

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

QUARTERLY MEETING

Alexandria, Virginia

Thursday, March 10, 2022

1 PARTICIPANTS:

2 Patent Public Advisory Committee (PPAC) Members:

3 STEVEN CALTRIDER, Chair

4 TRACY-GENE G. DURKIN, Vice Chair

5 JUDGE SUSAN G. BRADEN (RET.)

6 DAN BROWN

7 JEREMIAH CHAN

8 CHARLES DUAN

9 SUZANNE HARRISON

10 CATHY JUDAH

11 HEIDI NEBEL

12 JEFFREY M. SEARS

13 Union Representatives:

14 CATHERINE FAINT, NTU 254

15 United States Patent and Trademark Office (USPTO):

16 DREW HIRSHFELD, Performing Functions and Duties
17 of the Under Secretary of Commerce for
18 Intellectual Property and Director of the
19 USPTO

20 KIMBERLEY ALTON, Acting Director, Office of
21 Governmental Affairs and Oversight

22 MICHELLE ANKENBRAND, Senior Lead Judge, Patent
Trial and Appeal Board

ROBERT BAHR, Deputy Commissioner for Patents

1 PARTICIPANTS (CONT'D):

2 SCOTT BOALICK, Chief Judge, Patent and Trial
and Appeal Board

3 JACKIE BONILLA, Deputy Chief Judge, Patent Trial
4 and Appeal Board

5 MARY CRITHARIS, Chief Policy Officer and
Director for International Affairs

6 CARA DUCKWORTH, Acting Chief Communication
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8 ROBIN EVANS, Deputy Commissioner for Patents

9 ANDREW FAILE, Acting Commissioner for Patents

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11 JANET GONGOLA, Vice Chief Judge, Patent Trial
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12 LAURA GRIER, Patents Products Line Lead

13 JAY HOFFMAN, Chief Financial Officer

14 JAMIE HOLCOMBE, Chief Information Officer

15 STEFANOS KARMIS, Director, Office of Patent
16 Quality Assurance

17 CHARLES KIM, Director, Office of Petitions

18 RICK SEIDEL, Deputy Commissioner for Patents

19 BOB SIMMS, Director of Infrastructure
Engineering and Operations

20 DEBBIE STEPHENS, Deputy Chief Information
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1 PARTICIPANTS (CONT'D):

2 MATTHEW SUCH, Director, Technology Center 2800

3 VALENCIA MARTIN WALLACE, Deputy Commissioner
4 for International Patent Cooperation

5 DON WATSON, Chief Information Security Officer

6 KIMBERLY WILLIAMS, Patent Business Analyst,
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1 P R O C E E D I N G S

2 (11:00 a.m.)

3 MR. CALTRIDER: Good morning. It's 11
4 a.m. It's -- I'm -- let's call the meeting to
5 order. I'm Steve Caltrider, the Chair of PPAC.
6 We will start with each member of the PPAC
7 introducing themselves, and then Drew Hirshfeld,
8 who is performing the functions and duties of the
9 Under Secretary of Commerce for IP, and Director
10 of USPTO, will swear in our new members.

11 MS. DURKIN: Good morning. I'm Tracy
12 Durkin. I'm the Vice Chair of the PPAC, and I'm
13 also Chair of the new Patent Pendency Quality
14 International and PTAB Subcommittee, otherwise
15 known as PQuIP.

16 MR. SEARS: Hello, I'm Jeff Sears,
17 member of PPAC and Chair of the Finance
18 Subcommittee.

19 MS. DURKIN: Jeremiah?

20 MR. CHAN: Hi everyone, I'm Jeremiah
21 Chan. It's my third year on PPAC, and I serve as
22 Chair of the Legislative and Policy Subcommittee.

1 MS. DURKIN: Judge?

2 MR. BROWN: I'll jump in. Maybe Judge
3 Braden's having an issue. I'm Dan Brown, and I'm
4 Chair of the Innovation Expansion Subcommittee.
5 It's my second year on PPAC.

6 MR. CALTRIDER: Judge Braden, I believe
7 you're on mute.

8 MS. BRADEN: Sorry about that. It's
9 Judge Braden here, Susan. I am looking forward to
10 this great session we're having today, and I'm
11 very happy and proud to be this year's Chair of
12 the Artificial Intelligence and Information
13 Committee. Our presentation will be later this
14 afternoon, and we'll have some great
15 demonstratives.

16 MR. DUAN: Hi, there. I'm Charles Duan.
17 I am a member of PPAC. I am the Vice Chair of the
18 Legislative and Policy Subcommittee, and also on
19 the AI Tools and IT Subcommittee.

20 MS. HARRISON: Hi, there. I'm Suzanne
21 Harrison, and I'm Vice Chair of the Innovation
22 Expansion and Outreach Committee, and I'm on the

1 Finance Committee as well. And this is my first
2 meeting.

3 MS. NEBEL: Hi, this is Heidi Nebel. I
4 am the Vice Chair of the PQuiP Committee, and I'm
5 also on Finance, and AI Tools and IT.

6 MS. JUDAH: Hi, this is Cathy Judah,
7 PPAC member and President of POPA.

8 MS. FAINT: And hello, this is Catherine
9 Faint, PPAC member and Vice President of NTEU 245.

10 MR. HIRSHFELD: All right, I think that
11 is everybody. So, this is Drew Hirshfeld, not a
12 member of PPAC, but performing the functions and
13 duties of the Under Secretary and Director. And,
14 my day job, so to speak, before this, is
15 Commissioner for Patents.

16 Good morning, everybody. I hope you all
17 are doing well. I will jump right in to the
18 swearing-in of our new members. Let me first just
19 say, congratulations to the new members, and let
20 me also just say, thank you to everyone. Thank
21 you first, to Steve, for chairing. Thank you for
22 all the PPAC members, for everything you're doing,

1 for your commitment to the USPTO, and also thank
2 you to the USPTO staff. There's many people who
3 put these events on, and, quite frankly, a great
4 group of people who keep this agency running very
5 effectively, and efficiently.

6 So, we won't go around and do all the
7 introductions of the USPTO staff, but thank you to
8 all of you, you do a wonderful job. I'm honored
9 to be your colleague.

10 So, let's go right to the swearing-in of
11 our new members. And as you heard, it's Charles
12 Duan, Suzanne Harrison, and Heidi Nebel. Nebel, I
13 think. Sorry about the pronunciation. And, we're
14 going to do the video format for swearing-in. So,
15 you won't have to stand for this, but I will ask
16 if you repeat after me. And we'll start with, "I
17 do solemnly swear."

18 (New members sworn in)

19 MR. HIRSHFELD: Congratulations, and
20 thank you, again. And now, I will turn it back to
21 Steve. I know he will give remarks, and I will
22 return to give some additional remarks. Steve?

1 MR. CALTRIDER: Thank you, Drew, and
2 congratulations to our new members. I appreciate
3 your service, and look forward to this year. I'm
4 going to keep my comments short, because we have a
5 full agenda. But, for those that have been
6 following PPAC, you will notice a number of
7 changes this year.

8 The first is that we have revised our
9 committee structures, and established charters to
10 delineate more clearly the purpose of each
11 subcommittee. In a nutshell, we've consolidated
12 the Patent Pendency Quality International Patent
13 Trial and Appeal Board into a single committee we
14 call PQuIP. The rationale for this is simple.
15 Each of these work units directly impacts the
16 quality and the reliability of the patent right.
17 Consolidating these functions helps enable data
18 sharing and learning loops that drive continuous
19 improvement.

20 We also consolidated all policy into a
21 U.S. International subcommittee called
22 Legislative and Policy. The AI Tools and IT Tools

1 Subcommittee remains combined this year, as a
2 single committee -- single subcommittee, given the
3 success last year of that subcommittee. However,
4 to the extent PPAC provides advice on AI policy,
5 or other new technology, it will flow through the
6 Legislative and Policy Subcommittee. Each of the
7 subcommittees have set priorities for the year,
8 and we'll be reporting on them today.

9 The second change is the PPAC meeting
10 calendar, which I'm very excited about.
11 Traditionally, we've had three plus hour public
12 sessions throughout the year. This year, we're
13 having a three hour session as our first meeting,
14 and our last meeting, but in between those two
15 meetings, we will host shorter, one hour public
16 PPAC meetings throughout the year. Each of the
17 shorter sessions will be devoted to a single
18 topic.

19 The objective is really twofold. One is
20 it provides a much more in-depth discussion on a
21 key topic, and it also facilitates attendance by
22 the public. We hope members of the public will

1 find the shorter sessions easier to fit into their
2 busy schedules.

3 I'm going to close my comments by
4 sharing this year's priorities for PPAC. The
5 first is the reliability, and the durability of
6 the patent right. The focus needs to be applying
7 the law correctly and efficiently in every patent
8 application, from filing through final written
9 decision. The public expects the Office to get it
10 right every time. The Office and the PPAC is
11 committed to make that so. This cuts across all
12 the subcommittees.

13 The second is innovation expansion. The
14 geographic concentration on the coast, and the
15 demographic disparity that such -- some members of
16 the public view the patent system as not being
17 accessible -- needs to be fixed. It negatively
18 impacts American competitiveness. American
19 success relies on the patent system, that draws
20 out the spirit of innovation from everyone. And
21 finally, we need to be good stewards. This most
22 squarely hits our Finance Subcommittee, but all of

1 the subcommittees should be mindful of our duty
2 under the statute to provide advice on budget and
3 fees. That concludes my comments. Drew, I'll
4 turn it back over to you.

5 MR. HIRSHFELD: Thank you very much,
6 Steve. I just want to acknowledge your priorities
7 and your -- the new steps that you're taking with
8 the PPAC, and I think that is all wonderful. As
9 far as your priorities go, we certainly are in
10 locked step -- you know, quality, reliability,
11 durability of the patents that we issue is job
12 one. Certainly, innovation expansion is
13 critically important, and so we share in the same
14 priorities with you all.

15 I also wanted to say that I am a huge
16 supporter of the new format. It's something that
17 Steve and I, and others, have actually been
18 talking about for some period of time. I do think
19 that the public joining in will find that to be
20 most beneficial. And really, as Steve said, to be
21 able to drill in deeper on certain topics, to be
22 able to have a format that people can come in, and

1 not disrupt, say, half a day, or much of their
2 day. Come in for an hour, I think, would be
3 great, and so, I'm really looking forward to that
4 new format, and even expanding on that as we move
5 forward.

6 I have a number of topics that I want to
7 mention to you today. Unfortunately, I'm going to
8 start with a somber topic, and that is the war in
9 Ukraine. We, at the USPTO, are certainly deeply
10 saddened by these events, and are hoping for a
11 return to peace. We had -- I issued a statement
12 last week to that effect. We also have ended ties
13 with Rospatent, which is Russians' -- the Patent
14 Office in Russia, the Eurasian Patent Office, and
15 with the National IP Office of Belarus. That was
16 also in our statement. I will also just say that,
17 while I thought it was very important for the
18 statement to come out so people understood our
19 position, I knew there were more questions than we
20 had answers to at that time. Quite frankly, we're
21 still working through many of these issues, and I
22 appreciate everybody's patience as we're working

1 through this unprecedented time, as we continue to
2 get some answers.

3 So, let me share some additional updates
4 with you. Similarly, I think they will answer
5 some questions you have, and probably raise
6 others, and certainly not answer all the questions
7 yet, as we continue, again, to work through the
8 issue.

9 First of all, we are not having, as I
10 said, engagements, or any direct engagements, with
11 the entities that I just mentioned. Of course,
12 there is always the issue about, you know, large,
13 multilateral meetings that take place where, say,
14 for example, Rospatent, and the USPTO, and many
15 other offices are involved. Well, again, we have
16 ended direct contact. I will say that those
17 large, multilateral meetings, we will take on a
18 case-by-case basis. We will decide what to do,
19 rather, on a case-by-case basis, making sure that
20 we put the interests of the United States first
21 and foremost there.

22 So, I don't want to give everybody the

1 impression that we will certainly have made the
2 call we will never go to any of those meetings.
3 We haven't yet. We have no plans to, quite
4 frankly. But, if the U.S. interests dictate that
5 a large, multilateral interest is best for the
6 USPTO to go there, that is something we will
7 weigh, and the possibility is certainly there,
8 that we will attend those meetings.

9 Additionally, I will say this is
10 somewhat breaking news. Of recent, there have
11 been many questions about PPH (phonetic), and
12 we've been working through with Department of
13 Commerce, and State Department, on next steps
14 here. And, we will be announcing, very shortly --
15 likely today, possibly tomorrow morning, but more
16 likely today -- that we are no longer going to
17 grant requests to participate in the global PPH.
18 Whether requests are based on work product
19 performed by Rospatent, as an office of earlier
20 examination. I know I've received a number of
21 questions about this. Again, I'll say, I
22 appreciate everyone's patience as we're working

1 through all of these issues. Look for that
2 announcement to come out very shortly, from the
3 USPTO.

4 As I mentioned, I know there's other
5 questions that people have, such as questions
6 related to PCT (phonetic), and again, I will just
7 say, we are continuing to work through these.
8 And, as we make the decisions, we will certainly
9 share the information as quickly as we can with
10 everybody.

11 I'll move on to the rest of my topics.
12 Well, I just wanted mention one more thing. PPAC
13 has graciously offered to take any -- to take in
14 any questions that you all have, the members of
15 the public have, on the various issues surrounding
16 our engagement with the entities that I mentioned
17 previously. So, certainly, Steve, I don't
18 actually know, offhand, what the email address is.
19 But, I think you can all send those over to PPAC,
20 and we'll make sure to tell you what the address
21 is in a few minutes here. And so, you can send
22 that information in, and we will certainly -- PPAC

1 will share that with us, as well. And again, I
2 appreciate everybody's input, and everyone's
3 patience as we work through these issues.

4 Let me turn to an update on our nominee,
5 Kathi Vidal, who, as you all know, has passed her
6 Senate Judiciary Committee -- Subcommittee vote,
7 on January 13th, and we're awaiting full
8 confirmation by the Senate. I raise it, not
9 because I have additional information, I wish I
10 did. But, I guess, the information that I have is
11 we are still waiting. We don't really know the
12 timing of that. I'm hoping it's on the sooner
13 side. I've had the, you know, pleasure of getting
14 to know her these last many weeks, and I think
15 she's going to be an absolutely fantastic
16 Director, and so, I'm looking forward to her
17 confirmation. But, the update I wanted to share
18 with all of you is that I really don't have an
19 update. As to timing, we, like everyone else, are
20 awaiting the confirmation and the timing in the
21 full Senate.

22 I also wanted to give everyone an update

1 on the status of the USPTO, regarding the
2 pandemic, of course. And we still, as of today,
3 are remaining in almost a full telework mode.
4 It's not entirely mandated for our employees, but
5 the vast majority of our employees are still
6 teleworking. We've been encouraging teleworking.
7 So, we're about 99 percent of our employees,
8 throughout the agency, are teleworking. I will
9 say that, as you all know, we have had a very
10 extensive telework and hoteling, that's what we
11 call the full-time telework. But, we've had a
12 very extensive program for many, many years. So,
13 I will say, we have really not lost a beat, as far
14 as work goes, during the two years plus that we've
15 been in this pandemic.

16 Most of our employees either worked
17 full-time at home already, or had the ability to
18 work part-time. So, it's a very small number of
19 people who weren't prepared with equipment at the
20 start of the pandemic. So, we've been in a very
21 good position to continue to function, and I'm
22 very proud of the USPTO staff across the board,

1 Patents, and Trademarks, and all other employees,
2 of how we've performed during these two years.

3 That being said, I am expecting that,
4 very soon, we are going to go into our next phase.
5 That will be a transition phase, back to our new
6 normal, which will be after this next transition
7 phase. I am expecting us to get to the transition
8 phase very soon. Likely next week, we will be
9 announcing. And the timing is, you know, we're
10 coordinating within the rest of the Department of
11 Commerce. So, I don't know the exact timing on
12 that, but I will say, when we announce, and it
13 will be very soon, we will be announcing a 60-day
14 period of transition for our employees, meaning
15 anybody is free to come into the office, as soon
16 as that announcement goes out. But they have, for
17 people who are coming back who aren't full-time
18 teleworkers, you have -- they have up to 60 days
19 to do that.

20 Now, keep in mind here, that we've
21 actually hired hundreds of people, many hundreds
22 of people, who have never been to the office --

1 some of whom don't even have, you know, leases, or
2 places to live in the area. So, after two years,
3 it's been -- it'll be quite a change for many
4 people. So, we're giving a 60-day notice. I'm
5 expecting that 60-day, as I said, to kick off
6 likely sometime next week. And then, after the 60
7 days, our expectation is, we'll be back to what
8 our new normal is for the USPTO, that will
9 continue to have many employees working remotely.

10 I also wanted to mention another note
11 about our employees, since this is the first
12 meeting of the year. I just wanted to mention
13 that, every year, we do a combined federal
14 campaign. This is a charity-run -- an event,
15 basically a year-long event, that we and the rest
16 of the federal government do. And, I just wanted
17 to share that, this past year, USPTO employees
18 raised more than 1.4 million dollars as an agency
19 for charities. That was 130 percent of our goal,
20 and that represents 36 percent of the total amount
21 raised by the Department of Commerce. We're
22 nowhere near, actually, 36 percent of the size of

1 Commerce. So, I just wanted to share the
2 generosity of the USPTO employees, because that
3 stands out to me, and quite frankly, this is a
4 similar story to what we see, year in and year
5 out, of the generosity of our employees throughout
6 the agency.

7 I have a variety of other updates that I
8 want to mention. I have about 10 more minutes, or
9 so. So, I'm just going to literally tick off and
10 go through them, because I just -- they're
11 highlights that I really wanted to share.

12 I know in Steve's opening remarks, he
13 mentioned the priority of expanding innovation.
14 We certainly share that same priority. Hopefully,
15 you all are well aware of our Council for
16 Inclusive Innovation, which has been in place to
17 create a national strategy just for expanding
18 innovation. So, we are very excited about steps
19 taken there. We've had a full Council meeting
20 recently, where we had both Secretary Raimondo and
21 Deputy Secretary Graves in attendance. This was
22 in late January. Again, this is a top priority of

1 ours. I will share that, probably not a surprise
2 to anybody following Ms. Vidal, but this will also
3 be a priority of hers, I am sure. I know that she
4 is very excited about being involved with the
5 Council, and taking steps to expand innovation.

6 I also wanted to mention some IT
7 updates. I will mention a DOCX update. And I say
8 this -- I know this is somewhat of a weedy topic.
9 Normally, I wouldn't have it in, say, opening
10 remarks, but I know I get asked a great deal of
11 questions about DOCX. And so, let me share with
12 all of you that -- let me first go into a little
13 bit of background.

14 So, as part of our upgrade of our IT
15 systems, we want to have people submit
16 applications in DOCX format. You're going to hear
17 more about this later, I know. So, I'm just going
18 to give you the high level. But, we want to have
19 people submit in DOCX format. And I've heard some
20 -- I've heard, you know, some concerns raised by
21 many members of the public, that the rendering in
22 DOCX might not be as accurate as we hope it is.

1 Or, even if it's the rare situation, there's
2 concern -- what happens if there's a rendering
3 that's not correct, and what the applicant wanted
4 to have filed wasn't actually filed.

5 So, we've been thinking about, and
6 considering, how to move forward here, and what
7 you're going to hear is we are going to introduce
8 a program. So, we did delay the start of DOCX for
9 a year, actually, and now we're going to have a
10 program that will enable people to file a backup
11 PDF version, just like they do today. You submit
12 a PDF version today.

13 So, you can submit that as a backup
14 version, and that way, we're letting people still
15 give us the papers in the format they're used to.
16 And, if there's ever any rendering problems, which
17 I hope there's not, and my expectation is there
18 won't be, although, of course, you never know what
19 will happen, such as with, like, formulas, et
20 cetera. But if there's ever any time -- any
21 problem with a DOCX conversion, we do have the PDF
22 version of the backup to give support.

1 And it's our hope at the USPTO that that
2 gives all the attorneys the comfort that you have
3 to -- you know, regarding concerns about potential
4 malpractice, or concerns of not, you know,
5 actually, by mistake, submitting something that
6 the applicant wanted to have submitted. We hope
7 that alleviates your concern, and that people will
8 start using the filing in DOCX, because it is
9 where our systems are heading. It is in the best
10 interest of everybody. There's many benefits,
11 which I know we've spoken in PPAC before about,
12 such as document checking for the applicants, et
13 cetera. So, anyway, more information on that --
14 look for a notice, also from us, very soon.

15 Also, I'm going to mention our Deferred
16 Subject Matter Eligibility Pilot Program. This
17 was requested by members of Congress. June Cohan
18 is going to speak more about that shortly, so I
19 won't say too much about that, other than to say
20 we are on the front end of starting that. We do
21 have about 700 examiners who are in that pilot.
22 So, I'm looking forward to next steps. Again,

1 June will talk about that more.

2 I would be remiss if I didn't mention,
3 it seems anywhere I go, about director review
4 (phonetic) of PTAB decisions. It's a question I
5 get asked all the time. I will just give you a
6 status update on those. We've received just under
7 200 -- it's actually about 100 -- higher, 180s --
8 received of petitions for director review. This
9 is, of course, after the Arthrex decision. To
10 date, there have been four of those that have been
11 granted. A few of those are still pending, so
12 it's not that all of the 187, but most of them
13 have been decided. But, again, four of those have
14 been granted.

15 While I'm on PTAB-related issues, I
16 wanted to mention that we're also on the front end
17 of kicking off a PTAB pro bono program, which I'm
18 extremely excited about. As you all know, we've
19 had, for a long time, a pro bono program for
20 people filing patent applications, and help with
21 prosecution. This PTAB pro bono program will help
22 with ex parte appeals, and eventually, the hope is

1 that it will help with AIA trials. But, we're on
2 the front end of getting that started. The PTAB
3 Bar Association is working with us. They are
4 actually recruiting lawyers to participate now. I
5 know they have their annual conference later this
6 month, and so, there will be certainly more
7 information there. But, I think this is a really
8 wonderful assistance to people who need help with
9 their ex parte appeals. So, I'm really looking
10 forward to that step.

11 By the way, I'll just say, for our
12 existing pro bono programs, we've surveyed
13 participants in 20 regional pro bono programs
14 across the country. Of those who responded to the
15 survey, we had 41 percent self-identifying as a
16 female, 30 percent identifying as being Black, and
17 14 percent identifying as being Hispanic. So,
18 some great background there as well.

19 I also wanted to mention, and I know
20 I've discussed this even in our last PPAC, but the
21 PTAB's LEAP program, that's the Legal Experience
22 and Advancement Program. That is a program that

1 gives people new to arguments in front of PTAB the
2 opportunity to make those arguments, and to be
3 able to learn with hands-on experience in
4 arguments. So, very excited about that. I know
5 at the last PPAC I mentioned we were removing one
6 of the requirements to the program, about the
7 length of time you had to be under to qualify.
8 That way, we were opening the doors up for more
9 people to qualify for the program. So, I'm very
10 happy with the steps we've taken there.

11 And I also know that other agencies have
12 reached out to us, to learn more about the
13 program. Other agencies who have judges, as well,
14 and who have people making arguments in front of
15 them. So, I look forward to PTAB sharing their
16 information that they already have with other
17 agencies. And, you know, imitation is the finest
18 form of flattery, I guess. So, I think it's
19 wonderful that others have recognized this great
20 program that's helped training people, and are
21 maybe taking the same steps.

22 So, I know I'm right at the end of my

1 remarks. I did want to mention, recently we've
2 come out with a number of reports. A 5G report,
3 basically, on -- that's saying that there really
4 are many factors that weigh into determining who's
5 leading in the 5G move, and that there really is
6 no clear leader. I know I've heard from many
7 folks that that has been a very helpful report.
8 Thank you to our Office of Policy and
9 International Affairs for putting that together.

10 And I know we have many reports coming
11 up, including one I'm expecting very soon to be
12 coming out, and that is our third edition of
13 Intellectual Property and the U.S. Economy. That
14 is, of course, a report that discusses the impacts
15 of innovation and IP on the U.S. economy, and
16 there is always some quite staggering numbers
17 there.

18 So, with that, I will end my remarks. I
19 just want to, again, thank Steve and the rest of
20 PPAC. I particularly want to recognize and
21 acknowledge the new members, Charles, Suzanne, and
22 Heidi. Thank you to all of you, and I'm looking

1 forward to a great meeting today. Thank you,
2 Steve.

3 MR. CALTRIDER: Great. Thank you, Drew.
4 And, I also want to express my gratitude to the
5 USPTO employees, who were so generous in their
6 giving. It's a proud moment for USPTO, and PPAC
7 is very grateful for that as well. We have just a
8 minute or two. Perhaps a question, if anybody has
9 any questions? Well, Drew, I have one. You
10 mentioned four granted director reviews. Have
11 those matured to a final decision, or are those
12 still in progress?

13 MR. HIRSHFELD: No, they're still in
14 progress.

15 MR. CALTRIDER: Got it --

16 MR. HIRSHFELD: So, they've matured, and
17 returned back to the panels.

18 MR. CALTRIDER: Okay. Good, thank you.
19 Well, let's press on, because we've got a tight
20 agenda. Tracy, the PQuIP.

21 MS. DURKIN: Sure. So, yes. As I
22 mentioned in my introduction, I am chairing the

1 PQuIP, which, there has already been a nice
2 explanation of what that is, but it is a blending
3 of two prior committees that have been
4 longstanding on the PPAC: Patent Quality and
5 Pendency, and Patent Trial and Appeal Board. And
6 so, this committee, as has been mentioned several
7 times, reflects the continuing priority of the
8 PPAC to engage with the Office, to help ensure
9 that the patents that are granting are durable and
10 reliable for the public.

11 So, in keeping with the importance of
12 this subcommittee, and the fact that it touches on
13 so much of what the Office does with regard to
14 patents, among many members from the Office are
15 the Head of Patents, the Head of the PTAB, the
16 Office of Policy and International Affairs, and
17 the Office of Patent Legal Administration. So, it
18 is a very large committee, but we have a very
19 important job to do, so we need all hands on deck.

20 There are several issues on our plate
21 this year. One of them, that I think we're most
22 excited about, but we will not be presenting on

1 today, is data sharing, that has been going on
2 between the outcomes at the PTAB and the Patent
3 Examination Function. This is to create an even
4 more robust feedback loop, between examination and
5 post-grant proceedings. And, we hope to be able
6 to provide more information on that, as the year
7 progresses in future PPAC meetings. But today,
8 what we're going to hear about is equally
9 exciting, which is the Deferred Subject Matter
10 Eligibility Response, D-S-M-E-R, DSMER. It's a
11 pilot program regarding statutory subject matter
12 101. And then, we're going to also hear about
13 some new developments from the PTAB.

14 So, with that, I think I'm turning it
15 over to Bob Bahr, Deputy Commissioner for Patents,
16 but I know June is actually making the
17 presentation. But, I'll hand it over to you,
18 first, Bob.

19 MR. BAHR: Hi. Thank you, Tracy. I'm
20 going to pass it right through to June Cohan,
21 who's going to give a presentation on the Deferred
22 Subject Matter Eligibility Pilot Program. So,

1 June?

2 MS. COHAN: Thanks, Bob. Thanks, Tracy.
3 All right. So, yes. I'm here to talk about the
4 pilot program. It's a mouthful, so we call it
5 DSMER, for the Deferred Subject Matter Eligibility
6 Response Pilot Program. If you could go to the
7 next slide, please.

8 This program was launched on February
9 1st, and it's a temporary program we initiated in
10 response. We got a letter suggesting a program,
11 from two senators, Thom Tillis and Tom Cotton.
12 And in a nutshell, we -- applications that
13 participate in the program are going to get a
14 normal, first action on the merit, with all
15 applicable rejections. But, participating
16 applicants can defer responding to eligibility
17 rejections right away. Instead, they can focus on
18 the non-eligibility rejections, things like
19 obviousness, or written description rejections,
20 with the understanding that the resolution of
21 those issues may actually indirectly resolve the
22 eligibility issues. And so, we may see improved

1 examination efficiency, and increases in patent
2 quality, as compared to our traditional compact
3 prosecution practice. Next slide, please.

4 The application participation in this is
5 by invitation only. To date, we have mailed about
6 175 invitations. And, we will be mailing them
7 through the end of this July. The invitation is
8 going to, actually, appear in -- as a formed
9 paragraph in the first action on the merits, and
10 it will tell the applicant about the program, and
11 how to accept or decline the invitation. So, if
12 the invited applicant wants to participate, they
13 simply sign a simple form, and submit that with
14 their response to the office action. If they're
15 not interested, they don't have to do anything
16 special. They can just respond in the normal way.
17 Next slide, please.

18 Now, I mentioned that the program is
19 invitation only. We also have a few criteria for
20 the applications. And the reason we have this is
21 because, since we're studying examination
22 efficiency, we want to be sure that our data is as

1 clean as possible, and we avoid confounding
2 variables. So, we've selected these criteria in
3 order to control those a little more.

4 So, for instance, we are not permitting
5 continuation applications into the program,
6 because a continuing application -- there's
7 already been prosecution in the parent. And so,
8 both the examiner and the applicant are going to
9 have that prior knowledge they bring in, that will
10 create efficiencies in the continuation, which of
11 course is good for examination, but might make a
12 continuing application in the program look more
13 efficient due to that, as opposed to due to the
14 program's procedure.

15 We are also keeping the program limited
16 to our regular track, because if you're already in
17 a fast track program, like the Track One
18 prioritized exam, that might also, sort of,
19 confound our tracking of the efficiency data in
20 this program.

21 And then, the last requirement is, you
22 have to have both a Subject Matter Eligibility

1 rejection, which is SME, for Subject Matter
2 Eligibility, and at least one other rejection.
3 So, Subject Matter Eligibility, they're
4 Eligibility for short. These are the rejections
5 under our guidance. We call them either Step 1,
6 which are things like, it's a transitory signal,
7 or, oops, it's software per se, because they
8 forgot to claim the software as a physical object,
9 and those don't fall in a statutory category. Or,
10 it could also be what we call a Step 2 B
11 rejection, which are the things like the Alice and
12 Mayo case, where the claim recites a judicial
13 exception, without also including significantly
14 more, or what the Supreme Court calls, the
15 inventive concept in the claim.

16 And then, there's going to be at least
17 one non-eligibility rejection in there as well,
18 and that can be anything else. It could be a
19 utility rejection, an obviousness rejection, a
20 written description, or indefiniteness rejection.
21 Now, inside the PTO, we have, as Drew mentioned,
22 about 700 examiners participating in the program,

1 and this is great representation. It's about, I
2 think, 13 percent across the core, but it's much
3 higher, about 20 to 30 percent of examiners are
4 participating in the areas where eligibility
5 rejections are more common. So, places like
6 Business Methods, or Artificial Intelligence, or
7 the, say, Diagnostics and Bioinformatics areas in
8 1600. Next slide, please.

9 So, briefly, the program is giving the
10 applicants a partial waiver of this rule,
11 1.111(b). And, that's just the rule that requires
12 them to completely respond and traverse
13 rejections, if they want reconsideration. They
14 get a partial waiver with respect to the
15 eligibility rejections. So, they still need to
16 file a response to every office action that's
17 mailed out, but they can defer responding to the
18 eligibility portion of those actions. And then,
19 other than this permitted deferral or waiver, the
20 prosecution process proceeds normally. So, for
21 instance, if there's an interview held, the
22 applicant and the examiner would still document

1 the substance of the interview in the normal
2 fashion.

3 Now, this waiver stays in place until,
4 what we call, final disposition, which is things
5 like allowance, final rejection, or, say, if the
6 applicant appeals, or files an RCE. Or, by the
7 withdrawal or obviation of all non-eligibility
8 rejections, which is just the fancy way of saying,
9 the only rejection left in the case is
10 eligibility.

11 And then, after final disposition, the
12 application, sort of, returns to the, say, normal
13 process. So, the applicants can participate in
14 our pilot programs after final. So, for instance,
15 AFCP 2.0 (phonetic), or the QPIDS (phonetic), or
16 -- and this fast track appeals pilot (inaudible).

17 Now, the next slide is a flow chart
18 illustrating the typical process flows. I'm not
19 going to go over this today, but I just wanted to
20 let everyone know that this is out there. It's
21 posted on our DSMER website, and this just walks
22 through the various steps in the process, from the

1 applicant's point of view. And there's other
2 information available on our website. And, next
3 slide please.

4 Now, here, this is a little different.
5 This is a timeline, just illustrating some of the
6 major milestones for the program. So, we're
7 currently in the invitation phase, which is that
8 upper left box. As I mentioned before, it started
9 February 1st, it's going to run until July 30th of
10 this year, when we'll be mailing out the
11 invitations. And, as I've said, we've mailed out
12 about 175 so far. Now, the acceptance phase,
13 which is the bottom left box, that's -- we're
14 actually technically in that right now, but
15 because applicants will respond -- they'll accept
16 the invitation with their response to the office
17 action, they have that 6 month statutory time
18 period to respond.

19 So, this is sort of a rolling response
20 period, because the last invitation is not going
21 to go out until July 30th. They could,
22 technically, if they took the extensions of time,

1 wait until the end of January of next year before
2 they tell us if they're going to be in. We expect
3 most applicants will respond as they normally do,
4 which is about two and a half to three months
5 after the action is mailed. So, we're hoping to
6 see the acceptances start to come in, say,
7 mid-April from there.

8 Now, the other two boxes on the slide,
9 the projected disposals, these are just
10 projections based on average timing under
11 traditional compact prosecution. So, they may not
12 reflect what's going to happen in the program, but
13 I just have them up here to, sort of, show when we
14 might expect to get data. And, for those of you
15 not familiar with the term disposal, we're using
16 it here to refer to, say, issuance, or abandonment
17 of the case. So, as you see at the top, you know,
18 we could start seeing some disposals as early as
19 this September. But, say, if applicants were to
20 file an RCE, that's going to push things out a
21 little bit. Could be to, say, 2024, for certain
22 cases.

1 But hopefully we'll get -- you know,
2 data will be coming in, we think, on a regular
3 basis, but every case in the program -- it's going
4 to take some time before we have a, say, complete
5 set of data. And the data that we are going to
6 collect, we're going to look at things like the --
7 which applicants are participating? What entity
8 status they are, for instance, are they
9 independent inventors? Are they large
10 corporations? We're going to look at the effects
11 on things like pendency, examination quality,
12 examiner productivity, use of after final
13 (phonetic) programs, and the like.

14 And then, my last slide is just -- has
15 some links. The top is to our program page. It's
16 a long URL, but you can also find it by searching
17 for DSMER using a search engine. That's got more
18 information about the program. The flow chart is
19 posted, you can follow links to the public
20 comments. And then, the link on the bottom is
21 just to our eligibility webpage. That has
22 information about the examination guidance that we

1 use here at the Office, to examine eligibility.

2 And that is all I have, but I'm
3 certainly happy to answer any questions that
4 anyone has about the program.

5 MS. DURKIN: June, I'm curious --
6 disposal, does that also include appeal? Or is
7 that counted separately? If someone were to
8 abandon --

9 MS. COHAN: Well --

10 MS. DURKIN: -- you said, abandon
11 noticeable allowance. Is appeal in the third
12 category of disposal?

13 MS. COHAN: Yeah, we can -- that would
14 include the notices of appeal. The appeals
15 themselves are actually not shown on there,
16 because the timing of those can be longer.

17 MS. DURKIN: Mm-hmm.

18 MS. COHAN: But, yes, we would see that.
19 Because of course, applicants would, say, if they
20 wanted, after they have been rejected twice, they
21 can file a notice of appeal. So, we can count
22 that as an initial disposal, but we would also be

1 looking for what happens, of course, in the
2 appeal, and, you know, how the appeals turn out.

3 MS. DURKIN: Yeah. That makes sense.

4 MS. COHAN: Mm-hmm.

5 MS. DURKIN: We're excited to see how
6 that program develops. Does anyone have any
7 questions on that before we turn it over to --

8 MR. DUAN: Yeah, if I could ask two
9 questions. So, first of all, this a really great
10 presentation, very informative on how the program
11 is working. I know that a lot of the people I've
12 talked to have had questions about what's going
13 on, and this is really helpful. The two questions
14 I had -- so, first of all, on the flow chart, the
15 decision box marked as final action appropriate --
16 I assume that there has to be some change to the
17 way that that's determined, given the fact that
18 the applicant may not have responded to any 101
19 rejections. So, for example, if all of the other
20 rejections are obviated, and only a 101 rejection
21 remains, it doesn't seem quite right for that to
22 go to a final action. So, I'm wondering if

1 there's going to be any particular guidance on
2 that.

3 The second, I think this is just to
4 confirm. It doesn't seem like too much, other
5 than that that one thing that I just mentioned, is
6 going to change for examiners. This is mostly a
7 change for applicant practice. Is that correct?

8 MS. COHAN: Yes. To answer your second
9 question first, examiners are still going to have
10 to look at all issues, since the premise of the
11 program is that the resolution of, say, an
12 obviousness issue, may also resolve the
13 eligibility. The -- you say, if the applicant
14 were to respond, and the response is technically
15 only to the obviousness rejection, but there may
16 be claim amendments made, particular arguments,
17 the examiner is going to look at them, as she
18 normally would, and see, hey, does this also
19 resolve these outstanding eligibility issues. So,
20 it -- we don't expect it to change too much from
21 the examiner, other than, you know, the examiner
22 may be able to then, say, withdraw the eligibility

1 issue.

2 Now, for the first question. The
3 consideration of whether a final action is proper
4 on the second action is actually not changed. We
5 had talked about that, but since we're looking for
6 efficiencies, we wanted to keep as -- sort of, as
7 much possible the same for the procedure in the
8 program as in the traditional compact prosecution.
9 So, the second action is going to weighed under
10 the same circumstances.

11 MR. DUAN: Great, thank you.

12 MR. HIRSHFELD: May I jump in?

13 MS. COHAN: Mm-hmm. Oh, sure.

14 MR. HIRSHFELD: So, I get asked a great
15 deal why we made the Pilot Program so that
16 examiners make the rejection, make the 101
17 rejection, and then we let the applicant waive it.
18 I get asked the question, you know, why didn't we
19 just not have the examiners address the 101 at
20 all. And so, we -- I wanted everyone to know, we
21 gave that a lot of thought, and a lot of
22 discussion. And I'll tell you, I feel very

1 strongly that, for a first step here, and I don't
2 know if there will be future Pilot Programs, but I
3 felt very strongly that, for applicants' benefit,
4 it was in their best interest for us to make the
5 101 rejection. So, the applicant can make the
6 educated decision whether or not to respond.

7 I contrast that with the situation that
8 if we don't make it, the fear that I had, quite
9 frankly, was the examiner knows there's a 101
10 rejection that should be made, they don't make it,
11 they don't indicate that to the applicant, as part
12 of the program, and then the applicant proceeds
13 with prosecution on the other patent statutes.
14 They spend, whatever it is, six months, a year, a
15 year and a half, prosecuting; they think they're
16 done, and then they get a 101 rejection, which may
17 happen in some times. Hopefully, you know, the
18 Pilot Program worked, and the -- all of the other
19 responses to the other statutes obviated any 101
20 rejection that would have been made.

21 But if it didn't, then you're having an
22 unknowing applicant getting a 101 rejection, after

1 prosecution, that they spent a lot of time, and a
2 lot of effort on. So, I felt very strongly, quite
3 frankly, that for this step -- this initial step,
4 it's very important that we make the rejection,
5 then we let the applicant decide, based on the
6 needs of their client, based on the situation, if
7 it's right for them to respond, or not, to the
8 101. They can choose to respond if they want to.
9 They don't have to if they don't, and if they
10 don't, and it gets obviated by the other statutes,
11 wonderful. Program is, you know, working and
12 we've learned something, but I wanted them to make
13 the educated decision.

14 So, I can see that we might take results
15 from this program, and maybe expand on that. And
16 maybe, there's a time where we would do something
17 broader, and not have the examiners make that
18 rejection. But to truly test this premise, and to
19 safeguard the applicants, I thought that
20 information was needed upfront.

21 MR. DUAN: Thanks, Drew. That's a
22 really helpful explanation. I would just point

1 out one additional thing, which is that, by the
2 examiners making the rejection, I think that
3 actually helps for data collection and analysis.
4 There's been a lot of really good research done on
5 the prevalence and the nature of 101 rejections,
6 and by making sure that examiners are still making
7 that, I think that puts it into the record, and
8 allows us to study the phenomenon further, which
9 is really helpful.

10 MR. HIRSHFELD: Yes. Agreed. And
11 contrasting that, again, with not making any
12 rejections, and then trying to do a study, you
13 could compare large numbers of groups, but you --
14 any particular case, you would never know whether
15 a 101 was actually obviated if it wasn't made.

16 MR. CALTRIDER: And, if you don't mind
17 me chiming in, I have a question, as well as a
18 comment. Drew, I agree. I think the assessment
19 of making that rejection upfront is the better
20 practice, and I applaud that from the Office. And
21 I applaud the work of the subcommittee on this.
22 My question goes to data collection, in two

1 respects.

2 One, you commented a little bit on the
3 data being collected, and I wonder if you could
4 comment more deeply on what those fields are.
5 Because, to Charles' point, it -- you know, it
6 would be very, very interesting if your -- the
7 relationship between a 103 rejection, and whether
8 something is routine, or doesn't involve the
9 inventive (phonetic) activity, and also the
10 relationship between abstractness and 112. It's
11 -- those are data that's going to be really
12 important to see. So, I'm curious how detailed
13 the data will be, so you can tease those types of
14 analyses out.

15 And then, secondly, since this pilot's
16 going to extend for some period of time, given the
17 time period of prosecution, do you anticipate
18 making some of the data available as you go? Or
19 do you anticipate, kind of, waiting until the very
20 end, and then the data will be part of a final
21 report? And when I say available, available
22 publicly?

1 of, going in a and seeing which rejections were
2 made, looking for trends and combinations of
3 rejections, looking to see if there's, maybe,
4 certain technologies, or certain types of
5 applicants that this helps in. You know, maybe
6 this will help pro se independent inventors, more
7 than large companies that hire sophisticated
8 counsel. So, we'll be slicing and dicing in the
9 data. You know, we're also going to look, as I
10 said, at, sort of, the outcomes of things -- the
11 numbers, say, like, allowance rates, and the
12 number in type of claims allowed, or the RCE
13 filing rate. Maybe it's going to cut down,
14 hopefully, on RCEs and appeals. But we're also
15 going to look in and see, you know, the content of
16 it. Is the quality improved? Obviously, we're
17 going to use our traditional quality metrics there
18 for, say, clarity and completeness of the record.

19 And then, we haven't set a timeline yet
20 for data, but I think it's fair to say, I don't
21 think we're going to wait for five years to give
22 it to you. We want to be conscious of one, most

1 of these applications are currently unpublished.
2 So, we may wait, just a few months until it's
3 public, just so we don't, you know, accidentally
4 release anything about it. But, I certainly think
5 we would be making portions of the data available
6 as we go along, so people can track it.

7 MR. HIRSHFELD: I'll just take over this
8 --

9 MS. COHAN: Drew, was there anything you
10 want to add?

11 MR. HIRSHFELD: No -- yeah, I'll just
12 echo the last part that you said. I was leaving
13 it up to you on the data collection, and I know
14 we'll collect tons of data, no problem there.
15 And, to the question about releasing the data,
16 certainly there's no reason to wait to the end
17 here. We're happy to continue to release data as
18 we get it.

19 MR. CALTRIDER: Thank you.

20 MS. DURKIN: Any other questions on
21 that, before we change topic? Okay. Well, thank
22 you, June. Thank you, Bob. Thank you, Drew, for

1 your additional comments. Now, we are going to
2 hear about some new developments at the PTAB. For
3 that, I'm going to introduce Chief Judge Boalick,
4 but I'm sure he's got a cast of talent that will
5 be, actually, addressing the various topics that
6 we have. Scott?

7 MR. BOALICK: Yes, and thank you Tracy.
8 Yes, we have a number of our, you know, PTAB
9 senior leadership here today to talk about a --
10 several updates. If we could go ahead and move to
11 the next slide, I'll give you an overview of what
12 we're going to talk about.

13 So, the very first topic is going to be
14 an update on director review. I know that Drew
15 touched on this, we'll dive into a little bit more
16 detail here. And, presenting that is going to be
17 Senior Lead Judge Michelle Ankenbrand who, I'd
18 like to note, Michelle was very recently promoted
19 to be one of our two Senior Lead Judges at PTAB.
20 So, congratulations to Michelle.

21 Then, we're going to turn the floor over
22 to Vice Chief Judge Janet Gongola, to walk through

1 some updates on PTAB resources for inventors,
2 updates on the pro bono pilot. Again, Drew
3 touched on that, and we will have just a little
4 bit more texture to that. And then, we'll have
5 some time for any questions at the end. So, if we
6 could move to the next slide. I'll go ahead and
7 turn things over to Senior Lead Judge Michelle
8 Ankenbrand, to walk you through the current status
9 of the interim director review process that we've
10 set up.

11 MS. ANKENBRAND: Thank you, Scott. So,
12 if we can go to the next slide, please. Just a
13 little bit of background, before we start getting
14 into the discussion about the slides. As most, if
15 not all of you, know, the Supreme Court issued its
16 Arthrex decision in June 2021. So, in a few
17 months, we'll be coming up on the year -- the year
18 date, since that decision issued. In that case,
19 the Court considered whether APJs at the Board are
20 principal officers, who must be appointed by the
21 President, with the Senate's advice and consent.
22 Or, whether, as the -- as PTO and U.S. Government

1 argued, they are inferior officers, who can be
2 appointed by the Secretary of Commerce.

3 In that decision, the Supreme Court
4 provided a new tailored remedy, to ensure that
5 APJs function as inferior officers. So, the Court
6 did say that APJs were principal officers, and the
7 remedy, basically, in a -- the Court said that one
8 of our statutes, 35 USC, section 6(c) (phonetic),
9 is unenforceable, as applied to the director of
10 the PTO, insofar as it prevents the director from
11 reviewing decisions of the PTAB on his or her own.
12 And the Supreme Court also said that, the director
13 may review final PTAB decisions, and upon review,
14 may issue decisions himself, or herself, on behalf
15 of the Board.

16 So, with that as a little bit of
17 background, I'll get into the slides. So, the
18 Arthrex decision provided the director of the PTO
19 with the authority to unilaterally review a PTAB
20 -- any PTAB final decision, in an IPR by rehearing
21 (phonetic). Shortly after the Arthrex decision
22 issued, the Office implemented an interim process

1 for director review, that was consistent with the
2 decision. And, the interim process allows
3 director review to be initiated sua sponte by the
4 director, or requested by a party to an AIA
5 proceeding, in relation to a final written
6 decision. Next slide, please.

7 So, what happens if the Director
8 initiates a sua sponte director review? If that
9 happens, the process contemplates that the
10 Director will give notice to the parties, and may
11 give the parties an opportunity to brief the issue
12 or issues. And, just a little side note, the
13 Director has the option of initiating a sua sponte
14 director review at any point before the filing of
15 a notice of appeal in the case, or before the time
16 for filing such a notice has passed. Also, the
17 Director review may address any issue, including
18 issues of facts and/or law, and the review is de
19 novo.

20 So, one point on that -- even though the
21 review is de novo, the office does not consider
22 the request an opportunity for a party to make new

1 arguments, or submit new evidence that wasn't
2 already before the Board. With that being said,
3 the Director may choose to request additional
4 briefing on any issue, and in appropriate
5 circumstances, may allow the parties to submit new
6 evidence. Next slide, please.

7 So, the process as it -- currently in
8 place, that is not the sua sponte part of the
9 process: A party can request director review of a
10 final written decision, in an inter partes review,
11 or a post-grant review. And the party does so by
12 concurrently filing a request for rehearing by the
13 Director of the PTAB decision, and also submitting
14 a notification of that request by email, to the
15 email box that's highlighted on this slide. And,
16 of course, copying counsel for all parties. Next
17 slide, please.

18 So, the -- how does the process work?
19 Again, after the final written decision in an
20 inter partes review, or post-grant review, a
21 party may request either director review, or
22 rehearing by the original PTAB panel, but, a party

1 may not request both. So, if a party does request
2 panel rehearing, this is an exception. So, if a
3 party requests panel rehearing, and the panel then
4 grants the rehearing, a party may subsequently
5 request director review of that decision granting
6 rehearing. But, if the party instead just
7 requests both director review and panel rehearing,
8 either together or in the alternative, the Office
9 will treat that request as a request for director
10 review. Next slide, please.

11 So, what is the timing for the process?
12 The process tracks the PTAB's process for
13 rehearing, which has set forth in 37 CFR, section
14 42.71(d). And that, basically, just says that the
15 request must be filed within 30 days of entry of a
16 final written decision. Or, a decision on
17 rehearing by a PTAB panel, because, remember,
18 that's sort of the exception to the rule. If the
19 PTAB panel grants rehearing, then you can still
20 file a request for director review.

21 And, a timely request for rehearing by
22 the Director is considered a request for rehearing

1 under the Board's rules, and also, will reset the
2 time for appeal or civil action, as set forth in
3 the rule noted on this slide. That's rule
4 90.3(b). And the page limit is also -- for the
5 request, is also 15 pages, which is the same as a
6 request for rehearing. So, for people that are
7 thinking about -- parties that are thinking about
8 filing a request for director review, we just
9 commend them to take a look at 42.71(d), because
10 that will set forth the base requirements for the
11 request.

12 Next slide, please. So other
13 information that we've provided in our Arthrex --
14 in that the discussion of our Arthrex processes on
15 our website -- one thing to note is that third
16 parties cannot file a request for Director review.
17 Only a party to a case can file a request. Also,
18 during the implementation of this interim process,
19 the office is not charging a fee.

20 And then, the last sort of question is,
21 what happens to the POP Process -- that's the
22 Presidential Opinion Panel Process -- while we

1 have this interim Director review process? And
2 that will remain, has remained and will remain, in
3 effect and unchanged. But, as we've said
4 previously, we're reviewing the POP Process in
5 view of the Director review process, and we
6 welcome public suggestions regarding any potential
7 changes to either process. And we'll get to the
8 slide in a minute where there's a mailbox where
9 anyone can submit suggestions on the Director
10 review process. Next slide, please.

11 So, future plans, again the current
12 process is envisioned as an interim process that
13 can change based on input from the public and also
14 the office's experience with conducting the
15 Director reviews. And, again as I just mentioned
16 in accordance with the last slide, suggestions
17 about the Director review process can be submitted
18 to the mailbox that's outlined on this slide.
19 Next slide, please.

20 Further information -- so we've
21 published a wealth of information on the Director
22 review process that includes an Arthrex

1 information web page that's listed under the first
2 bullet point there. Also, the office has
3 published Q&As where the office has essentially,
4 sort of, laid out the Director review process and
5 tackled some of the questions that were first
6 received, and they've been updated over time.
7 Those are available at the second link, and there
8 was also a "Boardside Chat" presentation on July
9 1st, 2021, that was the rollout of the interim
10 Director review process, and there's a video and
11 also slides available on the website including
12 some information from Drew, also from Scott, our
13 Chief Judge, and from Jackie Bonilla, our Deputy
14 Chief Judge.

15 So, some other information that's
16 available on these web pages, as I said, are some
17 information about how the process works. So, the
18 request for the Director review comes into the
19 mailbox and gets filed in the case. What happens
20 next? So, the Arthrex Q&As explain that those
21 requests are evaluated by an advisory committee
22 that the Director establishes, and the advisory

1 committee advises the Director on whether it would
2 recommend a decision for review. That advisory
3 committee includes members from various business
4 units, such as the Office of the Under Secretary
5 PTAB, the Office of the Commissioner for Patents,
6 the Office of General Counsel -- for example, the
7 Solicitor's Office and the Office of Policy and
8 International Affairs. After the screening
9 committee -- the advisory committee, excuse me --
10 makes its recommendation, the Director then
11 independently determines whether review should be
12 granted or denied, and we'll get to some of those
13 grants in a few minutes.

14 Again, I think it's worth pointing out,
15 and it's also noted in Question & Answer A9 in the
16 Arthrex Q&As, at this time the office does not
17 accept requests for Director review of decisions
18 on institution or ex parte appeals decisions.
19 Parties may only request Director review of final
20 written decisions issued in IPRs and PGRs.

21 Some of the criteria for Director review
22 versus POP review -- so, Director review and POP

1 review both are on rehearing. And there's no
2 exclusive list of criteria, but PTAB decisions may
3 warrant Director review if they include, for
4 example, material errors of fact or law, matters
5 that the Board misapprehended or overlooked, novel
6 issues of law or policy, issues on which Board
7 panel decisions are split, issues of particular
8 importance to the office or the patent community
9 at-large, or inconsistencies with Office
10 procedures, guidance, or decisions.

11 POP criteria are similar, but POP is
12 generally used to establish binding agency
13 authority concerning major policy or procedural
14 issues or other issues of exceptional importance
15 to the office or the PTAB. So, some examples of
16 those are Constitutional questions, statutory
17 regulatory interpretation, issues of broad
18 applicability to the Board, or, again, conflicts
19 between Board decisions to promote certainty and
20 consistency.

21 Thus far, and I think Drew hit on this
22 earlier in his comments, the office has received a

1 number of requests for Director review to date.
2 It's been 187 total requests in just over eight
3 months. Among those are requests from final
4 written decisions -- if you can advance the slide,
5 please -- these are the stats. The statistics
6 among those are requests from final written
7 decisions that parties have filed. Also, we've
8 received a fair number of requests from decisions
9 that were remanded by the Federal Circuit that
10 gave parties an opportunity to request Director
11 review. Of those 187 total received requests, so
12 far 11 are still pending at this time and 176 have
13 gone to completion, 162 of those were denied, nine
14 dismissed, one withdrawn, and four granted. In
15 the four that were granted, those are the ones
16 I'll focus on. All of them were grants with
17 remands to the Panel with further instructions
18 coming from Drew, that the Panel should consider
19 in issuing a new final written decision.

20 So, the first one of those grants was in
21 IPR 2020- 00349, and that's at paper 57. In that
22 case, the final written decision determined all of

1 the challenged claims were unpatentable. Patent
2 owner sought Director review based on four
3 arguments -- one, that the Board erred in failing
4 to consider whether patent owner was entitled to
5 priority to a provisional application in relation
6 to two dependent claims of the patent, and three
7 arguments related to the Board's determination
8 that the challenged claims would've been obvious.

9 The order in that case granted director
10 review and remanded the case to the Board to
11 address the patent owner's argument on priority,
12 and it denied director review as to the three
13 obviousness arguments. This one settled after
14 remand, and the case was subsequently terminated,
15 and the director review order vacated the final
16 written decision, which allowed the parties to
17 settle after remand and the case to be terminated.

18 The next case was IPR 2018-00733, and
19 that's at paper 95, and again, director review was
20 granted with a remand to the Panel. The final
21 written decision determined all of the challenged
22 claims were unpatentable and declined to give

1 weight to patent owner's objective evidence of
2 non-obviousness. So, patent owner in that case
3 -- and that was one that came back on a limited
4 remand from the Federal Circuit -- sought director
5 review arguing that the Board failed to give
6 appropriate weight to the objective indicia of
7 non-obviousness in view of a similar analysis that
8 the Federal Circuit had vacated and remanded in a
9 related case. So, the order in that case granted
10 director review and remanded the case to the Board
11 to address the objective indicia of non-
12 obviousness in view of the Federal Circuit's
13 decision in the related case.

14 And then the last two director review
15 grants are based on the same issue. It was two
16 different cases -- IPR 2016-00754 and IPR
17 2016-01520. Again, there was a director review
18 granted with a remand to the Panel. There's one
19 order covering both cases, and in these cases the
20 final written decision determined all of the
21 challenged claims were unpatentable. And these
22 also are -- you can probably tell by the IPR

1 numbers being in 2016 -- they were limited remands
2 from the Federal Circuit and patent owner
3 requested director review arguing that the Board's
4 claim construction of certain claim terms was
5 incorrect, in view of the Federal Circuit's
6 decision in a related case that reversed the
7 Board's claim construction of similar terms and
8 entered its own claim interpretation. So, the
9 grant order in that case, which just issued on
10 March 3rd, last Thursday, grants director review
11 and remands the cases to the Board to address its
12 claim construction in light of the Federal
13 Circuit's intervening decision.

14 And with that, I think we can advance to
15 the next topic, which Vice Chief Judge Gongola is
16 going to present.

17 MS. GONGOLA: Good afternoon, everyone.
18 Thank you very much, Michelle. We're really
19 pleased to be here today to talk with you about
20 PTAB resources for inventors. As you may recall,
21 we have been focused on reaching into the inventor
22 community for some time now, and that effort

1 continues. So today, I want to share some of the
2 ways that we accomplished our reach-out, as well
3 as solicit from you other suggestions for how we
4 might build our ties further. Next slide, please.

5 So a first way that we have attempted to
6 make the Board accessible to the inventing
7 community, and really all those who are new to
8 PTAB proceedings, is through a web page called New
9 to PTAB. On this web page, we've taken our
10 proceeding types -- appeals and trials -- and
11 distilled them to the very basic building blocks.

12 So, we give information on the
13 fundamentals for appearing before us in plain
14 English so it's not confusing, it's not filled
15 with legalese, it's simple to understand.
16 Additionally, on this web page in the red box
17 shown on the slide, you will see that we are
18 highlighting an ex parte appeal brief template.
19 What we've done here is to make the appeal process
20 simpler and easier for inventors. We have taken
21 the requirements of an appeal brief and broken it
22 down into various sections. For each section

1 that's required in a brief, we give an
2 explanation, what the section entails, and we
3 provide some examples. So, the inventing
4 community can learn through those examples what
5 types of information to submit, what kind of
6 arguments to make.

7 This web page, we're not static with it,
8 we're continuing to develop it. Right now, we're
9 in the process of translating this web page into
10 other languages, starting with Spanish, and then
11 we'll continue the translation process so that we
12 can be available to not just English-speaking
13 inventors but inventors whose first language is
14 not English -- maybe it's Spanish, maybe it's
15 French, maybe it's German. Next slide, please.

16 Our second outreach effort is a series
17 called Inventor Hour webinars. We host on the
18 last Thursday of every month at noon, a one-hour
19 webinar, again geared towards inventors and those
20 new to practice before the Board. This inventor
21 -- this webinar -- is not a deep-dive into a
22 single topic like you find in most of the office's

1 presentations. Instead, we've aggregated for each
2 session, a series of topics. We spend 10 minutes
3 on one topic, 10 minutes on the next topic. By
4 providing short assemblies of information on a
5 variety of different topics, we're hoping to meet
6 all interest and give inventors a very broad base
7 for familiarity with our Board.

8 We also include a session where we
9 feature a member of the Board -- either a Judge or
10 a Board Operations member -- to talk about what
11 they do on a day-to-day basis, why they work at
12 the office, what their background was. And then
13 we end every one of our sessions with what we
14 regard as the most important part -- the
15 opportunity for viewers to ask us questions. Our
16 Inventor Hour series started out with just a
17 handful of folks in attendance and over the months
18 since August when we launched, we have grown the
19 series and now we're hitting around a hundred
20 attendees. So we really want your help in
21 spreading the word about this series so that we
22 have even more attendees going forward, and we can

1 answer more of the public's questions going
2 forward.

3 Another feature that we're doing to
4 enhance the Inventor Hour webinars as we go
5 forward -- we are bringing special guests in from
6 other parts of the office to talk about services
7 that other business units make available for
8 inventors. For example, in our March episode, we
9 are featuring the Patent Pro Bono Program. In our
10 May episode, we are featuring the Law School
11 Clinic Program. Both of those services work to
12 help inventors file and prosecute applications, so
13 we know we're not a siloed business unit. We're
14 one office, so we're trying to bring, through this
15 inventor series, eventually all information about
16 how we help inventors to the limelight. Next
17 slide, please.

18 Our final way of reaching out to
19 inventors is through the Inventor Digest
20 publication. We're very grateful to the editorial
21 staff of the Inventor Digest because they give us
22 the opportunity to publish a monthly article about

1 the Board. And on this slide, you'll see an array
2 of those articles and the topics they covered. We
3 started in September, just with the general piece
4 about the Board and who we are. Then we moved
5 into a couple of articles about our two proceeding
6 types -- appeals and trials. In December, we
7 talked about how hearings progress in front of the
8 Board. And then, finally -- in January, February,
9 March -- we're moving into a series where we
10 explain where the Board fits into the IP system,
11 how we compare to district courts, how we compare
12 to the ITC, so that inventors have an
13 understanding of what types of challenges can be
14 made in front of us as compared to other
15 adjudicative bodies.

16 So, from in the inventor outreach, I'm
17 going to move into now a little bit about our PTAB
18 Pro Bono Program. Next slide, please, and one on
19 to that. So, as Drew mentioned, we have been
20 working for several months to establish a PTAB Pro
21 Bono Program. This program is a continuation of
22 the Patent Pro Bono Program. The patent program

1 helps inventors to file and prosecute an
2 application. Our PTAB Pro Bono Program picks up
3 at the point of an appeal and takes you forward
4 through that process. Eventually, we hope to
5 expand the program to cover AIA trials, as well.
6 We have worked very closely with the PTAB Bar
7 Association to set up the structure for the
8 program, the eligibility requirements that
9 inventors will need to meet, the eligibility
10 requirements volunteer attorneys will have to
11 meet. I want to also extend a huge thanks to the
12 PTAB Bar Association. They are going to be -- per
13 the terms of the Memorandum of Understanding with
14 us -- the clearinghouse for our program. They
15 will conduct the matches between inventors and
16 volunteer attorneys. Now, at their annual
17 meeting, which is on March 24th in Washington,
18 D.C., both in-person and broadcast, we are going
19 to be making a big announcement about the scope of
20 the program. So, we'll give you the details about
21 what those eligibility requirements entail -- what
22 dates we will be open for business and inventors

1 can begin to seek assistance through this program.
2 So, please stay tuned for much, much more
3 information about the pro bono program.

4 We're hoping that we're teasing you with
5 this information now, piquing your interest, and
6 then you're going to want to come back and learn
7 more about this program from our website, from the
8 PTAB Bar Association websites. And then, my final
9 topic is to refresh your memories on our LEAP
10 Program. So, next slide please.

11 The LEAP Program stands for Legal
12 Experience and Advancement Program. The goal is
13 to give junior attorneys the opportunity to have
14 stand-up courtroom experiences in real cases
15 before a real panel of judges. And in exchange
16 for allowing a junior attorney to have this
17 developmental opportunity, we will allow a party
18 who proffers a LEAPer in their case to have 15
19 extra minutes of argument. Additionally, to
20 ensure that the party -- particularly the client
21 -- has a comfort level, we also give senior
22 counsel the opportunity to assist the LEAPer

1 during the argument, clarify the record,
2 supplement the answer to a question.

3 To qualify as a LEAPer, we're very
4 pleased that -- as Drew mentioned -- in November
5 of last year, we reduced, or liberalized, expanded
6 the eligibility requirements. Now, a LEAPer or a
7 junior practitioner need only show that they have
8 had three or fewer substantive arguments before
9 any tribunal, including the Board, to qualify.
10 There is no longer any requirement for the junior
11 practitioner to be a certain number of years in
12 experience. So far, we have had 113 LEAP
13 requests, all of which have been granted, except
14 for one, because that particular individual didn't
15 meet the LEAP requirements.

16 Now, the LEAP requests have come into
17 both appeals and to trials -- about 1/3 appeals,
18 2/3 trials. They also have been split equally
19 between appellants, petitioners, and patent
20 owners, with about a third for each one of those
21 categories. Of the 113 requests, we've seen 62
22 different law firms proffer a LEAPer. Some law

1 firms are repeat customers. In fact, we are
2 getting ready to announce sort of, like a top 10
3 user list of those firms who've taken advantage of
4 the LEAP Program, but we are really excited that
5 we've had so many different law firms participate
6 and we hope that the numbers continue to grow.

7 One area where you can help us here, is
8 to encourage in-house counsel to allow a LEAPER to
9 present an argument. We've heard that that is the
10 biggest stumbling block to the usage of the LEAP
11 Program. There is some hesitation, we think,
12 because of the case's high stakes -- there's
13 nervousness. You may not want to allow a junior
14 practitioner to have the opportunity, but I want
15 to affirm for you that the judges love having LEAP
16 practitioners appear. It's not that they go
17 easier on them, in terms of the number or quality
18 of the questions they're asking them, but they're
19 really committed to seeing LEAPers have these
20 developmental opportunities. So, we ask that you,
21 please, help us spread this word so that we all
22 take responsibility for growing the next

1 generation of IP practitioners.

2 The last bit of developmental news on
3 the LEAP front, is that, besides giving these
4 argument opportunities, we offer free oral
5 advocacy training for LEAP practitioners. It's
6 not a prerequisite to take the training to
7 participate in an argument. The training augments
8 your experience. We have it divided into three
9 parts, and our next training session is going to
10 be in May of this year. On May 6th, we're going
11 to offer a webinar with two very experienced
12 advocates about how to prepare for an oral
13 argument. On May 13th, we will receive oral
14 arguments from 40 practitioners on an AIA case.
15 The practitioners will appear in front of sitting
16 three-judge panels. The problem -- I can assure
17 you -- is very realistic, the issues are very
18 realistic, the record that the practitioners have
19 to work from is exactly like a case. We do our
20 best job to simulate real-world experiences so
21 that this mock argument opportunity is meaningful.

22 What is most popular about the LEAP mock

1 arguments is that upon completion, each
2 practitioner receives one-on-one feedback from
3 their three-judge panel -- and it's not all
4 positive feedback -- there's some points for
5 improvement shared with the LEAPers. We have seen
6 repeat customers for our LEAP arguments and based
7 upon the feedback they got at the first argument,
8 we definitely witnessed improvement in the second
9 argument.

10 And then finally, we round out the
11 series with another webinar on May 20th, where
12 this session, we're going to have four experienced
13 practitioners demonstrate an oral argument, the
14 very same fact pattern that the LEAPers presented,
15 so that they can compare and contrast how they
16 organized their argument -- the strategy calls
17 that they made for winning -- with what an
18 experienced practitioner would have done.

19 This part of our trilogy of events was
20 directly requested by past LEAP participants, and
21 so we developed it to meet their requests. The
22 trilogy is offered once a year, and we will be

1 opening the doors to registration in the month of
2 April. So, this is something else that we would
3 like for you all to do. Please help us spread the
4 word that our mock argument experience is on the
5 horizon. And just to let you know, we have -- we
6 continue to develop all of our programs.

7 One extension of LEAP that we're
8 planning for when we return to the office, is
9 called "Chamber Chats". We intend to have LEAPers
10 come into our offices and meet one-on-one with
11 judges, take a tour of the hearing room
12 facilities, and develop a mentorship relationship
13 that will last for the span of one year with our
14 judges so they can continue -- kind of in a more
15 intimate setting -- developing their advocacy
16 skills.

17 So, I hope that you have found this
18 information helpful, and we are happy to receive
19 any questions about director review, our inventor
20 outreach, PTAB Pro Bono, or our LEAP Program.

21 MS. DURKIN: Janet, thank you, and
22 Michelle, as well. I have to say that the LEAP

1 Program is one of the most exciting things, I
2 think, the Patent Office has done in years and
3 having just participated recently with one of my
4 younger colleagues who did a LEAP argument, it was
5 a really great experience. So, anyone who has not
6 participated in that really should consider it.

7 MS. GONGOLA: Thank you.

8 MS. DURKIN: Okay, Dan Brown, I think
9 you said you had a question. Oh, sorry.

10 MR. BROWN: Yeah, thanks. So, this goes
11 back to Michelle regarding the director review.
12 In the process of setting up the director review,
13 the pilot, was there any consideration in giving
14 the opportunity to go back to patents and the hard
15 area expertise to look at the case and opine on
16 it, particularly in cases of obviousness -- so
17 that there can be, you know, sort of a dialogue
18 going on around the merits of obviousness and you
19 know, what was happening at that point?

20 MS. ANKENBRAND: Thanks, Dan. So, at
21 the time we implemented the director review
22 process, we were simply trying to implement the

1 Supreme Court's Arthrex decision, which allows the
2 Director to go back and review decisions of the
3 Panel. Now, if Drew or our permanent Director at
4 that process develops -- wants to get feedback
5 from Examiners -- I think that's something they
6 can explore. And if it's something that the
7 public thinks would be a good idea, we do have
8 that suggestion box. Again, the process was sort
9 of put in place because we had a decision come
10 out, and we had to do something about it. And so,
11 we're still looking at improvements to the process
12 and how the process may change over time. So, I
13 think --

14 MR. BROWN: I understand. I guess my
15 advice or my prospective would be for Drew, maybe
16 ask him, you know, would it not be helpful to
17 understand from, you know, the group that's
18 closest to the POSITA in the office, to opine on
19 -- particularly areas of obviousness -- to give
20 you that feedback and actually take a position on
21 this case to understand, you know, what new
22 information was there or why the difference? Why,

1 say in a case, someone lost their patent rights?

2 MS. ANKENBRAND: Well, I thank you for
3 that feedback. I'm writing it down, so I will
4 pass it on to, you know, up the chain of command
5 through the office.

6 MR. BROWN: I appreciate that. And then
7 I had, also, one question regarding the LEAP, and
8 it sounds -- I think it's obviously necessary to
9 have this program. And, if Tracy says it was a
10 great idea, I know it's great. But how do we
11 ensure, I mean, from say an inventor who's using
12 the pro bono and maybe even having a LEAP
13 participant in that situation -- how do we assure
14 the experienced representation necessary for, you
15 know, for someone who's, say an inventor maybe has
16 a business built around it, to get the appropriate
17 representation to, you know, fight against
18 experienced, say a defendant if they were a
19 plaintiff?

20 MS. GONGOLA: Well, thank you both, Dan
21 and Tracy, for your applause for the LEAP Program.
22 We carefully, when we're restructuring how we're

1 going to accept volunteer attorneys -- and I don't
2 want to steal anybody's thunder with our
3 subsequent announcement -- but the question of
4 ensuring that the volunteer attorneys have the
5 adequate knowledge of both the technology as well
6 as proceeding in front of the Board, they knew the
7 ins and outs of how an appeal or later on a trial,
8 will work. We have put safeguards into place
9 where the volunteer attorneys have to preference
10 the technology that they're willing to help, so
11 that if their practice area is computer science,
12 they're not going to be working on a biotech case,
13 where they simply don't have the technical
14 background.

15 Additionally, we are requiring them to
16 attest to a level of experience with the
17 proceeding type. So, we are not going to accept a
18 first-year associate to serve as volunteer
19 attorney in an AIA trial when they've never done a
20 trial before. That, we believe, is not fair to
21 the inventor. They shouldn't have substandard
22 service simply because they're part of a volunteer

1 program. We don't view the PTAB Pro Bono Program
2 as the place where people can cut their teeth and
3 get the experience. We want experienced
4 practitioners to volunteer as attorneys, so that
5 inventors are fairly and adequately represented.
6 Now, that doesn't mean that the senior counsel,
7 who is the volunteer attorney, may not bring on --
8 as you said, Dan -- a LEAPer to help them or a
9 junior associate within their firm, but the senior
10 counsel is signing the papers and they are
11 regarded by the program as being the counsel of --

12 MR. BROWN: Okay, that answered it. So,
13 you're going to have a mentor there. And so, I
14 wasn't clear on that. So I think that's a good
15 safeguard, obviously.

16 MR. BOALICK: And I might also add that
17 the LEAP Program was designed when the LEAPer's up
18 doing the argument, if assistance is needed from
19 somebody more senior, one of the ways it was
20 intentionally designed was to allow a senior
21 experienced counsel to assist the LEAPer if they,
22 you know, run into a time where they need

1 assistance. Although, I have to say from feedback
2 from the judges who have seen LEAP practitioners
3 -- oftentimes, the LEAP practitioner's the best
4 prepared attorney in the room and knows the record
5 better than anybody else there. But yes, Dan, you
6 know, as Janet mentioned, these are concerns that
7 we certainly heard and are trying to design the
8 program to make sure that we address that, so that
9 it's a quality representation that you get.

10 MR. BROWN: That's great. For that --
11 to that extent, are you tracking success rates and
12 comparing them with LEAPers with, say more
13 experienced practitioners to see if there's any
14 metrics that pop up?

15 MR. BOALICK: I don't think we are, and
16 I'll let Janet elaborate a little bit more. I
17 think one of the reasons why that could be a
18 little difficult is, oftentimes the LEAP
19 practitioner will argue, say, the claim
20 construction of one term but there might be two or
21 three other terms that are being argued by other
22 attorneys in the case. So, they're sort of part

1 of a team, and they've got maybe one issue and
2 then other members of the team have different
3 issues. So, it might be hard to, you know, say --
4 hey, you know, the LEAP success rate is x versus
5 an overall, you know, non-LEAP success rate of y.
6 But I don't know, Janet or Jackie, you may have
7 other thoughts on that.

8 MS. GONGOLA: That is correct. That's
9 exactly why we don't track that data, and we have
10 never had a report coming back from the judges of
11 a case where a LEAPer was not well-prepared and
12 did not do a good job.

13 MR. BROWN: Thank you. I appreciate it.

14 MS. BONILLA: And, I would just add one
15 thing -- just to underscore that -- in our
16 experience, they are actually outstanding, because
17 usually it's the more junior attorney who's
18 actually doing the work on the case or drafting
19 the briefs. They know the record. And when you
20 go into a PTAB hearing, for example, those are the
21 kind of questions we want answered -- the details
22 about the record, our detailed questions answered.

1 And somebody who, in our experience, they're
2 really good, they're just really enthusiastic,
3 they know their record backwards and forwards.

4 And I will say, to go to your question,
5 somebody can be a really outstanding advocate and
6 still lose their case just because their case --
7 that just may be the facts of their case -- so
8 it's not necessarily indicative of how good they
9 are or how much they got out of the experience.
10 It's based on outcome of the case, so I just
11 wanted to underscore that. I've seen outstanding
12 lawyers lose cases and people who aren't so great
13 win cases because that's just the way the evidence
14 and the facts of law goes.

15 MR. BROWN: I understand. My bias
16 obviously is from the small inventor that's got
17 everything into this, and obviously they don't
18 have the resources, that's why they're in the pro
19 bono program. You know, everybody deserves a fair
20 shake.

21 MS. ANKENBRAND: Dan --

22 MS. DURKIN: We're now eight minutes

1 into your committee topic, so I think I should
2 probably move on.

3 (Laughter) Thank you, everyone,
4 that was a great discussion and I'm
5 going to turn it over to Dan for
6 Innovation, Expansion and Outreach.

7 MR. BROWN: Okay, well, I can only blame
8 myself.

9 (Laughter) So, in innovation and
10 expansion, we've been as a
11 committee working with our cohorts
12 at the office to try to get our
13 arms around this very big area of
14 dealing with education and creating
15 more equity, et cetera. And, in
16 doing that, I'm really proud of the
17 team because, I think, we did a
18 great job. The nature of the
19 committee is that it's very
20 far-reaching, and there's a lot of
21 things, sort of, underneath this
22 umbrella.

1 What we've decided is, as a group to set
2 it for our mission and our goal this year -- and
3 I'm going to let someone else, Suzanne, discuss it
4 -- is that we're looking at, how can we take this
5 education outreach into a more broader aspect of
6 the stakeholders and try to, sort of, corral all
7 the independent efforts that are going on
8 throughout the country in trying to expand
9 innovation? And, where the Patent Office can't be
10 the sole source of that -- or even the sole
11 pedagogy to it -- to try to provide that
12 leadership of bringing them together.

13 Unfortunately, at the PPAC and our
14 committee, particularly with Jeremiah also, we
15 have a lot of representation from those other
16 organizations at the Patent Office. It's
17 currently working then, I think, that we can go
18 back to those other organizations to try and help
19 facilitate this cross-pollination of that effort
20 of expanding inventors and innovation, in general.
21 So, with that, I'm going to introduce Suzanne
22 Harrison. She is the Vice Chair, and she has a

1 lot of experience in some policy areas and she's
2 been doing some work and -- Suzanne, why don't you
3 take it from here?

4 MS. HARRISON: Sure. Thank you, Dan.
5 As you all know, this is my first PPAC meeting,
6 and so I'm very excited to be on this committee
7 but I've spent my time actually just learning
8 about all of the work that the USPTO has been
9 doing around the outreach, and trying to connect
10 with a variety of different stakeholders. And I
11 really wanted to make sure that everyone
12 understood what I'm learning, which is that it's a
13 really diverse set of stakeholders.

14 So, for example, we have inventors, we
15 have small businesses, we have patent
16 practitioners, we have USPTO employees, we have
17 students, we have teachers. There's a large
18 number of different groups that the USPTO
19 interacts with, and that trying to get our hands
20 around the enormity of those efforts, and given
21 the small staff of the PTO, it has been very
22 eye-opening about the good work that they're

1 doing. And so, I just want to let you all know
2 that we are working on it.

3 We, from the PPAC, would encourage you
4 if you have thoughts on stakeholder outreach that
5 you would like from the USPTO or things you'd like
6 to see that maybe you don't see today, please let
7 us know. We've asked Valencia Martin Wallace and
8 Cara Duckworth to share with you a few things that
9 they have going on in their different groups. But
10 just know that it is a herculean task of things
11 that are going on in this committee and we'd like
12 to keep you updated, moving forward. So, I'm
13 going to turn it over to Cara and Valencia.

14 MS. WALLACE: Thank you, Suzanne. I'm
15 actually not sure if my slides are first or
16 Cara's, but if you could send the first slide up,
17 then we can decide if it's going to be me or Cara.

18 MS. DUCKWORTH: It's me.

19 MS. WALLACE: And it's Cara. (Laughter)

20 MS. DUCKWORTH: Hi, everybody. My name
21 is Cara Duckworth, I am the acting Chief
22 Communications Officer here at the USPTO. Thank

1 you to Dan and Suzanne, and all the subcommittee
2 members and all the PPAC members, for giving us
3 the opportunity today to talk a little bit about
4 our education and outreach efforts here at the
5 USPTO. And I would be remiss to say, yes, we do a
6 lot of the education and outreach within the
7 Office of the Chief Communications Officer, but
8 obviously the regional offices do a huge chunk of
9 it, as well. Valencia's going to talk about her
10 team's work, as well, so this is kind of
11 scratching the surface, but like Suzanne said, it
12 is a lot. So, we're going to try to cram all this
13 as best we can in an intelligible way and short
14 amount of time that we have.

15 So, if you don't mind going to the next
16 slide, I'm just going to give a couple of
17 high-level updates. So, just letting folks know,
18 I'm just a table setter here. The Office of the
19 Chief Communications Officer is divided into two
20 different divisions. One is the Communications
21 Division, which does everything that you all would
22 imagine communications does -- including press

1 releases and blogs and website and social media
2 and media relations -- everything under the
3 communications' sun there. The other division of
4 OCCO is what we call our Community Engagement
5 Division, and that is the one that oversees a lot
6 of USPTO's education and outreach efforts.
7 Specifically, that office is divided into three
8 different offices. One is our Office of
9 Education, our National Outreach -- sorry -- our
10 National Partnership Office, and our Innovation
11 Outreach Office. So, those are the three that
12 we're going to talk about here today with these
13 education and outreach updates.

14 So, just a quick thing starting with
15 National Partnerships, this is where we have a lot
16 of our joint project agreements, and we are really
17 looking here to scale up everything -- scale up
18 all of our programs. Like Suzanne said, we are a
19 small group, but we do a lot. And so, what we
20 want to do -- we're taking a look at all of these
21 things, every initiative that we're undertaking
22 currently -- and we want to see how we can

1 increase the touch points. So, we're looking at
2 other organizations that really align with our
3 mission of providing invention education and
4 intellectual property education to a wide variety
5 of groups, to a lot of school districts across the
6 country, especially those in rural communities.
7 So, we believe that they do have a lot of
8 touchpoints that perhaps we don't have yet. So,
9 we're looking at partnering with those groups in
10 this National Partnership's group.

11 We have a renewed Joint Project
12 Agreement with the National Inventors Hall of
13 Fame. This is, obviously, a great organization
14 that we've been working with for several years.
15 They do a lot, but they obviously have their
16 atrium headquarter museum there -- or museum, not
17 the headquarters necessarily -- but museum and our
18 atrium at Alexandria campus. But they do a lot of
19 invention education, and so we are providing
20 funding to further that, to extend that. Camp
21 Invention is probably their most popular program,
22 from K through 6th graders, and they are the ones

1 -- this is a summer camp that is located in every
2 50 states. And it's really, really cool because a
3 lot of the NIHF inductees, these world- changing
4 innovators, they come to the camps and they
5 interact with the kids, and they talk to the kids,
6 and it's just a really cool opportunity.

7 So, these Camp Invention numbers are
8 growing for the traditional school program where
9 they're now having those in person camps again.
10 They had to put those on pause due to the
11 pandemic, but they started those back up and
12 they're excited for another summer of Camp
13 Invention camps -- and the in-home kits -- this is
14 something that NIHF got creative with during the
15 pandemic. They sent out a lot of their in-home
16 Camp Invention Connect kits to students during the
17 pandemic. Obviously they were not meeting in
18 person, they were not doing camp in person, and
19 our funding is going to all of this -- to provide
20 more in-home kits to students, but especially to
21 those in rural communities.

22 So, we're working with NIHF on that. We

1 have a new Joint Project Agreement with the
2 National Academy of Inventors, looking
3 specifically at the collegiate space here. We're
4 providing a Game Mentorship Program, so we're
5 connecting a lot of inventors with some folks on
6 the collegiate -- the collegiate innovators. This
7 is really cool. We're also looking at specific
8 language -- the inclusive language -- that we can
9 be using to reach more people with invention
10 education. So, they are starting a survey with
11 that. There's a lot of cool things that are
12 happening with the National Academy of Inventors,
13 and so we're excited to be a part of it and to
14 provide funding to help increase those efforts.

15 And the new agreement with Smithsonian,
16 is in the works. This is one where we are
17 specifically looking at a really cool exhibit
18 called Game Changers, that is focused on
19 innovation in sports, in innovation invention in
20 sports. This is going to have an intellectual
21 property protection element to it, and so that is
22 an upcoming exhibit that will be in the American

1 History Museum. And we are also focused online,
2 so we want to make sure that folks who are not
3 able to come to D.C. to the museum can also have
4 the same experience. So, there will be an online
5 interactive exhibit to this extent, for the Game
6 Changers exhibit so that it's not just a physical
7 exhibit, this is something that anyone across the
8 country -- across the world -- can engage with.
9 Next slide, please.

10 So, we're going to the Office of
11 Education here, and like I said, we're really
12 going to try to scale up our programs where we
13 feel like it's appropriate. There is a new online
14 education portal that is targeting K-12 students,
15 as well as parents, caregivers, and educators.
16 This will provide a lot of really cool curriculum
17 materials, some fun things that we are going to
18 mine a lot out of, and so we're going to make sure
19 that we have the ability to put some of this stuff
20 on our website, have the ability to push some of
21 this stuff out on social media. We're trying to
22 reach far and wide with this invention education

1 curriculum and get more parents, more students,
2 everyone involved in how exciting STEM and
3 intellectual property education can be. So, this
4 is coming in April, we're likely having -- we'll
5 have it begin at the end of this month.

6 So, we're really, really excited about
7 that new education portal and our National Summer
8 Teacher Institute. This is a flagship program
9 that we put on every summer and a lot of teachers
10 apply. Because we are a small group, we are, sort
11 of a limited ability to really kind of scale this
12 up. So, we're taking a really close look at that
13 and determining whether or not it's appropriate to
14 contract -- so that we can reach more people,
15 reach more teachers -- because obviously that is
16 the window, that's the door to reaching more
17 students and getting them more excited about
18 invention education. Next slide, please.

19 In our Office of Innovation Outreach,
20 this is the group that puts on some really
21 incredible events every single month. Our Women's
22 Entrepreneurship Symposium is underway, currently,

1 we had our first program on March 2nd. We will
2 have another one on March 16th, and the final one
3 on March 30th, this is all in celebration of
4 Women's History Month. We're highlighting some
5 incredible women innovators and their stories and
6 we also pair that with a panel about USPTO
7 resources, and so please check those out if you
8 have not yet. We are still registering, so please
9 go to our website and our events page and check
10 those out -- more information there.

11 Our Black Innovation and
12 Entrepreneurship Program that happened in
13 February, we had more than 600 participants there.
14 Again, we had two short programs during the month
15 of February. Really cool again, we always love to
16 kind of, partner the two panels of storyteller
17 panel with the resource panel.

18 And Invention Con is the independent
19 inventor conference that is coming in August --
20 it's another flagship program -- we're reaching as
21 many people as we possibly can. And for the first
22 time in about five years, we have a plan to take

1 our Invention Con on the road -- sort of road
2 shows, if you will -- to various communities
3 throughout the country. We're planning to do that
4 for the first time in five years.

5 So we are, like I said, constantly
6 thinking on ways in which we are reaching as many
7 touchpoints as we possibly can, contracting when
8 we can to scale up our programs, but preaching the
9 value and the benefit of invention education as
10 far and wide as we can. So, I believe that is it
11 from me, and the last slide will have my contact
12 information on it, but other than that, I'm going
13 to probably turn it over to Valencia.

14 MS. WALLACE: Great. Thank you, Cara.
15 We can go to the next slide, so we can move on to
16 the next slide after that. Thank you. So, I want
17 to go over some of our updates with Council for
18 Inclusive Innovation, CI Squared, as well as other
19 USPTO Diversity, Equity and Inclusion Access,
20 DEIA, updates that we have.

21 So, just to start with our update on CI
22 Squared, we -- as Acting Director Hirshfeld

1 mentioned in his opening remarks -- we did have
2 our council meeting, our winter CI Squared meeting
3 in January of, it was January 25th. And we held
4 it virtually, as well. It was a closed meeting,
5 and we went through the updates on and some
6 discussions on the forthcoming National Strategy,
7 as well as some new USPTO initiatives supporting
8 the strategy, in order to get some feedback and
9 some input from our council on the direction.

10 The meeting began with Deputy Secretary
11 of Commerce, Don Graves, opening it up and
12 introducing our Chair of CI Squared, the Secretary
13 of Commerce, Gina Raimondo, who gave some remarks.
14 We then heard from the Administrator of the Small
15 Business Administration, Administrator Isabella
16 Guzman, who was also a member of CI Squared. We
17 then heard again from Deputy Secretary Graves, who
18 shared with the council the importance of
19 expanding innovation, as well as sharing on a very
20 high-level the concept of the initiatives that we
21 hope to put in place in support of the -- I'm
22 sorry I say it so much I can't say it again -- the

1 strategy, the National Strategy.

2 So, we then had a couple of
3 presentations, one from a senior member of our
4 strategy team that's developing, along with the
5 working group, the CI Squared working group that
6 supports us in developing the strategy. And then
7 we also heard from the Executive Secretary of CI
8 Squared who gave a report out -- a more in-depth
9 report out -- on the initiatives that we are
10 considering. And then we had a really robust and
11 really exciting discussion with our council
12 members on the direction of the strategy, other
13 things that we need to do, as well as some
14 initiatives, programs, projects that our council
15 members that are taking underway within their own
16 organizations in order to support the expansion of
17 our innovation community and ecosphere.

18 So, it was a wonderful meeting and was
19 about an hour and a half and could've gone on even
20 longer with all the participation from our
21 members. It helped us really in moving forward on
22 those initiatives and strategy -- the strategy we

1 hope to have out in the late Spring of this year.

2 So, some of the other things that are
3 happening around the USPTO is our participation in
4 the Department of Commerce DEIA initiatives and
5 programs. And some of those being -- one, a Race
6 and Ethnicity Committee -- and DOC began this
7 cross-agency committee focused on the department's
8 DEIA activities, in accordance with the
9 administrator's multiple executive orders that we
10 are all developing within our agencies right now.

11 Now, the next thing that the DOC is
12 leading is the Equity Town Hall. It was a town
13 hall for all DOC employees. It happened in
14 January. USPTO was represented by our Director of
15 the Office of Equal Employment Opportunity and
16 Diversity, Bismarck Myrick, who provided an update
17 on the initiatives going on within the USPTO. And
18 we heard from all of the other bureaus within the
19 DOC and the activities that they are participating
20 in, as well.

21 Now, also DOC has an equity action plan,
22 and the Equity Committee is developing this

1 DOC-level equity action plan that includes plans
2 for every bureau within the department, and the
3 report will collect bureau-level initiatives that
4 support the department's Strategic Plan.

5 Also, DOC has the DEIA Strategic Plan
6 that's being developed, and DOC's Office of Civil
7 Rights is spearheading the development of this
8 plan. And it will collect, once again,
9 bureau-level initiatives and best practices that
10 support the department's Strategic Plan.

11 Now, itself, the USPTO also has our own
12 DEIA priorities and initiatives that are going on.
13 We are establishing a DEIA agency-wide council to
14 facilitate communication and coordination of DEIA
15 initiatives and programming across our
16 organization. Now, part of that is establishment
17 of a chief diversity officer that will expand the
18 existing diversity team and programs and
19 initiatives that are currently going on, and a
20 continued production of the DEIA-centered
21 podcasts, the Diversity Download, that our
22 Director of OEEOD is spearheading. And this next

1 podcast will feature our Department of Commerce
2 Deputy Secretary, Don Graves -- in Season 4 -- and
3 it will be released in June of this year.

4 Also, I'd like to share with you some of
5 the work that we're doing on a global level. We
6 are meeting with IP offices around the world,
7 having conversations on diversity, and generally
8 -- because we are meeting globally -- it's
9 generally with a focus on gender diversity and
10 inclusion, and it's an important area of focus
11 across the globe. Now, in November we had a
12 wonderful meeting. We had a public session, as
13 well as a closed session with offices around the
14 globe, to begin these conversations on diversity
15 and inclusion, and specifically, gender diversity.

16 This year's theme of the International
17 Women's Day is, "Gender equality for a sustainable
18 tomorrow." And in part, in celebration of
19 International Women's Day, a number -- quite a few
20 number of offices -- joined in with the USPTO in a
21 joint statement that was provided in both English
22 and Spanish. It was published around the world

1 just this past Tuesday, March 8th, to reflect the
2 commitment from these offices "to work together to
3 support increased contributions from women in
4 developing, commercializing, distributing
5 innovations and creative works" in the future.
6 And we will be continuing this work with the other
7 offices in this arena, and including the World
8 Intellectual Property Office, WIPO.

9 So, as I mentioned, there are quite a
10 few offices that joined us in this statement. I'm
11 happy to say that it was a -- we're receiving a
12 large number of, you know, kudos -- and just other
13 offices, other organizations, that agreed with our
14 statements, as well as moving forward in this
15 arena. So, I would encourage all of you -- it is
16 on our web page, the USPTO dot gov web page --
17 encourage all of you to go on and just take a look
18 at the statement that was sent.

19 So, that is pretty much all of our
20 updates for now, and I'm looking forward to
21 working with the subcommittee. We have a lot of
22 wonderful things that are coming our way and a lot

1 of enthusiasm and energy, and I can't thank Dan
2 and Suzanne enough for your advice, your guidance,
3 in this area. And Cara and I are really enjoying
4 -- I'm going to speak for Cara -- we're really
5 enjoying working with them and looking forward to
6 what's coming for this year.

7 MR. BROWN: Thanks, Cara and Valencia.
8 I just want to leave some time -- is there any
9 questions?

10 MR. CHAN: Had a couple questions, Dan.

11 MR. BROWN: Sure.

12 MR. CHAN: These are more directed for
13 Cara. So, one is -- you mentioned, kind of,
14 taking Invention Con on the road. Right now, are
15 you thinking of any partnerships with universities
16 or organizations in the different places that
17 you're planning to take it?

18 MS. DUCKWORTH: We are always interested
19 in partnerships with universities and with other
20 organizations. That's a big part of both our
21 National Partnership's group and that is specific
22 to the joint project agreements. Our work with

1 the National Academy of Inventors is also looking
2 at this, as well, to see how many folks we can
3 partner with. Yes, absolutely. We're hiring in
4 the National Partnership's groups, too. We just
5 recently hired a few additional folks to help with
6 this. So, to the extent that there are more
7 universities that we can touch base with and start
8 a relationship with, we are always interested in
9 expanding that. So, absolutely, the answer is
10 yes.

11 MR. CHAN: That's terrific. And then,
12 one other question I had, which is, you talked
13 quite a bit about NIHF -- and for those on this
14 call -- if you haven't heard of them, I would also
15 encourage you to go take a look. They're doing
16 some really exciting things around innovation
17 kits, and -- really kind of -- teaching kids how
18 to invent, all about intellectual property, design
19 thinking, I mean, all sorts of incredibly
20 innovative concepts. But I was wondering, kind
21 of, thinking further down the line, was there any
22 thought to maybe connecting them with some point

1 -- at some point -- to the pro bono patent
2 prosecution network that the PTO has built?
3 Because as you start to teach these youth how to
4 invent, many of them who are going to start coming
5 up with really fascinating inventions, may need
6 some guidance on how to actually file for a
7 patent. And I wonder whether or not that would be
8 a great pool of candidates to actually tap into
9 for the pro bono network?

10 MS. DUCKWORTH: Thanks, Jeremiah.
11 That's a great idea, and I'm writing that down as
12 we speak. I think that's a really good idea. I
13 can't say enough good things about the National
14 Inventors Hall of Fame. Like you said, they do a
15 lot in invention education. They're also part of
16 our Council for Inclusive Innovation working group
17 that Valencia discussed, so they are involved in
18 helping create the National Strategy. So, they
19 are involved in the ground up in trying to
20 encourage more young individuals to pursue
21 invention and get excited about inventing and
22 going after patents. So, I think that's a great

1 idea and I've written that down. So, thank you.

2 MR. CHAN: Thank you, Cara.

3 MR. CALTRIDER: In the sense of some of
4 your outreach and the relationship with the PTAB
5 Bar Association -- pro bono program, as well --
6 the small inventors are obviously impacted by the
7 financial challenges if they find themselves
8 before the PTAB. Is this part of your outreach,
9 communicating the availability of that program and
10 those resources, as well?

11 MS. DUCKWORTH: Yes, so -- yes, part of
12 the outreach is always talking about the various
13 pro bono programs. I know for a fact that we have
14 a pro bono blog that's in the queue, that folks
15 will hopefully be able to see next week, that
16 we'll be putting out. So, yes, we are trying to
17 speak the magic of our pro bono programs, far and
18 wide. So, I absolutely -- we are constantly
19 looking at the various channels that we have to
20 get that information across. I'm not sure I
21 answered your question though, Steve.

22 MR. CALTRIDER: No, no, you did. You

1 did, great.

2 MS. DUCKWORTH: Okay.

3 MR. CALTRIDER: I do have one other
4 question, if I can indulge. The exhibit and the
5 agreement, the JPA with the Smithsonian, do you
6 know if that's a traveling exhibit? I don't know
7 if we can influence that or if that's a
8 Smithsonian decision, but it strikes me that it
9 would be nice to have that as a traveling exhibit,
10 perhaps that could be loaned to children's museums
11 around the country, particularly in, perhaps areas
12 that are underserved by much patent activity.

13 MS. DUCKWORTH: I love it. I'm writing
14 that down and we will touch base with the
15 Smithsonian on that. Thank you.

16 MR. BROWN: Is there any other
17 questions?

18 MS. HARRISON: I actually have a
19 question for Valencia. Valencia, you mentioned
20 that the National Strategy would be coming out in
21 the Spring, and I was curious if that was
22 something that was going to be disseminated

1 through the Department of Commerce or through
2 USPTO? I mean, how should people prepare -- kind
3 of, know this it's coming -- and how is it going
4 to show up?

5 MS. WALLACE: That's a great question.
6 Thank you, Suzanne. We are currently working with
7 Department of Commerce to review the strategy and
8 the work that's been done. So we are hoping --
9 and I'm keeping my fingers crossed -- that, you
10 know, through this vetting process that we will
11 have it in the late Spring timeframe, but it will
12 come out through the USPTO's web page, but we are
13 also planning to have a huge campaign around the
14 publication of the web page.

15 So, we will be shouting it far and wide,
16 and our getting our CI Squared members and our
17 work group members and our PPAC members to also --
18 to spread the word. And we're planning, along
19 with Cara's team, we're going to be developing
20 roadshows so that we can go around and educate
21 across the nation on the strategy. So, it's not
22 just developing it. That's, you know, as hard as

1 it is to do a right, responsible job about that --
2 the harder job is making sure that people are
3 adopting it. So, we're going to do our part in
4 going around the country and educating on the
5 strategy and how to use it in getting different
6 sectors of our community to adopt it.

7 MS. HARRISON: Okay, so there's a road
8 show being planned so people can expect to
9 interact with you, and ask some questions, et
10 cetera?

11 MS. WALLACE: Yes, absolutely.

12 MS. HARRISON: Okay, great. Thank you.

13 MR. BROWN: So, at the time I'd like to
14 ask anybody who has further questions, please
15 reach out to us at the PPAC. We'll be happy to
16 get back to you. As I mentioned, our theme is,
17 sort of connecting the dots. We're not looking,
18 as a committee this year, to create new
19 initiatives. There's so many initiatives out
20 there -- but to try to maybe augment those
21 existing initiatives and facilitate them. And our
22 next meeting, I'm sure, we'll be reporting some of

1 that augmentation connecting of the dots because
2 this is a strong committee. So, I'm looking
3 forward to it and sorry about being late, Steve.

4 MR. CALTRIDER: No problem, Dan. Thank
5 you. We are at our scheduled break. We're a
6 little bit over. I'd like to return promptly at
7 1:30 and restart at 1:30. We have a busy
8 afternoon, but let's go ahead and start our break
9 and return at 1:30. Thanks, everyone.

10 (Recess)

11 MR. CALTRIDER: We'll resume our meeting
12 and I also want to acknowledge those that are
13 participating remotely from the public, including
14 our former Chair, Julie Mar-Spinola. So, it's
15 nice to see you join us, Julie. Thank you.
16 Susan, I'll turn things over to you.

17 MS. BRADEN: Thank you, Steve. Again,
18 I'm Susan Braden, and I am the Chair this year of
19 the Artificial Intelligence and Information
20 Technology Subcommittee. We're going to start off
21 with a real bang. Which is -- we're going to,
22 first of all, find out from our fearless leader,

1 motto. And I'll be followed by my Chief
2 Information Security Officer, Don Watson, who will
3 give us a presentation on a quad chart about what
4 we're doing specifically. Then, we'll talk to Bob
5 Simms about our resilient efforts and the ability
6 to keep Continuity of Operations in the forefront.
7 So, Don, could you please take it away? And get
8 those slides up on the first one.

9 MR. WATSON: Okay, Bob, there we go.
10 Cue -- chart -- next chart, please. Thank you.
11 Jamie, thank you for the introduction. Everyone,
12 on the top left -- as you can see from our threat
13 level -- as Jamie had mentioned, the number of
14 attempts made against USPTO is significant. And
15 as he stated, our 24 by seven cybersecurity
16 operations team remains vigilant at thwarting
17 these attempts, and protecting USPTO business
18 operations, and protecting intellectual property.
19 And we did this through the defense in-depth
20 approach, from our boundary of our entire
21 enterprise down to endpoint protection.

22 Moving to the top right -- some of our

1 improvements. Our response to the recent Log4j
2 vulnerability was immediate, and it was ahead of
3 any federal level directed actions. Our products
4 teams came together swiftly to remediate and
5 protect the agency.

6 We are proactive. We're continuously
7 improving our incident response through tabletop
8 exercises. We conduct monthly phishing exercises.
9 We really continue to train our users of what bad
10 actors may try to do to trick them. We conducted
11 two acquisition-related supply chain risk
12 assessments. These are critical to ensure USPTO
13 data will be adequately protected within the
14 supply chain of services and products being
15 provided to USPTO. And lastly, we conduct
16 penetration testing on our high-value assets --
17 the crown jewels. We want to ensure they are
18 securely designed and that their security is
19 maintained. And with that, unless there's
20 questions, I will pass it to Bob.

21 MR. SIMMS: All right. Thanks, Don.
22 So, I'm going to talk about cloud migration, and

1 where we are today, and what we're planning --
2 prior slide, previous slide -- there we go. Okay,
3 so as you can see, in FY21 and 22 stats, we've
4 made significant strides in our cloud-first
5 approach -- creating 48 product accounts across
6 our Amazon, Google, and Azure cloud providers. We
7 are looking at ways to continuously optimize our
8 cloud expenses, which in FY21 -- I'm happy to
9 report -- ended up resulting in 35 percent cost
10 savings.

11 So, overall, I would say our cloud
12 infrastructure is certainly growing, and it's
13 directly attributed to the number of product
14 components our product teams have successfully
15 migrated to the cloud. And, if there's no
16 questions, I'm going to go ahead in the interest
17 of time and pass it along to -- I think it's Matt
18 and Laura. All right, thank you.

19 MS. BRADEN: While we're waiting for
20 them, I just thought I would mention that the
21 focus on the cloud really has been a primary focus
22 of Jamie and his team since he came, and his

1 efforts of leadership have really shown.

2 MR. HOLCOMBE: Thanks. I appreciate
3 that, Susan.

4 MR. SEIDEL: Thanks, Judge Braden. This
5 is Rick Seidel, I just wanted to kind of introduce
6 some of the things we're doing at Patents. We'll
7 have Laura Grier, who's our current Patent Product
8 Line Lead. She'll walk us through Patent Center
9 and DOCX, as well as some updates to Patent
10 Search. Then she'll pass the talking stick to
11 Matt Such, our former Patent Product Line Lead,
12 who'll give us updates on Patent Artificial
13 Intelligence efforts. And then, lastly, a demo --
14 the demo will be on DOCX, and we'd really like to
15 highlight two critical features here. The first
16 would be the Practice Mode, and then the other
17 would be the Review Document. So, our Lead
18 Product Owner, Kimberly Williams, will end the
19 presentation with a quick demo. So, with that,
20 take it away please, Laura.

21 MS. GRIER: Thank you, Rick. And good
22 afternoon, everyone. Yes, today as Rick said, I'm

1 going to give the update on where we are with our
2 Patent Center and DOCX rollout. Slide, please.
3 Thank you. (Inaudible) so efforts to encourage
4 interest in our applicants in filing applications
5 in the DOCX format. We have an overview of the
6 DOCX video out on our USPTO video YouTube channel,
7 as well as on our DOCX landing page, and Kimberly
8 will show you how to navigate to that link in her
9 demonstration.

10 We're also engaging our applicants by
11 enabling them to file their DOCX documents within
12 a single document with multiple sections, as well
13 as availing to them real-time content validations
14 -- meaning, when they file the applications in
15 DOCX, we allow them to verify the credibility and
16 integrity of the data that they submitted. Next
17 slide. One slide back. Thank you, thank you.

18 Currently, we are doing IT updates and
19 next gen development on both our internal, as well
20 as our external, search tools. Internally, we are
21 currently involved in rolling out the new next
22 gen's PE2E Search tool to our examiners. We've

1 exceeded over 70 percent today in training, that
2 appears to be going well. And most recently we
3 published -- we delivered -- a Patent Public
4 Search tool to the public. This will eliminate
5 the public searchers who, prior to the pandemic,
6 would have to have come on-campus to use our
7 public tools to search those documents. Now, if
8 they have access to internet, they can do that
9 virtually, anywhere they are, to get to these same
10 patent documents the examiners have access to
11 today.

12 And, as you'll see here, we've provided
13 various links to how-to navigate and get
14 additional training regarding how to use the
15 Public Search tool. As I indicated, we will
16 continue next quarter in rolling out our search to
17 the remaining examination corps. Next slide.
18 Matt, I'll turn it over to you.

19 MR. SUCH: Thanks, Laura. This last
20 quarter, we released our first artificial
21 intelligence capability in the new search tool,
22 for our examiners to be able to use artificial

1 intelligence to retrieve patent documents during
2 their search. We also released an official
3 Gazette notice on the 11th of January, and that
4 explains how this new technology works. It also
5 provides resources for the public to be able to
6 understand some of the changes that you will see
7 in the search history and search recordation.

8 Every single reference that an examiner
9 retrieves with artificial intelligence, is placed
10 in that search history, so that the public is
11 aware of the references that were in front of the
12 examiner during the search process. We're going
13 to be expanding access over the next quarter -- of
14 access to the more like this document within our
15 examining corps -- as the expansion of our
16 transition on the new PE2E Search continues. And,
17 we're continuing to develop enhancements on this
18 particular functionality for a future release.
19 And in the interest of time, I will turn it over
20 to Kim Williams, to talk about the DOCX
21 demonstration.

22 MS. BRADEN: Matt, before we leave this

1 -- for people who may be new to what you've been
2 doing -- the whole focus on this is really to
3 enhance our ability to have better patents,
4 stronger patents. And the effort that our group
5 was involved in last year, in getting additional
6 money from Congress, basically, to give you the
7 resources to get this AI tool out to our
8 examiners. Would you just spend two seconds and
9 tell them what you've done, internationally, in
10 terms of the information you've put into this
11 tool?

12 MR. SUCH: Certainly, thanks for that.
13 This tool actually allows us to be able to use
14 artificial intelligence on our entire catalog or
15 our entire database of all 64 international
16 authorities that are included in our search
17 database. And, so that goes beyond just English
18 language, but it also opens up the space of those
19 foreign documents for the examiners. We actually
20 do have -- we are able to see -- the documents
21 that are retrieved and cited by examiners, and we
22 are seeing that they are using foreign references

1 that come out of this particular capability and
2 office actions, since the release of this tool.
3 Thank you.

4 MS. BRADEN: And the documents are
5 translated also for the examiners?

6 MR. SUCH: Correct. Yes, the documents
7 are fully translated. So, in addition to being
8 able to access it through artificial intelligence,
9 they can also access traditional ways through
10 classification, and because of the translations,
11 they can access through Boolean keyboard searches.

12 MS. BRADEN: You teed this up for some
13 else now?

14 MR. SUCH: Yes, Kim Williams. I think
15 you're on mute, Kim.

16 MS. WILLIAMS: In two places, okay. Can
17 you hear me now? Good? Okay, great. Thanks for
18 that. So good afternoon, everyone, so today I'm
19 going to demonstrate filing a DOCX format using
20 Patent Center. So, this is the Patent Center home
21 page, and Patent Center's going to be your
22 one-stop shop to file and manage your

1 applications. And at the very bottom, this is the
2 simulator, the Patent Center training mode. This
3 is unique to Patent Center -- never going away.
4 The data that you enter is not saved, the data
5 that you enter is not submitted to the USPTO
6 systems, and it's not associated with your
7 customer number, so you can practice as much as
8 you want.

9 So, with that, I switch to training mode
10 -- it reminds you of those things that I just
11 indicated below -- and I'm going to go ahead and
12 get started. You know that you're in training
13 mode, because at the top it notifies you that you
14 are. If you were logged in as a logged-in user,
15 you would get a notification that you need to log
16 out to use training mode because, again, it is not
17 tied to your customer number.

18 So, here we are on the page, and what
19 I'm going to demonstrate is filing a new
20 submission. And you have the utility
21 nonprovisional -- all of the types that are
22 available to you. So, we're going to use the

1 utility nonprovisional, I get the guest user
2 pop-up, and that is correct because it is not
3 associated with me. However, for me to do this to
4 complete the submission, you have the ability to
5 upload your ADS information and that's what I'm
6 going to do here. I already have an ADS that I'm
7 going to upload here, using this great
8 drag-and-drop feature, that you can only do in
9 Patent Center. And it populated all of my
10 information -- my ADS does not contain my customer
11 number -- if you try to use one that has a
12 customer number, you may run into problems because
13 this is just one that you use when you want to
14 practice.

15 So, now we're on the upload documents
16 screen, and again, you need to put filing DOCX
17 format in Patent Center. I'm going to upload a
18 multi-section document. That means that it
19 contains my specifications, my claims, my
20 abstract, and it can even contain my drawings in
21 DOCX format. And these sections are detected and
22 split for you, and what you saw on my screen --

1 that is a real-time validation that happened --
2 that is not one that I queued up for you. The
3 document was -- the content was validated, and all
4 of the warnings here are present. I can still
5 file my application if one is present, because
6 these are what we would consider the minor
7 informalities -- things that you may hear from an
8 examiner -- to make corrections for. But the
9 great thing about getting these up-front, is that
10 you can correct those. So, now you get all the
11 warnings up front, you want to know exactly where
12 those warnings are located. You have a feedback
13 document that you get when you file in DOCX
14 format. You do not get that when you file in PDF.

15 So, here is the feedback document. It
16 is really a copy of the document that you
17 uploaded, except it has all of the useful
18 information -- a feedback summary -- that lists
19 your warnings. And then, not only a summary at
20 the top, but it pinpoints every location in the
21 document where those warnings are present. So,
22 that way you can change your document, you can

1 make your corrections quickly if you desire to do
2 so. And how you would do that is you would select
3 these three buttons -- you can remove these three
4 dots -- you can select remove, make your
5 corrections, and re-upload your document.

6 So, we're going to continue, and that's
7 where you can claim your entity status, and enter
8 your information, and calculate fees, and only the
9 fees that would be applicable to your application
10 show up on the fee sheet. We're not going to do
11 that for the purposes of this demonstration, and
12 you don't have to do that in training mode. So,
13 you get to your review and submit page, and it has
14 all of the application's data that you had on your
15 data sheet. It has all of the documents that you
16 uploaded. It has your warnings present.

17 Now for the purposes of this simulator,
18 I have to fill this in, but it does not send
19 anything to you. So you can put any kind of
20 information in -- as you can see that I'm doing
21 right now -- and don't be afraid to submit,
22 because you're in training mode. And you will get

1 a series of nines as your application number, and
2 those are not saved or sent into our systems. We
3 know that those are throwaway simulators. We
4 don't get to see any of this data, but this does
5 give you an idea -- you get an electronic
6 acknowledgement receipt.

7 You can print, email, or save your
8 acknowledgement receipt, and you also have what we
9 call our secure digest. This is your digital
10 footprint, and that shows that the information
11 that you've given us -- it has not been altered in
12 our system. So, filing a docket format will save
13 you time with these validations because you can
14 minimize the number of non-compliant notices you
15 may get, and also, even happen to do an examiner's
16 amendment to quickly get to allowance if you had
17 some of these minor issues that just needed to be
18 cleaned up. And that's everything in Patent
19 Center and how to file a DOCX.

20 And what I have queued up for you is --
21 on our home page, we have the Learning and
22 Resources tool. And from Learning and Resources,

1 we have all of our videos. And here is the quick
2 overview of filing DOCX documents in Patent
3 Center. We also have it on our Patent Center
4 information page, as well as our DOCX page, but it
5 goes through every step that you've just seen.
6 Any questions?

7 MS. BRADEN: Kimberly and Richard, one
8 thing that I wanted to have you emphasize is, the
9 belt-and-suspenders approach that you're having
10 for people who are a little reticent about the
11 DOCX experience.

12 MR. SUCH: So, I can certainly take
13 that. Thank you, Judge Braden. Not sure I've
14 heard it characterized as belt-and-suspenders, but
15 there is a reluctance to go into the deep end and
16 file with DOCX. And one of the big challenges, I
17 think Drew Hirshfeld commented on it earlier this
18 morning, is some of the rendering issues. So
19 right now, Kim and her team have done great work.
20 We're on the verge of announcing a pilot program
21 where applicants can actually submit a safety PDF.
22 And what this does, it's really an insurance

1 mechanism where applicants would file in DOCX at
2 the same time -- we saw that drag-and-drop feature
3 -- applicants could drag and drop their own
4 version of a PDF. And what it does then, is it
5 enables an applicant to compare -- within a
6 certain time frame -- I think right now we're
7 thinking about six months after the conclusion of
8 the proceedings. So whether it's patent or
9 abandonment -- which probably wouldn't apply but
10 -- have an opportunity to compare that safety PDF
11 with the office's rendering.

12 And this is really twofold -- one, it
13 gives applicants really a safety net. It
14 eliminates one of the concerns that we've heard
15 from our stakeholders, in terms of filing. And
16 then the second thing is -- equally important --
17 is it lets us know. Is there more work that we
18 need to do to address some of these rendering
19 issues? So, unfortunately, we're not quite ready
20 to launch this and announce it formally, but I
21 think in short order we will be moving forward
22 with this program. So, thank you for that

1 question, Judge Braden.

2 MS. BRADEN: Sure, also we have a lot of
3 training programs that are going on, on a regular
4 basis for people and they should not feel hesitant
5 to participate in that.

6 MR. SUCH: Correct. We've held -- and
7 Kim would know much better -- we're held several
8 training sessions, sometimes two per week, and it
9 is on our website. We also send out Patent Alerts
10 periodically to inform our stakeholders of the
11 opportunity to get up to speed on this training.
12 So, thank you very much. Thanks, Kim.

13 MS. BRADEN: Steve, we're exactly on
14 time for our presentation.

15 MR. CALTRIDER: Thank you, and I just
16 got a notice pop-up saying my camera turned off,
17 so I haven't had a chance to figure out why that's
18 the case, if you're unable to see me.

19 MS. BRADEN: Well Jamie can take over
20 everything.

21 (Laughter)

22 MR. CALTRIDER: I am going to indulge

1 and ask a very quick question before we get into
2 the next group -- and that is, the warnings that
3 were on the DOCX submission about missing a
4 period, non-consecutive claims -- do you have a
5 listing of the rules that are checked, or the
6 things that are checked as part of that, anywhere
7 that's available?

8 MS. WILLIAMS: Yes, on our DOCX page we
9 have a list of warning and errors, that you can
10 check out.

11 MR. CALTRIDER: Great, thank you. Thank
12 you. And, while I try to figure out what my
13 camera problem is, I'm going to turn it over to
14 Jeremiah.

15 MR. BROWN: So, Steve, I have a quick
16 question for Matt.

17 MR. CALTRIDER: Sure.

18 MR. BROWN: Yeah, Matt, have you
19 challenged the AI logarithm to compare results
20 between examiners, to see how robust it is?

21 MR. SUCH: Not exactly like that, since
22 the functionality is part of the suite of tools

1 that examiners have. But one thing we are very
2 interested in, is the degree to which examiners
3 are using references that the AI brings forth, and
4 actually citing those in office actions. We are
5 working right now to be able to capture that
6 information and understand what's going on there,
7 to understand that value.

8 MR. BROWN: I think it would be
9 interesting -- I mean, I've had some experiences
10 into understand, you know, running trials to --
11 since we're going to rely on this as quality
12 search, we have to validate that the quality is
13 there fundamentally, not assume it. And secondly
14 -- a follow-up for my question last year -- are
15 you looking to make this available to inventors
16 and practitioners so everybody's working with the
17 same tools?

18 MR. SUCH: Yes, we certainly are looking
19 at that, and we don't right now have a timeframe
20 for that but certainly, again, recognize the
21 potential value that that will bring to the IP
22 community at-large.

1 MR. BROWN: Yeah, I think, I mean this
2 is obviously a great tool. But, if we're going to
3 rely on it from, you know, saying that it's going
4 to bring more consistent quality, we need to have
5 a protocol to validate that to make sure that
6 there's not a bug in there or something that's not
7 working like you thought it was.

8 MS. BRADEN: Well, we have a job to do,
9 which is get some more money so that we can get a
10 tool for the public. And that's going to be maybe
11 on our agenda next year, once you finish the
12 rollout you're doing now. Thank you, all, very
13 much. If you have any questions, we have a link
14 that you can send them into, and we'll get them to
15 the proper person at the PTO. And I see our
16 fearless leader has his flak jacket on, as I said
17 before, and I've got my Ukrainian cheering
18 (phonetic) outfit on so, with that, Steve, I guess
19 we're going to go now and hear about legislation.

20 MR. CALTRIDER: Yes, yes. Jeremiah?

21 MR. CHAN: Yup, thank you. Hello
22 everyone, I'm Jeremiah Chan, and this year I have

1 the privilege of chairing our subcommittee on
2 legislative and policy, which also includes policy
3 related to AI and international issues. So, today
4 we're going to cover -- and before I do that I
5 should also say, I'm joined by PPAC members
6 Charles Duan, who's the Vice Chair, and Judge
7 Braden and Jeff Sears, as well, also on the
8 subcommittee. Today we're going to cover quickly
9 our priorities, as a subcommittee this year.
10 We're going to cover updates on a variety of USPTO
11 reports -- international updates regarding a
12 number of developments in Brazil, China and the
13 E.U., the WIPO Standing Committee on the Law of
14 Patents, upcoming international meetings and the
15 Inventor Diversity for Economic Advancement Act --
16 joined by a number of USPTO folks, particularly
17 David Gerk and Kim Alton.

18 So with that, let me start by just
19 quickly addressing our subcommittee priorities
20 this year, which are really around monitoring and
21 discussing the following items. The first being,
22 any introduced legislation that significantly

1 impacts patent policy, USPTO operations, and
2 inventor engagement of the IP system. The second,
3 is domestic or international policy initiatives
4 concerning IP policy, examples could include
5 harmonization and common assignment, for instance.
6 We're also going to focus on initiatives that seek
7 to improve U.S. inventors' ability to secure
8 reliable patent rights in foreign jurisdictions.
9 And finally, we're going to focus on emerging
10 technology issues, including AI policies and
11 patent eligibility. So, those are our focus areas
12 for this year.

13 With that, we're going to move to
14 updates on USPTO reports, and I believe David Gerk
15 is going to cover that for us. David?

16 MR. GERK: Thank you, Jeremiah, for that
17 introduction. Mary Critharis sends her apologies
18 for not being able to be here. She would have
19 liked to make this presentation, and I'll just
20 wait here as the slides are coming up. As you
21 introduced -- next slide, please.

22 As you introduced, the areas we're going

1 to be covering is going through a couple of
2 notable reports in the patent space and
3 patent-related space. I'd give a quick update on
4 some international developments of note and take a
5 quick glance to some upcoming international
6 meetings. Next slide, please.

7 The first report we'd like to highlight
8 that has now been published, it published on
9 February 15th, is a report on the patenting
10 activity among 5G technology developers.
11 Obviously, this is cutting-edge technology,
12 important technology. There's a lot of discussion
13 in the public space about who might be leading in
14 this space, and different views, competing
15 opinions. So, one of the purposes of this report
16 put together by the OPIA policy teams and the
17 Chief Economist's office, was to really put some
18 data and some more objective analysis in relation
19 to patents in this space. And, in doing so, the
20 report uses different methodologies to take a look
21 at the data and focuses on which 5G patents may
22 have more significant value. Next slide, please.

1 So, the data and methodology used behind
2 this was to focus on what's referred to,
3 technically, as triadic patent families. And, in
4 short, it's to focus on instances in which the
5 technology was important enough that applicants
6 were applying across three particular
7 jurisdictions -- the U.S., Europe, and Japan.
8 That indicated that it was of enough importance to
9 pursue protection across those areas and that
10 standard has also been used in the past, with
11 regard to other studies in this space. The study
12 also is in support of the 2021 National Strategy
13 to Secure 5G Implementation Plan, so this data
14 contributes to that. And again, the data used
15 also focused on four particular key types -- key
16 aspects -- of the 5G technologies and broke it
17 down into five particular patent attributes that
18 really highlighted quality and value in the space.
19 And you can see them listed on the slide there --
20 market coverage, technical relevance, radicalness,
21 legal breadth, and scope. Next slide, please.

22 So, in conclusion, I encourage you to

1 all take a look at the website and the report in
2 its full. But some high-level takeaways was --
3 that at least according to this data, and the
4 takeaways -- no single firm is winning the 5G
5 technology space. We have leaders in different
6 aspects, different areas. There were five
7 companies that were consistently filed more
8 5G-related patent applications than other
9 companies -- Ericsson, Huawei, LG, Nokia,
10 Qualcomm, and Samsung. And examination of the
11 indicators did not, as I mentioned, reveal a
12 consistent across-the-board leader. So, those are
13 some of the -- for time purposes -- high-level
14 takeaways that we'll leave the report to you all
15 to go, and we can talk further at some other
16 point, if any questions or takeaways that you'd
17 like to dive in a little further. Next slide,
18 please.

19 Two -- three, actually -- other reports
20 we do want to highlight, and not all of these are
21 completed, is the first one, and this is obviously
22 an important area of discussion is the

1 Congressional report on the impact of current
2 jurisprudence on subject matter eligibility. This
3 is a report that was requested, and a study that
4 was requested -- on May 5th, from Congress -- I'm
5 sorry, on March 2021, from a letter from Senators
6 Tillis, Hirono, Cotton, and Coons. We are
7 expected to complete that on May 5th of this year,
8 I had transposed those dates. We had received 135
9 unique sets of comments in regard to the subject
10 matter demonstrating, obviously, the interest and
11 the importance of that. So, that is still working
12 its way, we are quite far along on that work, and
13 it's working its way through finalization. And we
14 do look ahead to, here in later Spring, to
15 hopefully be able to share that and discuss that
16 in more detail.

17 Similarly postured, we're close to
18 completion of a report summarizing the public
19 views on the article of manufacture requirement of
20 35 U.S.C. 171. This deals with design patents and
21 the eligibility threshold there, and this report
22 is a summary of comments that were received in

1 response to a Federal Register notice back in
2 December, particularly, December 21st, 2020. And,
3 once again we are quite far along on this, making
4 its way through final clearances and we -- much
5 like the previous report, the subject matter
6 eligibility report -- we hope to be able to share
7 and publish this one here in the next couple of
8 months. So, stay tuned for that.

9 The last report to highlight on this
10 slide is the 2021 update on intellectual property
11 and the U.S. economy. This report did publish
12 recently on March 1st, 2022. It is an update to
13 reports done in 2012 and 2016 on IP-intensive
14 industries. And a couple high-level takeaways to
15 maybe whet your appetite, to dig in a little more
16 on the report, I'd share that it was found from
17 the work of the report that IP- intensive
18 industries account for 41 percent of domestic
19 economic output, and it directly accounted for
20 more than 47 million U.S. jobs -- 33 percent of
21 all U.S. jobs. So, obviously, IP is an important
22 component of innovation and the economy, and this

1 report, I think, continues to find that that is
2 the case. Next slide, please.

3 So that winds up the discussion of our
4 reports. We're going to transition now to some
5 brief updates on developments abroad. In Europe,
6 with regard to patents, we wanted to note, in
7 particular, that Europe has launched the Unified
8 Patent Court. In January, Austria became the
9 thirteenth country to accede to the Protocol on
10 Provisional Application of the Unified Patent
11 Court Agreement. And the reason that's
12 particularly noteworthy, is because that accession
13 triggers the Provisional Application Period and
14 allows for the resourcing of the UPC. So that's
15 ramping up here, I know we would expect to
16 continue to talk about developments there, and
17 what we can look forward to in that space.

18 Also in Europe, much like there's
19 discussions in the United States on standard
20 essential patent policy and developments in that
21 space, Europe is taking a close look at this area.
22 On December 7th, the United Kingdom IP Office,

1 UKIPO, launched a call for views in regard to
2 standard essential patents. Similarly, on
3 February 14th, the E.U. Launched an initiative to
4 revise its SEP framework.

5 And then, it's also worth noting on
6 February 18th, the E.U. and -- maybe I'll rephrase
7 with a little technical terminology -- made a
8 request for consultation with China at the WTO
9 over China's use of anti-suit injunctions in
10 standard and essential patent cases. This is a
11 quick-moving case, since -- or requests for
12 consultation to be more particular because there's
13 no case yet -- it's just the starting part,
14 there's already been developments.

15 And in particular, the United States,
16 Canada, and Japan have all made requests to join
17 those consultations, which will mean they -- if
18 China allows them to join, that's a prerogative
19 they have in this instance when others request to
20 join -- then they would be involved in learning
21 some of the info on the initiating discussions.
22 So that's noteworthy on current events space.

1 Next slide, please.

2 Since we were talking about China, we'll
3 continue there and just highlight that -- it may
4 be well known that -- on February 5th, China
5 deposited its instrument of accession to join the
6 Geneva Act of the Hague Agreement, which is the
7 modern version of the Hague Agreement. And that
8 will enter into force -- meaning that the Hague
9 Agreement will take effect in China --on May 5th,
10 2022, so you will now be able to use the Hague
11 System more effectively to protect your design
12 rights in China in May.

13 Previously, China had updated patent --
14 their design laws to prepare for this, including
15 allowing for partial designs, changing their term
16 of protection to 15 years to align with the Hague
17 Agreement. So, this is the natural progression
18 from those previous developments. Next slide,
19 please.

20 We're going to move now to Brazil and
21 highlight just a couple of events there to take in
22 mind. And these have already occurred, but

1 they're worth highlighting and noting, that in
2 2021, Brazil's Congress eliminated the prior
3 consent review. For those that might recall, what
4 this entailed was the regulatory public health
5 agency in Brazil, Anissa, would be involved in
6 reviewing -- prior to or at least
7 contemporaneously with the patent office --
8 patents with regard to pharmaceuticals, and in
9 some instances, they wouldn't even get to the
10 Brazilian patent office. So, by removing this, it
11 seemed that the evaluation of patent examinations
12 would probably be more efficient and focused
13 solely at the IP office, much more akin to what we
14 do in the United States.

15 Second development to note, is that
16 Brazil's highest court in May of 2021, overturned
17 the country's patent guarantee provision. Brazil,
18 historically, has had a long backlog in patents
19 and there was concerns that much of your term
20 would expire before you received your rights. The
21 term guarantee provision had ensured that you
22 would receive at least 10 years of term on your

1 patent, but now with the court's decision, that no
2 longer applies. And so, there's no longer a
3 guarantee of a minimum of 10 years. And
4 additionally, the court retroactively -- from the
5 May 2021 date -- applied this provision to
6 pharmaceutical-related patents, so a little bit of
7 a distinction there.

8 And then the last item to highlight, is
9 that Brazil's IP office in 2021, also, has now
10 expanded its PPH framework. And two notable
11 aspects of that, is they now include PCT work
12 products -- previously, the PCT couldn't serve as
13 a basis to expedite in Brazil, now it can. And
14 they've also expanded -- Brazil has some numbers
15 limits on PPH applications -- it's been increased
16 to 800 per year. Notably, in regard to Brazil's
17 PPH work, almost half of all PPH filings at INPI,
18 the Brazil IP office, are of U.S. origin. So,
19 obviously the PPH system is being actively used by
20 U.S. Applicants, with respect to Brazil. So this
21 is -- I think we can all say that this has been a
22 successful program, and one we're pleased to have

1 moved forward. Next slide, please.

2 As mentioned, just wanted to highlight,
3 since our last meeting last year, the Standing
4 Committee on the Law of Patents took place
5 December 6th through 9th, 2021, at WIPO. There
6 were a variety of discussions and subject matter,
7 but just for time purposes, highlighting a couple
8 things -- discussions to consider -- obviously
9 it's an ongoing area of interest of the
10 intersection of patents and health. And among
11 those discussions taking place, is discussions
12 involving -- and they were invited to participate
13 -- a tripartite group of WHO, WTO and WIPO, as
14 part of the SCP discussions, to sort of give the
15 varying different perspectives there.

16 Additionally, we will note that the
17 United States presented a proposal for information
18 exchanges on expedited patent examination. And
19 that proposal was generally warmly received and
20 action is being taken on that, such that, in
21 upcoming SCP meetings, that form should be used to
22 highlight offices from across the globe, highlight

1 the various instances and criteria for expediting
2 patent examination.

3 And that does a couple of things -- one,
4 it helps, hopefully, users be more informed about
5 what's out there and jurisdictions they may not be
6 informed. For example, perhaps down the road we
7 could share some sort of document or database that
8 might have a collection of that information and
9 that's something we often work to.

10 But secondly, it does also help us come
11 up with new ideas that maybe some offices have
12 come up with a creative solution, that we can
13 perhaps implement or build off of in our own
14 practices. So, SCP is making progress in this
15 space in the exact kind of work it's supposed to
16 be doing. Next slide, please.

17 And, you know, for time purposes, I will
18 just highlight that we have, upcoming March 28th
19 through 30th, the Standing Committee on the Law of
20 Trademarks, Industrial Designs and Geographical
21 Indications. Obviously, the ID part of it is most
22 relevant for patents, discussions of the Design

1 Law Treaty -- draft Design Law treaty -- are
2 expected to continue and a proposal by the U.S.,
3 which has a number of friendly jurisdictions who
4 have joined us, continues to gain support, and
5 that is for a joint recommendation on the
6 protection of Graphical User Interface designs.

7 And lastly, I'll highlight the WIPO
8 Assemblies coming up in July. It's been moved
9 from the Fall up to July, and of course, in the
10 next meetings we'll highlight more meetings on the
11 docket. So, I'll stop there for time. Sorry for
12 breezing through so quickly -- a lot to cover.

13 MR. CHAN: Thank you, David, appreciate
14 it. You can tell from David's update, there is
15 quite a bit going on. So, perhaps before we move
16 on, maybe I can take one question to see if
17 there's any questions about the updates he just
18 provided?

19 MR. DUAN: Yeah, so I have possibly a
20 very quick question. I'm having some trouble
21 finding the updated IP intensive industries
22 report. I don't see it on the website, so if you

1 could send a link around to it, that would be
2 wonderful.

3 MR. GERK: That is a really helpful
4 question, and we can do that, certainly.

5 MR. DUAN: Great, thanks.

6 MR. CHAN: Great, thank you. Alright,
7 Kim, do you want to take the IDEA Act?

8 MS. ALTON: Sure, no problem. Thanks,
9 Jeremiah. Next slide, please. And this is really
10 just one quick update from the Office of
11 Government Affairs, we'd just like to share with
12 you all that it does look like the IDEA Act -- the
13 Inventor Diversity for Economic Advancement Act --
14 will be advancing, and likely enacted into law
15 soon. The IDEA Act has been included in the House
16 and Senate versions of a big bill related to the
17 U.S., the United States and our competitiveness.
18 As a reminder, I know we've talked about this
19 before, this is the bill -- the IDEA Act -- that
20 would require the PTO to collect demographic data
21 on patent applicants and then to submit reports on
22 the data that we have gathered.

1 So, again, just want to flag it for you
2 all, we will be watching the negotiations that
3 will be ongoing between the House and Senate.
4 They have bills that have passed. The IDEA Act is
5 in both the House version and the Senate version,
6 and now the House and Senate will work to, sort
7 of, reconcile the differences that exist in that
8 larger competes bill. So, we will be watching
9 that closely. This large bill was mentioned at
10 the State of the Union address by the President,
11 so it's certainly a priority. It's a bipartisan
12 bill from members of Congress. It's a priority
13 for members of Congress, as well as for the Biden
14 Administration. So, we are happy to keep you all
15 posted on that development. Any questions? All
16 right, thank you so much.

17 MR. CHAN: Thank you, Kim. Well, since
18 we have a few more minutes, Charles Kim, who
19 covers AI policy -- thought you might have an
20 update or two for the group.

21 MR. KIM: Sure, Jeremiah. As I had
22 briefed PPAC in previous meetings, you know, we

1 have been actively engaging with our stakeholders
2 on a wide range of AI policy issues. We are in
3 discussions right now, in terms of some next
4 steps. I can't give the details yet because we're
5 still having discussions, but I think it's safe to
6 say that those next steps will likely include
7 further discussions with our stakeholders, so
8 please stay tuned. As soon as we're able to make
9 those announcements, we'll let you know, so please
10 stay tuned. And I'm happy to answer any
11 questions. Thank you.

12 MR. CHAN: Great. Thank you, Charles.
13 I'll also, kind of, alert people to the great AI
14 web page the USPTO's hosted -- lots of great
15 information there -- make sure you take a look at
16 that. Any questions about any of the items raised
17 between Kim, David, and Charles?

18 MR. CALTRIDER: Jeremiah, I'll ask a
19 question. First off, to pass along a compliment,
20 the progress in Brazil has really been remarkable.
21 It's unfortunate the highest court made the ruling
22 that they made, particularly retroactively. It's

1 a bit unfair to patent holders, but otherwise the
2 progress has really been notable, and I appreciate
3 the office's engagement on that. That's been over
4 a multi-year journey.

5 My question is, last year there was a
6 lot of discussion, particularly in the press,
7 around compulsory licensing of Covid vaccines and
8 therapeutics, and Covid- related products. I
9 haven't heard much about that recently. Is there
10 anything in the policy space going on, on that
11 front?

12 MR. GERK: I can try and take that. You
13 know, I can go back and check with the team if
14 there's any notable examples. You always hear
15 rumblings of rumors of things. I know when Covid
16 first began, there was that sort of discussion
17 playing into the WTO discussion, but offhand,
18 there's not one particular big notable one. But
19 we can -- I can go back to the teams covering
20 across the globe and if there's, you know, sort of
21 gather the details of anything in the works
22 someplace, if that would be helpful, or to

1 highlight that in follow-up.

2 MR. CALTRIDER: Last I heard, they had
3 the competing proposals, yeah --

4 MR. GERK: In Brazil, specifically, you
5 mean?

6 MR. CALTRIDER: No, I mean, on Covid --
7 the compulsory licensing, sorry. You had the
8 European proposal, the South African proposal, and
9 your --

10 MR. GERK: Sorry, Steve, I misunderstood
11 your question. I thought you meant laws on
12 compulsory licensing in certain jurisdictions.
13 No, there hasn't been a decision at the WTO, in
14 that, I think consultations and discussions are
15 still ongoing, you know, and we can check back
16 again. We're in constant dialogue with USTR,
17 who's leading that, but there hasn't been an
18 outcome, as far as I know.

19 MR. CALTRIDER: Right, thank you.

20 MR. GERK: Yes.

21 MR. CHAN: Other questions? If not, I
22 think we're right at time, Steve.

1 MR. CALTRIDER: Right, thank you very
2 much. Jeff, I'll hand things over to you.

3 MR. SEARS: Okay. Thanks very much,
4 Steve. We have a very succinct presentation today
5 on the financial side of the office. Before I
6 turn it over to the office, let me just give you a
7 brief overview of the subcommittee's priorities.
8 This year, as in past years, our priorities are to
9 provide feedback and advice to the office on all
10 things financial -- specifically, the budget, user
11 fees, financial status, and the financial
12 sustainability of the office's funding model. And
13 with that, I will turn it over to Jay Hoffman in
14 the office.

15 MR. HOFFMAN: Great. Thanks, Jeff.
16 Thanks, Steve, happy to be here with you today.
17 Now you put the slides up, okay, I see they're
18 coming up now. All right, great. Well, we'll
19 jump right into it. I'm going to cover three
20 topics today relatively quickly. I want to give
21 you an overview of where we're at in the Fiscal
22 Year 2022 financing of the agency, talk about some

1 financing issues that are just over the horizon,
2 and then take a couple minutes at the end to give
3 you a little bit of an overview on the patent fee
4 schedule. Next slide, please.

5 So, the government's fiscal year runs
6 from October through September, so Fiscal Year
7 2022 started back on October 1st, and
8 appropriation for Fiscal Year 2022 has not yet
9 been enacted, although there has been significant
10 action, just in the last several hours in
11 Congress. And, all that action would suggest that
12 a final appropriation may happen in the next few
13 days. Until that time, the government is still
14 operating on a temporary continuing resolution --
15 or CR, as it's often called -- and that CR that
16 we're currently on, actually expires tomorrow.
17 Not to fear, though, another temporary CR is
18 already working its way through Congress, as is
19 the final omnibus. Because we're on a continuing
20 resolution, we are subject to the CR formula that
21 provides funding for the current fiscal year based
22 on a prorated amount of the prior fiscal year's

1 enacted appropriation.

2 So, last year in Fiscal Year 2021, the
3 USPTO received an enacted appropriation of 3.695
4 billion dollars. We're on a CR through March
5 11th, that equates to about 44 percent of the year
6 and so, we get 44 percent of last year's
7 appropriated amount. So, let me walk through the
8 table with that context in mind. Using last
9 year's numbers -- 44 percent of the 3.695 billion
10 -- USPTO, overall, has appropriated authority to
11 spend fees up to 1.639 billion dollars. And of
12 that amount, 1.44 billion dollars is for patents.

13 Now, in addition to those appropriated
14 fee amounts that we can spend, we also began the
15 year with an operating reserve balance of 476
16 million dollars and other revenues, reimbursables
17 and such, of about 6 million dollars. So, total
18 financing sources for the agency, through March
19 11th, are 1.934 billion dollars, which is more
20 than sufficient to finance all of our funding
21 needs through this point in the year. Next slide,
22 please.

1 So, speaking of spending, I wanted to
2 give you a quick update on how things are
3 progressing. So, this chart shows our spending
4 and revenue collections for the year. You'll see
5 a green horizontal line running across the top.
6 This green line is our annual spend plan for the
7 year for patents, and we project to spend about
8 3.5 billion dollars in the patent business line.
9 The blue bars that you see on this slide, show
10 commitments and obligations -- or amounts spent in
11 layman's terms -- and so far, we've spent about
12 1.3 billion dollars through the end of January.
13 The red bars that you see here are the actual
14 patent revenues that we've received, and through
15 the end of January, those are lagging spending
16 slightly. We've collected about 1.2 billion
17 dollars in revenue.

18 This is fully expected. Every year,
19 spending tends to run a little higher in the
20 beginning of the year than revenues, and then that
21 reverses itself in the latter half of the year.
22 This has to do with the way contracts and other

1 spending patterns, sort of, materialize over the
2 course of any given fiscal year. Long story
3 short, by the end of the year we expect that
4 revenues will have caught up and exceeded
5 spending, and we will be making an incremental
6 increase to the agency's operating reserve -- if
7 all goes according to plan. Next slide, please.

8 Let's take a look at revenues for
9 FY2022. So, this slide shows the aggregate patent
10 revenue rate. The x-axis is in time, coinciding
11 with the start of the fiscal year, October 1st.
12 The y-axis is in millions of dollars in revenue.
13 The purple line that you see going across the top,
14 is at 3.631 billion dollars. This is our plan for
15 the year, this is how much revenue we expect to
16 collect. And the blue line that you see, the sort
17 of swooping up from left to right, this is the
18 forecasted revenue rate -- the 25-day moving
19 average of the actual patent revenue rate that
20 we're seeing.

21 And, as of the end of January, you can
22 see that we were tracking at about 3.606 million

1 dollars. That's only 7/10 of a percent below
2 plan, about 25 million dollars below plan. So,
3 the big takeaway from this is that the revenue
4 rate is tracking just within a whisker of the
5 expectations, so this is very, very good. Next
6 slide, please.

7 Take a look at our patent operating
8 reserve. So this slide shows the operating
9 reserve, which are deposits on-hand that are
10 available for spending by the agency. The x-axis
11 here, again, is in time. This goes all the way
12 back to October 1st, 2020, so you're looking at
13 about a year and a half worth of data. The y-axis
14 is in millions of dollars. We've set a minimum
15 operating reserve target, which is represented by
16 this black line going across the middle here, of
17 325 million dollars, and that equates to about one
18 month of patent spending. The blue area that you
19 see here is the actual operating reserve balance,
20 and as of the end of January, the balance was
21 sitting just under 620 million dollars, so, well
22 over the minimum levels -- nearly two months'

1 worth of operating reserve balances.

2 You can see here that for the last, you
3 know, roughly a year, the operating reserve has
4 been trending up toward our optimal target, which
5 is about 885 million dollars. We expect, based on
6 everything we're seeing, the revenues that I just
7 showed you, the tight spending tolerance, that
8 we'll be able to continue making progress toward
9 the optimal level, and we'll definitely stay above
10 minimum levels throughout the year. Next slide.

11 All right so next topic, looking over
12 the horizon a little bit, the USPTO submitted a
13 budget proposal to the Office of Management and
14 Budget last Fall -- this is for Fiscal Year 2023.
15 OMB's provided feedback on that already, and we've
16 gone through the process of incorporating all of
17 that into the final document. We have not yet
18 submitted the FY2023 budget. The timing is still
19 a bit up in the air, however, we expect that the
20 FY23 request will go forward sometime this Spring,
21 probably sooner rather than later.

22 The second item I wanted to just give

1 you an update on was that the USPTO has been
2 working on the FY2022-2026 Strategic Plan. This
3 is a very important part of our financial planning
4 process. We design our spending and budgets
5 around the goals and priorities in the Strategic
6 Plan. Congress is also in the process of updating
7 their Strategic Plan, and it's likely to be
8 released with their budget submission here in the
9 next several weeks. Next slide, please.

10 Okay, I wanted to take just a couple of
11 minutes, particularly for some of the new PPAC
12 members that are joining us, and provide an
13 overview of the patent fee structure, so you have
14 some context when we're talking about fees and
15 revenue -- what's going on. So, a few concepts to
16 bear in mind before I get into the chart -- patent
17 and trademark fee collections in the aggregate
18 must recover the aggregate USPTO operating costs.
19 So, in total, we need to cover enough -- collect
20 enough revenue -- to cover all of our costs, but
21 for a particular service that's not necessarily
22 the case. Congress established a fee structure

1 that relies on both front-end and back-end fees to
2 support agency operations. And the current patent
3 fee structure balances multiple policy
4 considerations in order to foster innovation and
5 competition, while also providing financial
6 sustainability.

7 So let me give you a few examples of
8 these policy considerations that are part of our
9 fee structure. We have, I think, many of you
10 probably know -- small and micro entity discounts,
11 that equate to 50 percent and 75 percent,
12 respectively, for fee categories. We have low
13 barriers to entry. So what do I mean by that?
14 Well, the way our fee structure is designed, that
15 front-end fees for things like file, search, exam
16 -- those fees are generally less than the cost to
17 the agency owner to provide those services. And
18 that's made up on the back-end, by maintenance
19 fees, which essentially subsidize those lower
20 front-end costs.

21 So let's take a look at the pie chart
22 here. As you can see, the pie chart on the right,

1 this is our FY 2021 fee collections for patents.
2 And the largest fee category represented by the
3 gray area, is maintenance fees. It makes up about
4 44 percent of all patent revenue. Next, is patent
5 application filings, the blue area, that makes up
6 only about 29 percent of all revenue.
7 Post-allowance fees, which are orange, they bring
8 in about 11 percent, and then all other fee
9 categories combined are right about 15 percent. So
10 you can, sort of, see this front-end-back-end
11 balance that I was alluding to in terms of the
12 policy considerations, and the way the fee
13 structure is designed.

14 So just one more slide. Next slide,
15 please. Great, thank you. So this is the basic
16 fee schedule over the life of a patent. So, I'll
17 provide an overview here and kind of walk you
18 through this. So this slide shown is a simplified
19 view of the patent life cycle from filing, all the
20 way through maintenance, with timing based on
21 total pendency of about 23.4 months. The fees
22 that are listed here are undiscounted, meaning

1 that they do not reflect small or micro entity
2 discounts. We're just trying to keep it simple.

3 Now, the top row of boxes here shows the
4 year that a particular activity is implied to have
5 occurred. And the second row, in the blue, shows
6 the life cycle phase. The third row of boxes show
7 the fees that we charge for that phase, again
8 these are for large entities. And then the bottom
9 row of boxes shows the unit cost for that same
10 phase. This is based on the USPTO's
11 activity-based costing accounting data that we
12 calculate the actual cost of providing the
13 service.

14 So, you'll see here that the unit cost,
15 as I was alluding to before -- we'll just look at
16 the first column -- for file, search, exam, that's
17 approximately \$5800 in cost. However, if you add
18 up the revenue for those three things, that's
19 about \$1800 in cost. So, again, low barriers to
20 entry, where the agency is subsidizing front-end
21 filing costs and making that up later in
22 maintenance. If you look all the way to the

1 right, you'll see that the maintenance fees, that
2 adds up to about \$13,400 if someone pays all three
3 stages of maintenance. But the cost is
4 essentially negligible -- essentially zero for
5 those -- because you're simply extending the
6 rights on an already-issued patent.

7 So, hopefully this gives you a little
8 bit of context when we're talking about fee
9 collections and looking at different categories.
10 Sometimes we get into a lot of the details -- I
11 thought it might be interesting for the call today
12 to just have a little context for that. So, with
13 that -- with one minute to spare -- I'm going to
14 turn it back over to our fearless subcommittee
15 leader, Jeff, and see if he has any final
16 thoughts.

17 MR. SEARS: Thanks very much, Jay, that
18 was a really great presentation. I especially
19 appreciate your walking us through the fee
20 structure, how the office, essentially subsidizes,
21 or how applicants subsidize filings on the front-
22 end to foster innovation. And how the office

1 doesn't really break even until -- what'd you say,
2 the second maintenance fee? Is that the
3 break-even point?

4 MR. HOFFMAN: Yup, right about the
5 second maintenance fee.

6 MR. SEARS: Great, thanks. I'll turn it
7 over to the PPAC. Any questions?

8 MR. DUAN: Again, just one quick
9 question -- for the 2022 Strategic Plan, will you
10 be taking public comments on a draft? And about
11 when would you expect that to happen, if so?

12 MR. HOFFMAN: Good question. Certainly,
13 the PPAC will have an opportunity to see the
14 Strategic Plan. I think, until we get a little
15 bit closer to finished -- and we're still quite a
16 ways -- I think I'd like to defer a more specific
17 answer on that, at this time.

18 MR. SEARS: Okay, Steve, it's 2:30. I
19 will turn it back to you.

20 MR. CALTRIDER: Very good. Thank you,
21 everyone, and thank you for an incredibly
22 productive meeting today. I appreciate our

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PROCEEDINGS were adjourned.) * *

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(Whereupon, at 2:32 p.m., the
PROCEEDINGS were adjourned.)

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I, Kendra Hammer, 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.

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