That's where the PLT changes started. That's also, I might add, where AIA is categorized. Significant changes to the law that require law changes and government policy changes, as well, which all fall into this category require longer efforts of pushing. Various activities that happen within the Office by a variety of groups: some take more of a lead in one aspect or another, but that's really irrelevant for the point of this discussion. I wanted to lay this framework out for you.

Also wanted to let you know that the next steps that exist for Substantive Law Harmonization, in particular, there's any number of practical operational opportunities that will come up as our IT development allows us to take advantage of them, but we also have a grace period, which is the next major step in Substantive Law Harmonization that has to happen for the world to allow the significant growth in SME use of the
patent system to really flourish, as well as lots of other kinds of issues that come up such as attorney-client privilege. There's another harmonization issue that we're drawn into. Prior-user rights can come up as well.

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

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

The rules package is in inter-agency review at the
moment. Once through that review, it goes out for public notice and public comment with an eye towards implementing, ideally, in calendar year 2014. Do not confuse this with the Patent Law Treaty implementation; which is a completely different animal even though legislatively they came somewhat together.

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

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

Global Dossier: You heard a moment ago of One Portal Dossier -- same animal with a slightly different name. Global Dossier really is the broader accepted term at this point. Another
great example of that operational harmonization.

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

An important point I wanted to highlight here for IP5, is the activity that took place also in June. June was a big month where USPTO was hosting the IP5 offices. Again, this is the IP5
countries representing 90-plus percent of all of
the patent activity in the world. And the idea
here is that -- these are somewhat my words but
it's also reflected in all the offices
perspectives -- that it's incumbent on those five
offices that are carrying the weight of 90-plus
percent of the patent activity in the world to
take a leadership position in figuring out how to
make the international patent system more
functional and accessible and cost-effective to
the world's users, not just big corporations but
also the emerging small entities.

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

What was accomplished? Aside from
side meetings for bilateral discussions with the various offices, we had a discussion of the trilateral pausing, which is what preceded all of the IP5 activity or actually overlapped by the last five years where we formally acknowledged the transition of all trilateral projects to the IP5 context, and we're going to let trilateral sit ready to go if needed in the meantime. That's a significant step. IP5 also transitioned from -- the original 10 foundation projects of IP5 are now either complete or functionally set in the context of working groups within the IP5 construct. Now again, that IP5 construct is a set of functional independent working groups staffed by each of the five offices. One key point about this is that for each of the five offices, not all five have to go in lock-step as was somewhat happening with the foundation projects. The lock-step has been loosened to where, as we have different IT roadmaps and funding issues going on for various offices, it's much more efficient to have a couple of offices able to surge ahead on a
particular project while keeping in touch with the
issues of the lesser participating office so that
they can be brought in as soon as possible. CPC,
the Patent Classification project, is a classic
element of that. Europe and U.S. surged ahead
with the opening of that CPC in January, and here we
are only six months later, and all of the other
three offices are now on board with commitments
to, at varying levels, adopt the CPC projects when they
can.

Okay, now I'm switching to the final
push here. These are the two projects that I was
going to highlight. I'm glad that the thunder has
been stolen for the Global Patent Search Network.
You heard about that. But one thing I wanted to
add that maybe doesn't come clear is that
it is a translated database. So, in other words,
it's no longer a searching of bits and pieces and
fragments and figures of a non-native language
document. It's going to be the ability to search
a translated Chinese document into English so that
there can be full-text search of that translated
language document, if that makes sense. That's huge.
Again, machine translations are not perfect, all the caveats understood, but that's an enormous step forward versus what I know from past practice. And I know you've probably encountered it as well, of this weird fragment of a Japanese language or Chinese language document out of context, but it had the one word that existed in the claims, and that's no way to make a good, high quality comment on a claim during prosecution. I think this is a huge step forward. We're looking forward to seeing this database and Japanese appears to be the next language that's on queue for that particular project.

Lastly, I'll comment on another project that's been around for a while actually. This has been around -- the Common Citation Document's been around since the trilateral days, but it is also gaining a considerable amount of steam here. I wanted to highlight it in the sense that there's actually a live demo out there that I'd encourage you to have a look at on the IP5 site. Both of those links get you to the same IP5 demo. But
take your favorite international application, plug it into this demo, and see the common document that comes out of that that contains the materials in an electronic format for citing of the relevant art in a common language which is English in this case.

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

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

MS. JENKINS: So, as most of you know, I sit on two committees, so I get really exciting
talking to the international folks because there's
so many just excellent initiatives going on, and
then I also sit on the IT Committee (laughter),
and I don't get as excited, and then I go -- it's
a circle. And then I get worried because they
can't do what they're doing. I go back around.
They can't do what they're doing, so it's just --
it's not all good, so.

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

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

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

In terms of IT, I think you heard it
from John Owens, and there's bits and pieces.
There's a bit of cross-over in David Landrith's
presentation and some of the things that Mark
mentioned. Many of the programs that we are
looking forward to that fall under the Global
Dossier -- so that's kind of the new -- going to
be kind of the IT platform to exchange data and
information between the IP5 countries on
cross-filed applications. That's actually where
you will probably see the One Portal Dossier idea,
and then John mentioned that, or David Landrith did, so that's when we share our data with the other IP5 countries. Next step is us receiving their data. Right? But we are going to rely and build that on the PE2E systems. So, PE2E slows down, we're not ready to do that yet. So, that slows down the transition to the next step of One Portal Dossier.

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

So, the future, and it's funny because you -- all of the discussions we have about IT, most of the future improvements, particularly in international -- data exchanges where all the information is -- and it's all IT based. So, it's true that everything that we delayed in PE2E will
ultimately slow down some of our plans for the international -- although some of the international plans are not as well developed yet -- so the hope is that when we get our PE2E back on track, we get the basic architecture in place and the infrastructure in place that then when we come with the global requirements with Global Dossier that it will mesh, but it's hard to say at this point exact impact, but I can tell you that it will impact the discussions already.

MR. THURLOW: Just a quick point or comment I guess. I just wanted to share Mark and Marylee's excitement on international issues. Before the IP5 meeting in California, we actually had a delegation including Commissioner Tien from SIPO and about 10 representatives come into New York, and we organized the meeting for them, and we all had the opportunity to meet and have lunch with them and separate meetings and side meetings. And I was quite frankly surprised how well they spoke English. And it was just a really good exchange of information, and I always know when we
talk about international issues a lot of companies, of course -- comes to jobs -- and has IP issues, in particular, in China.

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

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

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

MS. JENKINS: Good. Glad to hear that.

MR. GUETLICH: We'll stick that alongside naming the Denver office, naming the PPH.
MS. JENKINS: Yeah, wow. Too many "P"s.

But one thing I know that's very -- I guess a hot topic is the grace period. So, do you want to touch on that a little bit and talk about what we may do for the next meeting in November?

MR. GUETLICH: Sure. That is a great topic. And thank you, also, by the way, for the comments about international, and I'm always humbled to be here because there are so many people involved that add to this topic of international. And grace period, again, is one of those as well; lots of good thinking into that. AIA made a huge step ahead in the whole context of not only first inventor to file but also grace period. It's a big change for U.S. Practitioners that are coming to grips with that right now of what that really means, but also internationally it's somewhat of a surprise to everyone to realize, oh, we really do have a first-class system here in the United States that allows for an inventor to disclose but still have a significant amount of protection against that
inventor's own disclosure, whether it's by
accident or by theft or by deliberate action, to
protect that invention for filing. Now, you
better hurry, but it needs to happen.

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

But we need to come up with some kind of
a uniform grace period that is the baseline
throughout the world. That's what we're striving
for. There are conversations coming up this fall
internationally that will help us focus on that
particular baseline, whatever that's going to be,
so that we can begin to rally the conversation
more broadly throughout Europe, the member states
of the European patent community, and the rest of
the world to have something that everyone can live
with now that we're all working with a
first-to-file kind of patent world.

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

MS. STEPHENS: So, thank you, Louis. As
he mentioned, I'm here to give a quick overview on
the quality and customer-satisfaction measures in
the patent call centers, and with a little bit of
background, in front of you on your slide deck you
have why we measure customer satisfaction. Well,
the USPTO as an agency receives over 800,000 calls
each year, and those calls on average are anywhere from 2 1/2 minutes to 10 minutes in length, and as we, as an agency, understand customer satisfaction, one of our goals is first-call resolution.

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

And in addition, how useful is our website in providing that type of response. But insofar as measuring customer satisfaction, we
realize that first-call resolution is simply the first step, and that we do it differently across the agency, and our current approach -- we are at 18 different call centers. There are four separate business organizations that represent those four, so on the right-hand side of the slide you can see the 18 listed specifically, as well as the organization that they report to. The key to this slide is to follow up with our first-call resolution. We do self-monitor our calls and such that calls are recorded, they are sampled, and listened to, providing feedback to our agents, as well as sometimes we actually piggyback on calls and listen to live calls as they are happening. And there's just a limited number of call centers as indicated by the asterisks on the right-hand side that participate in the actual quality monitoring.

So, another aspect of our approach is the actual formal customer survey, and there's currently only two call centers that engage the actual formal survey, and that is the Ombudsman,
which is the Patent's Ombudsman Program, as well as the OICO Service Desk located there on the bottom-right hand side of the slide.

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

We certainly have room across the board, across all the call centers for improvement. In one way we think that improvement can come as our recommended approach is to enlist the help of experts in this arena. We certainly understand the business of patents and patent prosecution, and we have experts clearly in that arena, but in terms of official customer survey and formal surveys, we don't have that level of expertise. We would like to engage experts in terms of the actual survey development such that the
satisfaction drivers and results can be measured, reported. Our preliminary market research indicates that these experts are able to compare results, drivers, to other federal agencies, so that would be helpful in helping us drive our customer satisfaction as well as the entire -- and that's what the graphic on the right-hand side delves into; that entire process of continuous improvement such that the end result is an increased customer satisfaction. So, with that, I'd just like to turn it over. Questions and comments?

MS. SHEPPARD: So, a little bit of background. How this came about was -- well, first, I'd like to say something very positive. The emphasis on customer service by the USPTO -- there's lots of ways to call in. There are lots of avenues for people who have questions to get input directly from people who have expertise in those areas, not just for calling for questions for filing, but also calling in with comments. There's no lack of ways to do that.
Anecdotally, I saw some areas for improvement when I called in and others called in. So, I started to delve into this a little bit deeper and found out that there were 800,000 calls coming in. I still haven't gotten a good answer on how many people are actually fielding those 800,000 calls.

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

There doesn't appear to be any set of best practices that goes across the 18 separate call centers. I don't think they speak between them about how to answer questions, and sometimes people get routed between the 18. Although I highly commend the metrics and quantifiable data that came out of three of the call centers that I believe Debbie Stephens -- she was the one who emphasized that this should be done -- that still
leaves 15, if I'm doing the math right, that have no quantifiable or metrics to show whether or not the customer is getting the help they need.

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

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

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

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

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

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

MS. SHEPPARD: I'd also suggest -- and
the suggestions are fantastic that you have in
your document -- but also to generate some forms.
And I know that other call-in centers, from just
like AT&T or others, have forms for commonly asked
questions; that it could be consistent between the
people when they come on or off the call centers because as I understand it, people rotate through the call centers, so what someone who's normally doing substantive work has to reinvent the wheel every time the phone rings. Are there any -- what's the words for that? The form sheets that kind of give you commonly asked questions.

    MS. STEPHENS: Yes, certainly each call center has -- part of their call center tool has a knowledge management pack is what it's referred to in call center-ease. That is used or can be used by the agents. I know our particular agents have their own, also, set of documents that they utilize on their desktop at any given time either in some of them in a physical, quick-paper type documentation as well as electronic where we have file folders electronically that they share across their desktops to share that information such that you do get the agent that maybe is there doing different work that you should still see a consistent approach in their response to the inquiry.
MS. SHEPPARD: There's been a lot of talk today about the AIA help center and other help centers that are being put into place, and I just think that a more -- I know everyone's doing the best they can with very limited resources, but just adding more and more resources to call in is not the answer until there are some sort of systematic approach to making sure the customer is getting the best service they possibly can.

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

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

MS. JENKINS: And then, how -- a
follow-up to your question. How are you staffing them? Because if I'm calling or I'm having someone else call, and I'm saying call the office to answer this question on AIA, I'm assuming I'm getting -- I'm hoping I'm getting an expert on AIA. If I'm calling about an assignment question, we know a lot of people in the assignment branch, so -- we're on a first-name basis -- but you know, that's a concern.

MR. HIRSHFELD: So, let me -- just a couple of those, some of the areas are in my area as well. We have tiers. Right? And we certainly do have -- and I don't know what the term is. You just said it before, Bruce. But the sheets that provide information and tell you the knowledge packs, knowledge trees, however you want to call them, but we certainly do have ways to route. There certainly is training that takes place. I can tell you with AIA there was extensive training and the knowledge packs for people. The tiers direct people based on, obviously, questions asked, and out of 800,000 you can imagine the
calls are wide-ranging, so that first tier is very
critical to move you to the right place.

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

A lot of it -- the training is ad hoc.

I'm trying to draw the line to where I think it is
in the middle. Right? There's certainly
significant training, and most of it is ad hoc.

There's certainly significant room for improvement. I think your points are very well taken. Did that answer your questions?

MS. STEPHENS: Can I --

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

MS. STEPHENS: Just to Drew's point, our Application Assistance Unit, with the start of AIA, we're working very closely with Drew's agents or staff in terms of when the initial question comes in, they're documenting that question, and then sometimes even during the -- what we refer to as if we're the tier 1, they're the tier 2 or tier 3. And they're either staying on the phone to listen to the response, so that way they can understand to better provide a response the next time. Or if that's not possible at the time, we're getting feedback from the Patent Legal staff
such that we'll be able to answer that question more robustly in the future.

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

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

A timely example of this, and you've heard it in a couple of different presentations
were the White House executive actions. Dana
mentioned that the USPTO has held stakeholder
meetings to discuss the implementation of four of
the five executive actions. We were fortunate
enough to get the majority of them here at the
USPTO dealing with patent litigation abuse, and
really the meetings were two-fold. One was to
provide a status update to our users and where we
are in implementation efforts, and the other
aspect of these meetings was to get input from our
user community on the various legislative
proposals, to hear from them where they would like
to see things going.

And so, just to get a little more
specific with you, the meetings were held with the
ABA, the IP section; the AIPLA; the IPO; the
Electronic Frontier Foundation; Public Knowledge;
the Internet Association; BSA; the Fairness
Coalition; and the Innovation Alliance. So, we've
had several of these meetings and they all, as
Drew pointed out, were very lively discussions.
It was really interesting.
So, continuing on with the outreach theme, I just wanted to mention in October -- it's specifically October 11th and 12th of this year -- we'll be hosting our 16th Annual Independent Inventor Conference here in Alexandria; a two-day conference administered by the Office of Innovation Development under Bruce. And these are specifically tailored for perspective or established independent inventors and small business owners, and I know Louis has participated in many, many, many of these. But they're really, really important events, and we always enjoy hosting them, and it's one of our flagship outreach events for both independent inventors and small businesses, so it's a great opportunity, again, to engage the public, deliver pertinent information, and they're extremely, extremely valuable.

And again, I should point out that we typically hold several of these a year, and we have not been able to hold the number that we planned to hold or really should hold because of
our challenging financial situation, so -- but we
are trying to keep this going, but again, with not
a lot of individual ones planned so -- but here in
Alexandria in October.

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

And then Drew talked a lot about the
Software Partnership meetings. We started these back in January before the White House came out with the announcement, so we were working on this ahead of time, which was very helpful. And so, two meetings coming up; one in Berkeley, which is not in the Silicon Valley (laughter) and one here in Alexandria, and again, discussions about the White House executive actions and claim clarity, functional claiming, and very interesting discussions. The one here will be focused because we have a big examiner contingent here, obviously, on access to prior art by our examiners and an interactive forum for our stakeholders on input on how we can improve access to prior art, which is really critical for us to keep focusing on quality and quality improvement. Both meetings will be webcast. You can sign up, and we will be advertising that shortly. So, we'll continue to work with PPAC, improve transparency, public participation and collaboration, and I think we can all agree that this has been very positive in helping us be more
efficient, be more effective, and in spite of the challenging financial situation, we're committed to continuing to do that.

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

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

We all recognize that there's a cost to this, and there's a cost in travel. There's a
cost in our time when we have to leave our real
jobs to come here. But I think it's an investment
that generates a real positive return, and so I
would encourage the Patent Office to consider
allowing us to get together on a quarterly basis
and have these discussions.

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

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

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

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CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

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

(Signature and Seal on File)

Notary Public, in and for the Commonwealth of Virginia

My Commission Expires: August 31, 2013

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