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MR. CALTRIDER: Good afternoon, everyone. Let's get started. Welcome to the June 2022 PPAC. It's live for most of us in the room, although we have a few people attending remotely. Thank you, thank you, thank you for taking the time to meet live today. We're very, very excited about the agenda. It's a fireside chat with the undersecretary of Commerce, director of the USPTO, Kathi Vidal. We're tremendously excited about the agenda. We're excited to be here live. So, without much delay, I would like just to go around the room and on those online that are participating via -- that are PPAC members, to introduce themselves quickly. Dan?

MR. BROWN: Dan Brown, my second year at PPAC.

MS. BRADEN: Hi. Judge Susan Braden, retired, second year at PPAC.

MR. CHAN: Jeremiah Chan, third year at PPAC.
MR. SEARS: Jeff Sears, sixth year at PPAC.

MR. CALTRIDER: Steve Caltrider, chair.

MS. HARRISON: Suzanne Harrison, first year at PPAC.

MS. NEBEL: Heidi Nebel, first year at PPAC.

MR. DUAN: Charles Duan, first year at PPAC.

MS. DUDA: Kathy Duda, POPA president, and union member of PPAC.

MR. CALTRIDER: And Cathy, online?

MS. FAINT: Yes, hello. Catherine Faint, Vice President of NTEU 245, and union member of PPAC.

MR. CALTRIDER: Thank you. And I don't think Tracy's online, at least I'm not seeing her.

Okay, let's begin. The -- if I may start today's discussion, thank you for joining us. We -- we have a full agenda of questions, so we're going to go very quickly through this. But I thought it would be good just to lay a little bit of context
and foundation on, you know, how we came about deriving these questions. We reached out to a number of stakeholders, and Suzanne will explain our process.

MS. HARRISON: Yeah. So, the process that we went through was many of the listening sessions that Kathi had attended generated a number of questions, and we went through all of those. We also received questions from stakeholders as part of our communication with PPAC, and we added those.

We asked each of the PPAC members and the committees that they represent to generate a set of questions. We took all of those. We aggregated all of those questions into groups and we tried to find common themes and issues that seemed to be representative across a number of stakeholders. And then we came up with a list of questions that we are fortunate enough to ask Kathi today. But overall, I'd say we generated -- for the questions that we have today, it came out of 100, 150 from stakeholders.
MR. CALTRIDER: And thank you to the stakeholders who engaged the PPAC and -- and provided us questions. It was very, very helpful, and very insightful to see kind of the pulse of the stakeholder community on what -- what they are most interested in. I get to open with the first question, and -- and it didn't necessarily come from the stakeholders, but it's something that's in top of mind for -- for many people. And that is, why did you want this job? Why now, and can -- or what motivates you to -- to be the next undersecretary of Commerce?

MS. VIDAL: So, thank you for that question, Steve. And -- and I want to thank the entire PPAC. We've been working together very closely in the last few months and -- well, not few because I've only been here for two, but at least in the last month and a half. And I just -- I want to thank everybody for your contributions, and then all the stakeholders as well, who engage with the PPAC.

In terms of this position, when I was
approached about it, it was not something that was
on my bucket list. When I was approached about
it, I thought long and hard about what this
position means and what this country needs right
now. I thought about the issues we're seeing from
-- you know, in terms of counterfeits, in terms of
some of the abuses. I thought about the way
stakeholders saw various issues and saw an
opportunity to contribute, is the bottom line.

   And I felt that this was a -- a
different and broader platform than I've ever had
to -- to help make change on behalf of the
country. And just the thrill of being able to be
in a position where you wake up every day and want
to do what's best for the country, it was one that
certainly I could not turn down.

MR. CALTRIDER: Very exciting. Thank
you.

MS. BRADEN: Good afternoon. This is a
softball.

MS. VIDAL: Okay.

MS. BRADEN: Unfortunately, the state --
current state of the patent eligibility jurisprudence has had a negative impact on the predictability and reliability of patent protection in this country on — particularly in the life sciences and software industries, and on legally to have predictable patent protection.

What is your — what are your priorities? What do you think you can accomplish to help in that area during your term?

MS. VIDAL: So, thank you for that. In terms of what we're doing right now, we did commission a study on whether the current 101 jurisprudence is protecting and incentivizing innovation, especially in new technology areas. I've seen the results of that study. They won't surprise you, but that is something that we're going to release shortly. That was something that Congress had asked for. So, one way in which the USPTO is contributing, of course, is on the congressional side in terms of talking to Congress about potential change.

Another way, as everyone knows, is at
the supreme court level. You saw our American Axle brief that we did with the solicitor. Certainly, there is no, in my mind, perfect vehicle for solving 101, but we have to make vehicles perfect. So, we've -- we've certainly submitted a brief on that, and hope that all stakeholders in all areas think about submitting amicus briefs so that the Supreme Court has the ability to address 101 more broadly and not just limited to the type of invention that's at issue in American Axle.

And then, you know, certainly within the USPTO, it's been kind of coming upon us to provide guidance that's going to be used both at the examination level and at the PTAB in terms of interpreting the laws. We have that on 101. As you know, that was -- that was promulgated in 2019. It's been a few years since, so we are working on taking a fresh look at it and determining what, if any, changes need to be made to that. And we will certainly get the PPAC input on that.
So, those are the three areas that we're really focused on right now. I -- I agree with you, it's a terribly important thing to fix and to have more certainty when it comes to 101. And we will play whatever role that we can in that.

MS. NEBEL: So, this is a similarly related question. There is much discussion about whether discretionary denials and 101 subject matter guidance have bettered the patent system for innovators, including independent inventors, small businesses, and universities. What's your position on these reforms, if you care to elucidate a little further? And do you intend to sustain or even codify them?

MS. VIDAL: So, I'll take those as two separate questions, 101 and discretionary denials. I don't think I have a whole lot to add on 101, other than that -- I do believe certainty is going to be even more helpful when it comes to small and medium-sized innovators, in part because they depend even more so on funding just like the pharmaceutical industry. So, certainty in that
area could only be helpful when it comes to 101.

In terms of discretionary denials, we will be releasing something soon, providing more guidance when it comes to Fintiv and how certain other factors will be applied that should provide not only more certainty within the USPTO, but the stakeholders as well. And I look forward to -- you know, to releasing that and to hearing thoughts on that.

It's -- it's the same thing as the other things that we produce where we're doing things MM and then final, because if we can solve for something now and make change now that we think is going to better the system, we're going to do that. But we're not going to substitute that in place of finalizing things through rulemaking. So, just like with director review, we're going to go through the rulemaking when it comes to discretionary denial, not -- not just Fintiv, but all aspects of discretionary denial.

MR. CHAN: Hello, Director Vidal. It's great to be in person with you.
MS. VIDAL: You as well. I'm going to switch -- I'm going to switch gears a little bit and move to -- to something I know that's really important to you, because you've mentioned it several times, which is better engagement of underrepresented inventors.

MS. VIDAL: Mm-hmm.

MR. CHAN: And, you know, this, I think, in many ways, started the momentum when the USPTO published the groundbreaking Progress and Potential report. And I think as a follow up, many people, including myself, were very excited about the IDEA Act potentially passing and really allowing us to have clear metrics for being able to measure progress in that area.

Now that it's kind of been indefinitely delayed, how can the USPTO measure progress? How can we make sure that we're doing the right things to better engage all inventors across the country?

MS. VIDAL: So, Jeremiah, I appreciate that question. It's -- it's important that we make progress in -- the measuring and the making
of progress are both positive things. So, certainly, at this moment, we can't benchmark, given the data that we receive. We do -- we do have some information on women inventors, but not on different ethnic groups, as you know.

And so, in terms of moving forward, a couple things. One way that we're measuring our progress is based on our outreach. So, each of the regional offices has -- has a system that we use where they measure where they are and who they're engaging with. So, we actually have a -- a heat map on that so that we can make sure that we are getting into underrepresented communities and are reaching out more broadly. So, I will -- I will say that's -- that's a positive.

In terms of measuring progress with the PTO, we have engaged with companies. There is some thought that companies will start to self-measure and then report back, so we're looking at any way that we can benchmark and measure.

In parallel with that, we don't want
that to be the starting -- I mean, if we can
measure now, that's great, but we -- we want to
make progress on top of that. So, a lot of our
efforts are not just focused on ways we can
measure, but ways we can reach more communities,
you know, ways we can make sure that we're lifting
people within those communities.

So, in that regard, we are working with
our regional offices. We're considering an
ambassador program that will be much broader than
the regional offices so we can reach into more
communities. And if you look at the data -- and
we're looking at our pro bono programs. I'm
trying to figure out how we can use them to reach
more people. And our partnerships, small business
association, et cetera.

So, we have a very concerted effort,
including with the Council for Inclusive
Innovation, and we're doing everything we can.
And I'm going to roll out more, but it hasn't been
announced yet, when it comes to reaching more
deeply.
I will say that there are statistics that give me hope, and that's the statistics we're seeing from our pro bono program. So, whereas we know the -- within the USPTO, the number of patentees is 13 percent women across -- you know, in terms of inventors. We meet -- the individuals who are participating in our pro bono program, when we go out and meet people where they are, the number of women is 41 percent. The percentage of women is 41 percent. So, if you think about the difference between 13 percent and 41 percent, it shows that our outreach is working based on that data.

And just to share a couple of the other numbers, in terms of the African Americans we're reaching through that program, 30 percent; in terms of Hispanic, 14 percent; Asian Americans, 5.6 percent; Native Americans, 1.5 percent. So, although we don't know the numbers in the USPTO, I can guarantee those are not the numbers in terms of those who are patenting.

So, we do have some data that suggests
that our outreach is working. But you're right, the more we can measure the data, the more we can benchmark and make sure that we're working to improve the numbers.

MR. BROWN: So, as you know, I'm the inventor representative on the PPAC. I'm the inventor representative on the PPAC. So, my question is going to be around invention, and in, hopefully, the innovation that we can -- we can see as a country from it.

You know, the ability for startups to compete with the market, it's -- it's largely dependent on the ability to enforce patents. And most startups don't have a lot of money, and they go into competition in larger markets against well-funded competitors, and there's a bit of a David and Goliath in that.

In this -- this scenario, there's a very high bar to get an injunction since 2009 with the eBay case, and that's contributed to even more challenges for small inventors to -- to protect their rights, preserve their rights. And it's
really been an impediment in negotiations for
getting startup money, for negotiating licenses,
and those type of things. And -- well, I
understand the USPTO cannot overrule or modify
eBay, but I'm interested in how we can advocate or
modify the ability for small inventors to preserve
their rights so that we can get that innovation,
you know, reward that we're all looking for.

MS. VIDAL: So, thank you for that, Dan.
And so, I think people at the PPAC know, but maybe
not everybody knows, Dan has been working with me
very closely to make sure that we're out there
also doing listening session with inventors.
That's been extremely helpful.

As -- as Dan knows, I've certainly
represented numerous inventors and had some of the
same challenges where money is tight and you have
people ripping off your trademark, infringing
their patents. And I've been able to resolve a
lot of those cases, but it's -- it's tough and --
and I -- I sympathize with -- with that.

I think there are two aspects of that.
One is the actual system, and -- and the second is what we're communicating about it. So, I think we need to do a better job when it comes to communicating about the system -- not only to innovators and prospective inventors, but also to people who are investing in companies -- about the system and the current benefits and, you know, the likelihood of getting an injunction, et cetera, because I think the system, it can be improved and we're working to improve it.

But it's fairly strong right now. And I just want to make sure to end -- end misperceptions, so that -- that are causing innovators not to patent, that are causing, you know, venture capitalists, and others not to invest in those innovations. So, I want to work with you on that as well. I think that's terribly important to make sure that we've got the language right and the communications right to incentivize the behavior that we know the innovators and inventors need.

In terms of enforcing rights, we -- we
need to think more about that. As you know, we're looking and watching -- as Judge Braden knows, because it is her brainchild. We're looking into a small claims court that the PTO could perhaps host. We're doing -- we're doing a study on that as to whether there is a better way of resolving some of these issues short of the cost of district court litigation.

But you're right, there are a lot of barriers right now, and I -- I look forward to exploring that with you. I don't have an answer on all that other than I think there are a lot of great ideas out there, and -- and it's incumbent upon us to look into them.

MR. BROWN: Thanks. And I -- I have to say, I'm -- I'm very encouraged in the last six weeks with the intensity that you're bringing attention to this. And I look forward to, you know, moving the needle on this.

MS. VIDAL: Yeah, as do I. It's -- it's really important, so I -- I look forward to collaborating on that.
MR. SEARS: Hi, I've got a question for you about a frequent topic, post-grant proceedings. Post-grant proceedings before the PTAB have resulted in frustration with some inventors who invest in filing an application and successfully prosecuting the application to issuance, only to have the PTAB reverse for some or all of the claims. What are your plans to improve the reliability of the patent right so that reversal by the PTAB is more of an exception than it is today?

MS. VIDAL: So, there's a lot to unpack there. As -- as you know, we've had private sessions on some of these. So, in the first instance, we need to do everything we can to make sure that the patents issued in the first instance are robust and reliable. And to me, that's a two-way street, that part of that rests on the applicant to make sure they're disclosing the prior art, to make sure their lawyers are crafting claims that comport with the specification of the invention. And part of it is on the -- on the PTO
side, on the examiner side. So, we are focusing hearing on that issue.

For those who are not on the PPAC, the PPAC and I and a number of the folks at the PTO had a discussion about that today on how we can improve the robustness and the reliability of patents, both at that stage, but then moving forward to the PTAB to make sure that we're -- we're applying with the same standards that if the right art is found and the patent is issued, then it's upheld at the -- at the PTAB because it's the same standard.

So, really appreciate that question. We're -- as you know, we're digging deep into that from -- everything from 112 to 103, just to make sure that we're applying the same guidance, that we're providing more clarity on how we're interpreting the law. Because in some of those areas, there's not one interpretation of the law. So, we're going to be doing as much as we can on that, because it's -- it's a critical issue.

And back to the definitive guidance, I
think that's going to help as well. And it even
leads to some other information, even on our
processes, to make it clear, the processes we're
using to ensure consistent decisions and, you
know, to -- to ensure that the way that we're
making these decisions is going to result in the
best work product.

MR. DUAN: First of all, I just wanted
to echo Dan's comments. Thank you so much for
your work here, for having this conversation, and
for your engagement with the PPAC, and for, you
know, everything you've been bringing. I think
this has been a really fantastic engagement that
we've seen.

We have a question about international
harmonization efforts. And that's something,
obviously, that's been very much on the patent
office's docket. And then maybe if you can
comment on -- on what the -- what the office is
looking at doing, particularly, ways that we can
increase efficiency and transparency of the patent
system through these harmonization efforts.
MS. VIDAL: So, thanks, Charles, for that. I just got out of meetings with some people, 14 others in this room, with -- with IP5. That's an important issue not only to the U.S., but to other countries as well, so it's something that we're digging in deep on. It's something that we believe that if we meet at the highest levels across the countries more often, that we can -- you know, in addition to the working groups, we can make more progress.

To me, that's key in part because of the small to medium-sized enterprises, but even for the larger corporations to make sure that the barriers to protecting your IP in different countries is low, or is at least lower than it is right now. And harmonization is a key part of that. So, we're -- we're definitely keenly focused on that.

As we think through other issues that aren't necessarily in that bucket, I would say we're also looking at what other countries are doing. When we think about 101, we're looking at
what other countries are doing. When I think
about design protection, we're looking at what
other countries are doing. Because it's important
for us to understand that, and to understand that
when people are looking at protecting their IP,
it's not just a U.S. solution, it's -- it's a
global solution. And the more we can learn from
each other, the more we can harmonize, the better
it's going to be for all stakeholders.

MS. DUDA: Okay. So, quality search is
one of the foundational elements of a thorough
examination, and the office has invested in AI and
Patents End-to-End, PE2E, research. So, what is
your vision of leveraging AI to further expand
search in examination?

MS. VIDAL: So -- so, thank you, Kathy.
We -- you know, as you know, we need equip
examiners with all the tools that we can so that
they can perform their job efficiently and
effectively. The PTO is -- we have ongoing
efforts in that regard. So, as you mentioned,
we've -- we keep introducing new search
capabilities. We keep broadening the prior art that's being considered during examination.

That effort is going to continue as we find new sources of AI tools and other tools to make the examiners' job easier. And to make it easier to identify the key art, we're going to continue to -- to use those -- those new tools.

So, it's front-of-mind not as a new initiative, but as a -- I think given how fast AI is improving, it needs to be a continual process improvement that we'll be doing. But it's something that's -- that's really important, because examiners have a certain amount of time, and we want them to be spending more time doing the analysis. And then we can use tools, not only on search, but just identifying issues with an application, et cetera. We're going to use technology wherever we can to make their jobs easier and to make them more efficient and effective.

MS. HARRISON: So, I want to come back to the topic of diversity for a little bit.
Earlier, Jeremiah asked about diversity in inventorship, and I want to turn to diversity in the profession.

MS. VIDAL: Mm-hmm.

MS. HARRISON: And so, as you know, there are very few women and minorities in the profession. And so, I wondered if you could share some of your thoughts about what the USPTO can do to help offset that.

MS. VIDAL: So, I -- I appreciate that. And, you know, this is -- this is a bigger issue that -- and I think we need to be part of the ecosystem in fixing the issue. So, we certainly welcome all the thoughts in the PPAC and stakeholders on what more we can do in our leadership position to advance that.

I will say there are certain things that we are focused on internally. First of all, we are looking even within the organization. We are forming a new DEIA committee that's going to consider these issues within the USPTO. We have changed our hiring practices to make sure that
when we do announce jobs, that we're using language that's as inclusive as possible so that people don't self-select out of that process. We are making sure that we reach into communities so that we get a wide variety of people and a diverse group of people applying for positions.

And then even when it comes to advancement within the organization, we're implementing best practices, and we'll continue to research best practices to make sure that the opportunity for people to rise is -- is equal, that everybody has an opportunity to rise. I think that it's incumbent upon any organization to do that, and we are certainly doing that and have taken that on in -- in full force.

In terms of beyond that, we are rethinking the standards for practicing before the PTO. There is a patent bar that we are rethinking -- I know we've -- we've changed it in some ways. We're going to consider making additional changes so that we really tie the qualifications to the types of people needed to actually produce a good
work product. So, we don't want -- we don't want quality to be sacrificed in any way, but for example, if somebody has a computer science degree, that might qualify as a technical degree with the -- with the rest of it.

We're also rethinking whether it should be the same test for design patent protection as it should be for utility patents, that there may be a wide variety of diverse people who could practice before the PTO if they're working on the design side, as opposed to some of the more technical utility patents.

And we're also thinking about those who practice before the PTAB, and thinking hard about -- and -- and on a lot of these, we are going to get stakeholder input. So, we're not -- we're not just going -- if it's low-hanging fruit and we think it's an easy change, like we did -- actually, Drew Hirshfeld is in the room. This is his last PPAC session, so thank you for attending.

Like -- like Drew did before where we -- we changed the standard for the patent bar in a
way that would not sacrifice quality, but would
broaden the number of people who could practice
before the PTO, we're thinking about the same
thing with PTAB. Is there -- is there some other
criteria that we could use, because even having
the pro hac in is a barrier. And I know that
sometimes even people can pro hac in, they don't
consider themselves part of the PTAB bar because
they have that barrier. So, we're thinking about
what we can do in that regard.

But even beyond that, the work that
we're doing with K through 12, getting into
communities, we are focused on innovation, but an
innovation that focuses on STEM. So, it's getting
out there into communities, trying to encourage
teaching in outreach so that we're reaching
everybody in diverse communities. And in those
communities, we're focused on things that -- that
excite everyone.

So, just as an example, it used to be in
schools that -- and maybe some of you have done it
-- there were two innovation exercises they would
do. One was shooting up rockets, and one was
dropping an egg. And the data shows that those
two experiments did not tend to attract diverse
interests.

When they changed that in schools to
things like your -- your neighbor has a wheelchair
and needs and implement to hold their water, or
anything where there is an empathy component, the
number of children who are interested was much
more diverse.

So, just thinking through the science
that they're -- and play whatever role we can to
incentivize innovation at all ages is something
were also focused on as well. And you're going to
see much more on than that when we roll out CI² in
-- in full force.

MS. HARRISON: And I'm sorry, but I just
want to follow through with one thing that you had
said, because it really is a PPAC initiative,
which is, can you really clarify for everyone,
when you say you want stakeholder engagement, how
can they -- how can they really put that
information -- get that information to you? When you want comments from people -- so, you've been very consistent in all your listening sessions. And so, I think she really does mean that. And so, let's give you all the ways that -- that you can touch the USPTO and tell -- tell them what you want them to be doing or ideas that you have or ways to engage with this.

MS. VIDAL: Well, I appreciate that. And ideas have come to me in so many different ways. I'm open to any way, the most efficient ways, or better. So, if -- I don't know if the PPAC has an email that you can email. We have a lot of emails on the website where you can provide your feedback, and all of that is being looked at. But if you do communicate with the PPAC or if the PPAC has ideas on additional listening sessions -- you know, as I've said, in many different forums, it doesn't matter where the idea comes from. If it's a good idea, you don't need to be a big company. You don't need to have a lot of signatories. You don't need to get it into the
press. You don't need to -- all you need to do is bring it to our attention.

I'm sure anybody on the PPAC, if you raise it with them -- and they're all on LinkedIn with their emails and whatnot, if you raise it with them, they will raise it, and we will solve for it. So, there's so many great ideas out there.

In addition to that, I am reaching out to broader groups to have listening sessions to find out, you know, what the best practices are. So -- and then -- and when I talk about stakeholders, it's not traditional USPTO stakeholders only. It's anybody out there who could potentially benefit from the innovation ecosystem, which is pretty much anybody.

So, we --- I just spoke with Howard University last week on what that they're doing, how we could collaborate with them. So, I'm aggressively looking for opportunities. The PTO is aggressively looking for opportunities. But I mean -- I would welcome any additional ones as
MR. CALTRIDER: I'll put a little commercial in for the PPAC, at -- at this moment. Because we do have a website, you know, we -- it's part of the USPTO site, and we do have an email address. So, I would encourage any stakeholders -- broadly defined, as you said, it's -- it's virtually anyone to submit comments to the PPAC. We -- we'd like to have those comments. We route them to the appropriate people at the USPTO, or we take it up ourselves if it's an issue that the PPAC should take onboard. So, we really appreciate when we get that kind of feedback as well, so --

MS. VIDAL: Well, and I'll just add to that. So, that's a good point, Steve. I'll just add to that. We did launch about a week or two ago an inclusive innovation website. And that has a lot of information for individual inventors, union inventors, to connect up with the PTO, and for others to get involved in those efforts. If that does not have an email on it -- I believe it
does -- if it does not have an email on it, it will have an email on it within the next 24 hours. So, I believe it's there, but if not, we will have one there.

So, if you have any insights, ideas around inclusive innovation -- including on that page, we -- we rolled out that page with the idea that we wanted to get everything we could get out there right now about -- I'd like to get everything -- and Valencia, I'll give credit to as well, who's here. I'd like to get everything out there. Even if it's not 100 percent, we will just keep improving on it and making sure that we -- we'll get things in people's hands as soon as we can.

MS. BRADEN: Aha, red means go. It's like putting together a Christmas toy or something the night -- the eve before. It says all -- even a five-year-old child could do it. You say, where's the five-year-old child that can do this? I -- as I said before, I get all the -- the more serious questions, but the life cycle of
software in pharmaceuticals is very different than
a mechanical. You know, patent law is for --
written for one size fits all. I'm sure that
Judge Rich didn't think about those things in 1952
or whenever it was he was writing the laws. Can
you share your thoughts about that?

I mean, you know, there's been a lot of
discussions through Sonoma. Steve's former
colleague, Bob Armitage, has written about this
issue a great deal. I was thinking, you know,
years ago, Congress created -- I looked this up on
the -- on my phone while you were talking. Like,
for a copyright, they formed a commission. It was
-- these -- on new technological uses of copyright
works, and that was some time ago. Nothing really
happened from the CONTU experiment. But I wonder
if some type of commission to look at this --
that's elevated beyond just the Sonoma, the Naples
roundtable, those types of things -- might be
warranted.

In that regard, I know that the
Secretary of Commerce has a group of -- much
larger group of people involved looking at some of these issues. Maybe you can share what you're doing there and your thoughts about maybe -- should there be a commission that looks at something like this? I was thinking that this happened also in the antitrust era where I -- where I cut my teeth practicing law, I believe, in the Carter administration. You take a look at the -- you know, with the broader issue of -- of antitrust jurisprudence, and I thought that a lot of good stuff came out of that. So, that's a really big question, isn't it? It's not something you can answer easily.

MS. VIDAL: No, I have the answer.

MS. BRADEN: And I suppose you have the answer, so --

MS. VIDAL: Yes. So, first of all, I -- I do think it's time to rethink everything. As -- as you mentioned, the last BB was in the -- in the '50s, right? And the AIA came along. And there's been things since, but not -- not at that level.

And I remember from when the first
committee draft for AIA until the eight or nine
years that it took to pass it, this was a constant
discussion. Because you had pharma on one side
who had certain things they wanted to achieve from
the AIA, and -- you have tech on the other -- you
have one -- you have tech on the other side. And
their thoughts were somewhat at cross-purposes
during that time, and there's a lot of discussion
about maybe we need two systems.

It's obviously a broader issue. It's
not just the U.S. We need to think globally about
this, because we've got treaties and, you know,
people need to abide by the -- I do think if we go
back to first principles on is our system
incentivizing innovation, there's two parts to
that, right? There's the guarantee of the limit
of monopolies so that you incentivize them, but
there's also the building on it. And I think
you're right, in different fields, that time point
may be different, especially with the -- the rate
at which technology is being developed outside of
the bio space versus in the -- in the bio space.
So, I -- so that would be my answer, it's just generally, I think we should go back to first principles. I think if you look at first principles, a one size fits all may not be the optimal solution, but it's -- it would take a lot of thought, and obviously, international collaboration and cooperation on that. So, we welcome -- we welcome further discussion on that.

That's --

MR. CALTRIDER: That's something --

MS. VIDAL: And -- and I will say just right now, we are trying to solve for all industries, including independent inventors, in trying to get more surgical about what we're doing. Because sometimes when you do things at a macro level, you're impacting people differently. And we've always looked at the system -- and a lot of people have -- probably not, you know, as a zero-sum game. And I think we need to find ways to solve these issues so that it works for all industries, including for independent inventors.

So, I'm -- I'm looking forward to
working with the PPAC on that and getting your thoughts and advice on that because I'm confident that we can come up with solutions that will be the right solutions for the country, which means it's going to -- it's going to work across the industry. But in terms of the timing, that's -- that's obviously a bigger issue.

MS. BRADEN: Yeah.

MR. SEARS: I have a question for you about a topic I will call temporarily unavailable fees.

MS. VIDAL: We'd like them back. That's --

MR. SEARS: You know where I'm going. So, here's the question. Today, the patent office operates under the fee collection and appropriation protocol of the American Invents Act, in which the office is typically authorized to spend, in one way or another, all of the fees it collects. But before the AIA, between FY '90 and FY 2011, the office collected fees that it wasn't authorized to spend. Today, these fees
total almost a billion dollars, and they're sitting in a USPTO account at Treasury.

Here's a two-part question. Have you considered whether to seek authorization to spend these fees? And if so, have you considered how these fees might be used at the patent office, for example, to offset inflationary pressures?

MS. VIDAL: That's a loaded two-part question. So, yes to the first one. I think in terms of if we do have the fees, how would they be used, we would -- that we have to be larger analysis. I mean, certainly, if we could get down dependencies on trademarks, et cetera, you know, patents, that would be a fruitful use of fees. But there's certainly other things I'm sure we could find to spend the money on. And so, that's -- that's where I'd love to go offline and talk about that more in terms of how do we get those fees back and what do we use them for. But that's -- that's a much -- a much larger issue, as you recognize.

MR. CALTRIDER: The PPAC is always
ready, willing, and able to engage and eager to
engage on that issue if we can be of any
assistance. You may appreciate, we've sent a
letter to congress last year on that issue, and we
-- we certainly are willing to address it again,
because it's -- it's important. It's -- it's fees
collected by applicants. They should be used for
the office, and it's a matter of getting those
appropriated so we can use them.

MS. VIDAL: And I appreciate that
because it's -- you know, if we have full funding,
it's going to -- it's going to make our mission
easier to achieve.

MS. HARRISON: I was just going to say,
Kathi, we have gone through our questions and
obviously, we have a little bit of time. And I
was wondering if there was anything else that you
would like -- any kind of remarks you would like
to make of things maybe we didn't ask that you
wanted to talk about or highlight for the public.

MS. VIDAL: I think you've been pretty
comprehensive. I -- I like your -- I liked the
comments you made about outreach and about hearing people's ideas. There's certainly more ideas that -- when I came here, just based on my experience working for, you know, large tech and inventors is mostly what I worked for. I didn't work as much in the pharma -- I mean, a little bit where I helped on the pharma side.

I had some thoughts as to ways we could improve the system. I didn't want to presuppose that those were the right ideas, and it's been really great to hear from people both inside and outside the organization. And, you know, through that, it's helped me think through ways to focus and ways to try and make bigger impacts sooner.

So, I would -- I would welcome additional ideas on that. There were things that we discussed in the PPAC session today that were just raised, that I know we're going to hit hard and quickly because we know that it can make a difference.

So, I would encourage people to continue the dialogue, to -- when we do put out -- you know, when -- when we do make decisions on an
interim basis, we do always have an email where
people can email comments. I got a comment in
Houston the other day that for big organizations,
they'd like to know when we're going to start to
do the formal rulemaking so they can get their
comments in in time. So, we've taken that to
heart. And we'll make sure that we do announce
that in advance, so that we say, you know,
comments to the website will close on this date,
so that we can actually form the questions and get
something out broader.

I like stakeholder and PPAC input, as
you know, with the PPAC along the way. I think
it's a much better system when we're hearing input
as we go, as opposed to just coming up with a
final product and getting input at the end. I
think it's harder to maneuver at that point and --
and to really shape a system that's going to work
for everyone.

So -- so I will say, I know that there
are up to three positions available on the PPAC
and on the TPAC. They may be filled by current
people, they may be filled by new people, so I would encourage people to apply for those. I think it's great that the PPAC and the TPAC have a wide variety of interests represented. That helps me do my job. You know, I -- I don't have an independent inventor that's sitting in my front office that can advise me. I don't have somebody from the, you know, the pharmaceutical industry on some of the issues that we're seeing percolate, you know -- I do have some people on that, but, you know, it's nice -- it's nice to have more. So, I'm very grateful for this. This, to me, is a very, very meaningful position to be -- you know, to be the advisors to the director on all of these key issues.

So, I would encourage people to apply and to support those currently in a position. These are people who are empowered to -- to provide advice on the things that we're going to be doing. And they will be with me every step of the way. So, advice you provide to them is going to filter into the process.
MS. HARRISON: And sorry, one last thing. Again, I think all of us on PPAC have been really excited with your use of focusing on how to make an impact, bringing stuff to impact. And so, I just wanted to ask for you to clarify for the public what do you mean by that, because that's a really important thing, and I think that would be helpful.

MS. VIDAL: So, that -- that's perfect. This actually gets back to Steve's first question is, why this position, why now. For me, I get energized and excited if I can make impact. It's what gets me up at 2:00 or 3:00 in the morning to start -- you know, review opinions or whatever it is that I'm doing that day.

And it means different things to me in different contexts. From the PTO perspective, if there's something we can do right now, I want to do it right now. And -- and that's what we did with director review. I -- we thought there could be more clarity, so we took it on immediately and we -- we updated the website very quickly on that.
We did the same thing with the role of the director, vis-à-vis the role of PTAB judges. We did the same thing with Fintiv. If there's things we can do -- and we've got an amazing team that's doing this, so I have to credit all of them, because if there's things we can do, everybody's ready in position to do it. And so, when I think about the impact, I think about there are abuses of our system. How do we surgically attack those without throwing out the baby with the bathwater? How do we do that without hurting the individual inventors, but make sure that our -- that our system is strong, that the patents that we issue are more robust and reliable, that the PTAB is working for its intended purpose.

So, any initiative that we can do on that, we take on immediately. And we actually focus our meetings on initiatives. So, we -- we don't often do great, big-group meetings. When we talk about ideas, we say, this is what we want to achieve. How do we get there? We're having discussions with Cathy, I know right now, about
specific initiatives related to examiners. And so, within the USPTO, it's about that kind of impact. Like, what's going to have the most impact and what can we take on right now.

Outside, when I talk about just bringing innovation to impact, it's very broad in terms of the impact. So, some of it is within -- within commerce, some of it is jobs, and economic prosperity. And I see protecting IP as the bridge between the two, protecting your ideas, protecting your -- your brands is what helps you get investment and get people behind you so that you can bring your ideas to impact which is job and greater economic prosperity.

When it comes to certain technological areas like the green tech space, we -- we just launched the accelerated examination for green tech. It's about building great ideas that are going to help the world to impact, to get them to market.

And as part of this with CI², Council for Inclusive Innovation, it's two-part. It's
number one, the more people we have, the more hands on deck, the more impact were going have for the country, the higher the GDP is going to be, the more people will have jobs.

The other part is there's an equity component of it. And, you know, a lot of times, we focus on pro bono and what's good for the public. We focus on the back end where the system didn't work, and now someone needs housing, and they don't have money for housing. That's terribly important work.

I'd also love to see a huge focus on the front end. How do we deal with people from the beginning? How do we give them opportunity? How do we teach them and give them all the tools that we have at our fingertips so that they can build from the beginning? And if we -- if we move the effort there, hopefully there will be less effort to do on the backend, that we don't have to find people housing, because they've already bought it using the hard-earned money they made.

So, that's what I mean -- so, when I
define impact, it's just an easy way to say we
need to make change, and we need to -- we need to
find a way for everybody to be elevated -- even
people within big companies, it's not just the --
the underrepresented -- to make sure we're having
more impact to this country.

MR. CALTRIDER: To expand on that
question just a bit. You've been with the office
for how many weeks now?

MS. VIDAL: I think almost two months.

MR. CALTRIDER: Two months, or eight --
eight weeks roughly. Two questions. First is,
you know, have you had an opportunity to identify
your priorities, in terms of what are your top
three priorities? And the second question is,
what surprised you in your first eight weeks? And
-- and perhaps, you know, what are you pleasantly
surprised about and what are you not so pleasantly
surprised about?

MS. VIDAL: Okay. I know I have team
members in this room, if you say what are her top
three priorities, they will say that there's no
three, because I've never prioritized that way. I -- I have a broad, overarching umbrella on what we're trying to achieve and we're going to do everything to achieve it. And we have, you know, 11,500 people who are highly skilled, very motivated, smart, creative people. There's a lot we're going to get done.

And so -- so it's hard -- I mean, in terms of top three, you could -- you could look at the three concentric circles of, you know, incentivizing more innovation, protecting that innovation in the U.S., you know, and overseas and then bringing it to impact. But there's so much to unpack within that. So -- so, I guess if I had to pick three, I would pick those three. But they're umbrellas, and there's -- there's so much underneath it.

In terms of what surprised me, it didn't surprise me in terms of what I expected. It -- it surprised me in terms of the dialogue I heard that people said -- when you go into government, you're not going to be able to move at the same speed
that you've always moved at, that there's going to 
be too many barriers.

And -- and if you look at what we've 
done as a team so far, if you can only imagine all 
the things we have in the hopper right now that 
are being rolled out, I'm not -- I'm not seeing 
that. I'm seeing that things are done 
intentionally. They're done carefully. That's 
important. They're done to make sure that 
everybody's heard. But I -- I just -- I'm not 
seeing barriers to making change. And so, that -- 
if I had thought there were barriers, I would not 
have come here. But -- but it does -- it does -- 
it's not the dialogue that I heard when -- when I 
told people that I was going into government.

MR. CALTRIDER: Okay. Thank you. Other 
questions from PPAC?

MR. DUAN: I'll -- I'll just sort of 
follow on to some of the things that Suzanne has 
said and the conversation you had about sort of 
outreach to outside stakeholders. I -- I -- the 
number one I want to just emphasize is that your
-- while you've been holding plenty of listening
sessions, a lot of my friends have -- have had the
opportunity to talk with you, I think they've been
really, really appreciative of that sort of
outreach.

And I guess, you know, I -- I know that
there a lot of people out there who are probably
thinking, you know, I -- I feel like I'm affected
by patents, or that the innovation system is
important to me, but I don't really know how to
participate. I -- I guess in a sense, I kind of
want to see if there's a way I can give them a few
words of encouragement.

So, number one, are there sorts of
outside stakeholders that you've met with that you
didn't expect, but had interesting ideas? And
number two, are there groups that you would be
interested in hearing more from that you feel
like, you know, aren't the kinds of people that
normally would come to the patent office, but
you'd like to get their views?

MS. VIDAL: So, those are -- those are
really good points. So, I have heard really
interesting views from independent inventors that
-- that are ones that I hadn't focused on,
including, you know, the 12-month provisional
application period that -- a lot of them said, 12
months is not really enough time for me to figure
out if this is something worth pursuing.

But out of that came the idea that maybe
we should be pursuing track three, so that
inventors who haven't yet proven that their
invention is going to work or they're not yet
ready to spend the money on patents can slow down
the process. So -- so, we're certainly -- and
nothing's been finalized. This is all really
early-stage thinking in terms of what are all the
ideas that could potentially help independent
inventors.

In terms of reaching people who -- who
don't normally participate in the system, I have
met with some really great inventors who have told
their stories and about how they connected up with
IP. And -- and I want to work with them.
There -- there was a woman that -- that
-- I guess she interviewed me in Denver, Colorado
-- who was -- she's the -- this is a sad
statistic, but -- it's good for her, but not good
for -- for us. But she's the only African
American female, she said, of this century in
Colorado who's received a patent. And she is so
excited. She -- she created the Tempus hood.
It's a little hood that you can put on to protect
your hair. It was some -- an issue she was
dealing with. She created it. She has a company
now. You can go buy her -- her product on the
website.

We're talking to her about -- how did
you go through the process? How can we help
people? How can we go back -- if you could rewind
the clock, what -- what would you have wanted to
see along the way, even from the beginning, in
terms of knowing what was available, and then --
and then the help you've received along the way?

So, there have been a number of people
like that that I have met with at some of these
listening sessions, because some of them have been quite broad. And for a lot of them, we actually bring in the participants who have used our pro bono program. So, they're the people that were hard to reach, that didn't have access. But to find out from them, what do we do to reach people like you? Do you want into our pro bono program? Tell us how you did it, so we can scale that. But I think that's really important.

And one thing we need to do is create a lot of collateral around that. We've -- we've learned about that as well. For example, when somebody gets a rejection with the PTO, she would put a cover letter to explain what it means, because certain groups, including women in certain ethnic groups, will interpret that rejection differently and self-select out of the system even after they filed a patent. And should we provide a video link -- so, you get a cover letter that explains what it means and says, go to this video to find out what's next. Should we do that if people file a patent? I think all along the
way we need to think not only about what's working for traditional stakeholders, but how do we hold people's hands through the process and -- and make it easy to understand and -- and easy to be able to secure the -- the protection.

MR. BROWN: So, since we have time, which is wonderful, I -- I'd like to do a follow up. So, on -- in the context of, say, small inventors, entrepreneurs, and -- and to tie in with your action, you know, it's always been my feeling that the best social system is a good job. I think that's a -- it's the synopsis of your -- your pathway there.

And it's a -- it's a very difficult challenge to bring products out in the States now, because it's a global marketplace. And -- and it actually puts the small inventor at a -- a disadvantage, because while you want to make it in the States, you -- you just don't have the same cost advantages and labor -- and many times, other areas -- to support that cost difference. So, the patent becomes that much more valuable in -- in
that sense of personal risk or even in developing
that risk.

And I don't know -- maybe this is a
bigger question for Commerce, in your opinion in
Commerce, but is there some way that we could
lessen that risk for inventors willing to bring
the product out in the states and to have
something there that incentivizes that creation of
jobs? That -- that's a particular, I think,
point, that while we -- well, protecting member
rights, taking the jobs offshore -- certainly,
there's going to be some jobs here. But that --
getting down to the grassroots, not everybody goes
to college, manufacturing-type jobs, there needs
to be a better pipeline for that.

MS. VIDAL: So, that -- that's a good
point, Dan. And one of the things that this
administration is doing is there -- there is
funding for things like that, as you recognized,
through Commerce and otherwise. And I'm working
with various organizations on what those -- what
those grants look like, what the contractual
language looks like.

ARPA-E has a very good program where there is -- you do need to manufacture in the U.S., but they give you funding for that. They give you funding to apply for the patent. And so, I've been talking to them about getting access to their language to see if there's more we can do, both in government and even in the private sector, around that.

I know a lot -- I've been talking to governors when I go to states. I know some states are also doing that, where they're getting out grant money. And I want to make sure that where the government is helping the innovators, that were doing so in a way that's going to benefit the country, which includes keeping, you know, jobs here, you know, as well as other benefits, and to make sure that any of the IP developed through that either benefits the individual inventor or it benefits the country if the inventor chooses not to -- not to actually make product of it. So, I think there's a lot that can be done, especially
if there's some role the government's playing.

In the private sector, it's a little harder to solve for. I think we can learn from what we're doing in the public sector -- or in, you know, the government sector. But I -- I'd love want to go offline and talk more about that, because I -- I agree with you, I'd like to see companies be better supported. I'd like to see it done in a way that -- that it does help the country. And so, I -- I would welcome further discussion on that.

I will say a quick, quick question -- a quick comment about ARPA-E. One thing that I love is that if people decide to manufacture outside of the U.S., they can take their patent away. So, they said that as soon as -- I said, well, have you ever sent a note? They said they can send -- they can send letters to say, we understand you're now trying to offshore. If you offshore, we're going to write to the USPTO and take your patent away. They said as soon as that letter is sent, there's no offshoring. So, it's -- whatever it's
doing, it's -- it's working.

MR. BROWN: The one caveat -- or -- or
just to touch on that -- is the counterfeiting
that gets in. I -- I don't know -- the -- as
technology changes -- so, we have a company,
Bionic Wrench, and it's made in the States. You
can ship a wrench from Shenzhen, a one-off, to
Chicago cheaper than I can get it from my plant in
Pennsylvania to Chicago. And that continual
knocking off and depressing that price, it's no
longer stopping containers at the border. It's
just -- it's -- it's like the drug problem, but,
you know, in manufacturing, and it's a real
challenge.

MS. VIDAL: So, I agree, and that's
another issue that I want to take on. I'm
actually recording remarks today for a group --
and it's on counterfeiting. And so, we do have
campaigns going on around counterfeiting to
educate consumers. That's -- that's really the
USPTO's sweet spot since we're not an enforcement
agency. But we are working across agencies to try
and do more.

I've -- I've spoken to the Secretary of Commerce about this, that there's no one group where -- that's going to be able to solve this, because some of the groups are focused on larger issues in terms of monetary amounts. And as you recognized, it's not even shipped in a container now. They ship it in little boxes so they'll avoid issues at Customs.

And so, we need to figure out how -- how across government and how with messaging to the public do we change the dialogue, do we -- do we stop the supply and the demand when it comes to counterfeit goods. So, again, welcome any thoughts on that. I -- I believe very strongly on that. I'm very concerned about the counterfeit activity, because it's -- it's -- you know, it even runs counter to the -- going back to first principles and it's cutting against all the great work we're doing. We need to do whatever we can to cut that out.

MR. BROWN: So, again, this is a
Commerce thing, not the -- the patent office, but
the one thing I could say that you could represent
to us as small inventors in -- in that menu would
be to -- the websites or whatever that advertises
goods, they will maybe take down on a trademark or
whatever. But even an identical product, they
don't want to say, oh, the patent wouldn't be
there.

I mean, just even the -- to the
strengthen the presumption of validity and that
the patent's been issued, and allow them to apply
the same thinking that they would to maybe stop a
copyright or trademark violation, just -- just to
do that. And that would stop it at the beginning.
And you wouldn't have the -- you know, with the
cybersquatting, someone could take our trade name,
type it in a shopping site, and they buy -- the
position would be the first on the top. People
are buying an identical knockoff, and it's coming
to them. And then we get complaints about how
terrible the quality is of our product, and it's
-- it's so frustrating. It's crazy.
MS. VIDAL: So, why don't we get a separate PPAC meeting just on that, if you don't mind, Steve. I would love to have one just on that topic of counterfeit goods, because there are groups that are -- that are working on this. I want to be an ally and then I want to do whatever we can as government, not just as a USPTO, on that. But that -- that seems like it warrants its own separate discussion.

MR. CALTRIDER: I agree. I agree, I think that's a great topic. We're -- we're coming close to our hour. Thank you very much for appearing. I do have one order of formal business that -- that -- I'm looking at my PPAC, that -- they aren't aware of this, but I would be remiss if I didn't do this. Drew wasn't here when he -- we started our introductions. But when you commented on not having any barriers in the office, because you had highly committed and skilled professionals, Drew certainly fits that. He has been a highly committed public servant for many, many years. I think I met Drew 15 or 20
years ago, probably, in my first --

MS. VIDAL: Come up here, Drew.

MR. CALTRIDER: And he's been absolutely
dedicated to make a difference in the patent
system and innovation in the United States and
American competitiveness. And he's done just an
absolutely fabulous job. The PPAC normally
doesn't do -- (applause) normally doesn't do
formal business, but I would love to entertain a
formal motion of gratitude for Drew if someone
would be willing to -- to move. Charles?

MR. DUAN: Oh, do you want to move?

MR. CALTRIDER: I'm -- I'm the chair, so
I'm --

MR. DUAN: Oh.

MR. CALTRIDER: So, I can't move.

MR. DUAN: All right. I will move.

MR. CALTRIDER: Very good. Do we have a
second?

MR. SEARS: Second.

MR. CALTRIDER: All those in favor? All
right.
(Applause) Thank you. Thank you, Drew. Thank you, Drew, for your service.

MR. HIRSFELD: So, I have to -- I have to say, like, I -- I just want to say one thing. So -- so, first of all, thank you to everybody. You can imagine I'm filled with emotions at this time. It's -- it's almost 28 years, and it's been quite a run and really enjoyable.

And I'm listening to -- to Kathi answer all those questions, which, I think you can probably tell, many of which, she didn't have in advance, and watching -- watching what a wonderful job she's done. And I -- I originally thought, like, if a person who came into the agency to lead the agency was really, really good, like Kathi is, I would think it would be a lot easier to leave the agency. But as I was watching, I thought, it's actually harder to leave the agency, because I'm really excited about the direction of the agency with you. And I -- I really appreciated all your answers today.
In any case, this is -- this -- I don't look at this as goodbye. I look at it as just a transition to -- to next steps. And so, I look forward to working with everybody. And I appreciate all the wonderful people at PTO, on the various PPACs over the years, and in the public who I've been fortunate to deal with. I feel -- I feel like I'm the luckiest person to have the roles that I've had. So, thank you, everyone. Much appreciated. (Applause)

MR. CALTRIDER: Thank you. Okay. Thank you, everyone. We look forward seeing everybody in August. We're going to have a virtual meeting in August, and we'll go back, hopefully, live in September. That's yet to be determined. So, thank you, everyone. We're adjourned.

(Whereupon, at 1:59 p.m., the PROCEEDINGS were adjourned.)

* * * * *
CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

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

(Signature and Seal on File)

Notary Public, in and for the Commonwealth of Virginia

My Commission Expires: September 30, 2025

Notary Public Number 256314