

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING
QUARTERLY MEETING

Alexandria, Virginia
Thursday, August 5, 2021

1 PARTICIPANTS:

2 Patent Public Advisory Committee (PPAC) Members:

3 JULIE MAR-SPINOLA, Chair

4 STEVEN CALTRIDER, Vice Chair

5 TRACY-GENE G. DURKIN

6 JEFFREY M. SEARS

7 JUDGE SUSAN G. BRADEN (RET.)

8 DAN BROWN

9 JEREMIAH CHAN

10 JENNIFER A. CAMACHO

11 BERNARD CASSIDY

12 Union Representatives:

13 KATHLEEN DUDA

14 CATHERINE FAINT

15 VERNON AKO TOWLER

16 United States Patent and Trademark Office (USPTO):

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

18 JACKIE BONILLA, Deputy Chief Judge, Patent Trial
and Appeal Board

19 SARAH BROWN, Senior Advisor for Operations

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

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1 PARTICIPANTS (CONT'D):

2 KALYAN DESHPANDE, Senior Lead Judge

3 ROBIN EVANS, Deputy Commissioner for Patents

4 TAMARA FOLEY, Attorney Advisor, Office of
5 Governmental Affairs

6 JANET GONGOLA, Vice Chief Judge, Patent Trial
and Appeal Board

7 LINDA HORNER, Administrative Patent Judge, and
8 Senior Advisor to the Under Secretary and
Director, USPTO

9 MICHAEL KIM, Vice Chief Judge, Patent and
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12 KRISTEN MATTER, Acting Deputy Director, Office
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14 SEAN MILDREW, Deputy Chief Financial Officer

15 RICK SEIDEL, Deputy Commissioner

16 BOB SIMMS, Director of Infrastructure
Engineering and Operations

17 COKE STEWART, Performing the Function and Duties
18 of the Deputy Under Secretary of Commerce for
Intellectual Property and Deputy Director of
19 the USPTO

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Chief Information Officer

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2 DON WATSON, Chief Information Security Officer

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

2 (11:00 a.m.)

3 MS. MAR-SPINOLA: Let me welcome
4 everybody. And thank you for attending our
5 quarterly meeting. And I'm Julie Mar-Spinola,
6 Chair of PPAC. I want to keep my intro short, so
7 we have plenty of time to review.

8 And so, let me just start by welcoming
9 everybody and then introducing our Chairs of our
10 Subcommittee. There's Steve Caltrider, our
11 Vice-Chair, and he is the Chair of our PTAB
12 Subcommittee, Jeff Sears is our Chair of our
13 Pendency and Quality, Barney Cassidy is Chair of
14 our Finance Subcommittee Jeremiah Chan, Chair of
15 our AI and IT Subcommittee, Tracy Durkin is our
16 Chair of our Outreach Subcommittee, Judge Susan
17 Braden and Dan Brown are our Co-Chairs of
18 Legislative Subcommittee, Jennifer Camacho, the
19 Chair of our Innovation Expansion Subcommittee.

20 With that, let me turn it over to
21 Director Drew Hirshfeld, performing the functions
22 and the duties of the Director of the USPTO. Good

1 morning, Drew.

2 MR. HIRSHFELD: Thank you very much,
3 Julie. I hope everybody is doing well. Just
4 wanted to thank Julie and all the PPAC members.
5 I'd like to thank all of the USPTO staff who've
6 put this event together, and I know we have a
7 number of people -- I'm watching numbers on the
8 screen, we can see people are joining in, so thank
9 you to members of the public for joining in.

10 We have a great agenda for you all
11 today. One of the struggles we always have, quite
12 frankly, with the PPAC meetings is how to fit in
13 everything that we have. So, on the agenda,
14 you'll see topics ranging from PTAB, including a
15 post- Arthrex Director review process. The
16 Patents Organization will talk about drawing
17 quality and petitions information. We have budget
18 and finance, AI, international legislator affairs,
19 innovation expansion, and sustainability. So,
20 great topics for all of you.

21 What I would like to do in my remarks,
22 and I'll keep them brief today, but what I'd like

1 to do in my remarks is give you some highlights
2 that I feel are particularly noteworthy, and I'll
3 touch on some of what's going to be discussed in
4 more detail later on and some new topics.

5 Let me start with a visit we had early
6 last month from our Deputy Secretary Don Graves.
7 It was a wonderful visit. By the way, the
8 Secretary, Gina Raimondo, visited PTO after she
9 started and Don Graves visited us, after he took
10 on the role. And they both showed a great deal of
11 interest. I wanted to talk about the Don Graves
12 visit because it was a great visit. And I talked
13 to him in advance of that, and said how detailed
14 do you want us to get? And he said, let me see --
15 get the full package.

16 So, we actually not only gave him a tour
17 of the wonderful National Inventors Hall of Fame
18 Museum, which if any of you haven't seen, you have
19 to be able to see it, once we re-open of course.
20 And then we gave him a tour of PTO and a whirlwind
21 with the business senior heads.

22 But we also gave him a short day in the

1 life of a patent examiner and a trademark
2 examining attorney. So, he actually got to see
3 the tools that examiners use and be able to ask
4 questions. I thought that was wonderful.

5 And then I will say one of the
6 highlights for me, personally, was we presented
7 him with a framed copy of one of his ancestor's
8 patents. So, his, I think I'm going to get this
9 right, but it was a great, great, great, great
10 grandfather in -- and I have the year written down
11 here -- in 1881 received a patent, and so he has
12 ties to the patent system. And it was a really
13 special moment, quite frankly, to be able to be a
14 part of that with him. By the way, his ancestor
15 was one of the first black people to receive a
16 patent, so it was a very moving and touching
17 experience for all of us.

18 I always wanted to look forward a little
19 bit and let you all know that later this month, we
20 have our annual Invention Conference,
21 Invention-Con, as well call it. It's the 25th
22 year of this conference, and it focuses, of

1 course, on independent inventors, IP protection,
2 and the importance of American ingenuity.

3 This year's theme is capitalizing on
4 your intellectual property and, to date, very
5 pleased to say we have more than 1,500 registrants
6 for this. So quite a great turnout so far. And
7 I'm looking forward to those numbers continuing to
8 go up. So, I say that now, because if there's
9 people here who would like to join, and I hope
10 there are, please know that you can still sign up
11 for the Invention-Con conference. We will have
12 remarks from Secretary Gina Raimondo, as well as
13 many panels.

14 And I'd like to highlight one of them
15 because they -- one of our panel members will be,
16 I want to make sure I get her name Gitanjali Rao.
17 And you may know that name, but she is a
18 15-year-old author, inventor, scientist, and is
19 Time Magazine's 2020 Kid of the Year. So, she was
20 inspired by the water crisis in Flint, Michigan,
21 and she developed an innovative way to make sure
22 that our drinking water is clean. So, very

1 excited for that panel as well as many others.

2 Okay, let me go back to some other
3 ongoings at USPTO. Since our last PPAC meeting, a
4 lot has happened on the Arthrex front. So, of
5 course, we had the decision from the Supreme
6 Court. I know others will get into more details
7 later, so I'm going to skip some of the details.

8 But just to say, we do have a new
9 post-Arthrex interim Director process that is on
10 your way. You can get information about that
11 right from our website. We've put up a great
12 question and answer document which you can look
13 at. It gives you information about the process
14 and should -- gives you a way to provide comments
15 to us, should you have comments. So, I hope that
16 you will certainly take a look at that if you
17 haven't been able to. And please give us
18 comments. This is an interim process, so I see it
19 being iterative.

20 By the way, we were able to take -- use
21 the President Opinion Process, the POP Panel
22 process, that we had in place already and use a

1 lot of that to help us move to this process. So,
2 again, please take a look at our website and give
3 us some feedback. By the way, two decisions went
4 out this week. Those were the first two
5 decisions, both denials, that went out very
6 recently. So, you'll hear more from that.

7 One question I did want to address
8 myself though, because I'm getting asked it a
9 great deal is how is one person going to do all of
10 this. And I assure you that I do have an advisory
11 group that is working on this. And that, by the
12 way, is addressed in our questions and answers
13 document that we have. But I have an advisory
14 group that helps on this. That advisory group is
15 made of judges from Keytoward (phonetic), it is made
16 of members from patents, members from our general
17 law office, and so we -- I tried to have a very
18 representative group throughout the Agency to be
19 able to give me input and information, and then,
20 ultimately, the decision will be made by me in all
21 of these cases. So, I do have a great deal of
22 assistance, and I want to say thank you to the

1 teams that have been working on all of that.

2 I also wanted to mention another topic
3 related TCAB that has been a topic in the past.
4 In PPAC, we've had great discussions in prior
5 meetings about situations where patented claims
6 are held to be invalid and what are we doing at
7 USPTO as a teaching point and a learning point
8 from that. I wanted to assure you all that that
9 is a very high priority of mine to continue our
10 efforts, moving forward, to get a better
11 understanding of anytime there's a claim that's
12 held to be invalid. I want to understand and we
13 all want to understand at PTO the reasons why.

14 So, we are working on a process to be
15 able to capture that data such as -- is it related
16 to prior art, was the art in the case, was it not
17 in the case. If it was not in the case, should it
18 have been something an examiner should have found,
19 some reference that wouldn't reasonably be in a
20 place where an examiner could find. These are all
21 questions that I think we need to get a better
22 handle on, so we will continue that focus. And

1 I'm looking forward to future PPACs where we'll be
2 able to give you more information as we continue
3 with our study.

4 Maybe I can transition to the patents
5 organization and just mention filings a little
6 bit. I think Andy Faile might get into more
7 detail on filings or some of the patents folks
8 might get into more detail. But I get asked a
9 great deal about the filings relative to the
10 pandemic. We are tracking and got a negative --
11 we are proposing, actually, or predicting for the
12 year that there will be a slight decrease in
13 filings in this year as compared to last year.
14 We're predicting about point, or, I'm sorry, about
15 2 percent decline. That decline is less of a
16 projection than we were originally projecting at
17 the beginning of the year. Our original
18 projection was about a 3.7 percent decline. So,
19 we've seen filings come in at a higher rate than
20 expected. So, we've reduced our projection
21 numbers.

22 I think that is actually very good news.

1 It shows that there hasn't been too much of an
2 impact, decrease in filings. These numbers aren't
3 too far off what they typically are in a year.
4 Nobody knows what's going to happen the remaining
5 months, so I get it that these are all
6 projections. But, again, I think this is a very
7 healthy place to be in our revenues. And I know
8 you'll hear more from Jay Hoffman later, our CFO,
9 of course, that our revenues continue to be
10 strong. So, I feel that the agency is in a very
11 good place.

12 I did want to mention some about patent
13 pendency. You have all heard me talk many times,
14 both as Commissioner and being in this role, about
15 our transition in looking at patent term
16 adjustment timeframes or pendency, rather than
17 your average First Action and Total Pendency,
18 which is what we've been doing for many, many
19 years looking at that. So, this does represent a
20 significant change. Looking at the patent term
21 adjustment timeframes, which are set by statute,
22 makes more sense to me. I think we've actually

1 received comments from many of you that it makes
2 more sense. But just a background, it's a way for
3 us to say, how many applications in all these
4 actions can we ensure are below these patent term
5 adjustment timeframes.

6 By doing that, we'll get consistency
7 throughout the core. When people, for example,
8 look for status inquiries, they'll be able to have
9 more consistency. Averages are somewhat
10 problematic with a very large organization such as
11 ours, because if you are not in an area close to
12 the averages, your numbers could be way off. And
13 that is a problem. So, we're really trying to
14 focus on the patent term adjustment timeframes,
15 and you'll see that.

16 One interesting issue, in focusing on
17 the patent term adjustment timeframes, is it has
18 helped us move out a lot of older cases, which is
19 a good thing, of course. We want to move the
20 older cases, so that they're not there anymore,
21 right. So, we're working the cases as they come
22 in. The downside to that, quite frankly, is

1 you'll see that our First Action pendency numbers
2 will increase a little bit, and we've seen that
3 trend a little bit.

4 And so our First Action, again, which
5 we're trying to get away from these, but for
6 completeness, I'm just adding it to the
7 discussion, are about 16.9, which is higher than
8 it's been recently. But I think that this is an
9 interim uptick, because of our change to a new
10 process of looking at the patent term adjustment
11 timeframes. Our Total Pendency is still declining
12 and is at a very, very healthy 22.6. So, [Audio
13 drops) years our goal, and to be beneath 24
14 months, and we're currently at 22.6 months. And
15 personal opinion, the Total Pendency matters a lot
16 more than the First Action Pendency. I know
17 people may have different opinions about that, but
18 that's my view, and I think, of course patent term
19 adjustment is the right way to go. So, I just
20 raise those, so you are alerted if you see some
21 changes in our numbers, that is the effect.

22 By the way, in looking at First Action

1 and Total Pendency, the difference between 16.9
2 and 22.6 for Total Pendency is a very small
3 difference. To me, that is a really good
4 indication. It's something I haven't actually
5 really focused on in the past, but the fact that
6 our First Action Pendency and our Total Pendency
7 are getting closer in time is quite a great
8 statement about what our examiners are doing.

9 In other words, having interviews to
10 move cases along, issuing high quality First
11 Actions to make sure that there's compact
12 prosecution. All of these factors play into not
13 having a significant delta between First Action
14 and Total Pendency. I know I got a little weedy
15 (phonetic) in my discussion there, but I do think
16 it's important for all of you to hear that.

17 A couple additional notes about Patents
18 Organization. You've also heard me mention that
19 this year is a really interesting year for Patents
20 Organization. They are going through very
21 significant changes, perhaps the largest changes
22 ever in Patents Organization. Starting this past

1 October, there were changes relative to the --
2 first, there was a reorganization of senior
3 leadership. Second, there was the changes to the
4 examination time, the way we rout cases, and a
5 performance appraisal plan for every single
6 examiner. These are very significant changes.
7 They all occurred for a variety of reasons at a
8 similar time. So the Patents Organization is
9 doing a great job, in my opinion, adjusting to all
10 of these.

11 I did want to mention routing here and
12 time a little bit. The routing is one of those
13 topics that I can't state enough of how large of a
14 change this is. This change entirely gets us away
15 from the USPC and moves us to a CPC, which is
16 something we've been in the middle of for years.
17 It also now creates, instead of a single data
18 point of matching a case to an examiner like we've
19 done historically, it now creates a profile of
20 classification for every case that comes in. We
21 have a profile of every examiner based on the
22 actual cases they've worked on, so it's a

1 technological profile. We're able to match those
2 profiles to get the best match and technological
3 match and be able to give out cases, which help us
4 really focus on our pendency goals as well as
5 getting the best case to the examiner. So this
6 really puts us on a footing to make immense
7 improvements moving forward.

8 And I'm very happy with what we've done
9 so far. I don't want to seem remiss to those
10 examiners who are listening in. I'm well aware,
11 with 8,000-plus examiners, this has worked better
12 in places than other places. But, overall, I'm
13 very happy about the start we've had, and I feel
14 like we're in the right place.

15 By the way, with examination time, all
16 the examiners' time that they have for production
17 is tied to these classifications, in some way,
18 shape or form, as well as also now being based on
19 specific attributes of cases, which we've never
20 done in the past. So, significant changes, and I
21 think we're moving forward.

22 A last word about classification is

1 artificial intelligence, which I know it will be
2 discussed later on in the program, continues to be
3 a priority of ours in a number of ways. We are
4 actively using artificial intelligence for some of
5 our classification. We're seeing improvement to
6 the classification, and we're seeing also
7 financial savings as well. So, I think that that
8 is a very, very positive step for all of us.

9 Okay, a couple other topics, and then
10 I'm going to wrap it up here. I did want to
11 mention the President's Executive Order on
12 Economic Relief, related to the pandemic. That
13 issued of course late January, January 22nd, by
14 the President. It's an executive order that asked
15 the agencies to identify actions they can take
16 within existing authorities to address the current
17 economic crisis, resulting from the pandemic. We
18 have the PTO working group, led by -- or
19 performing functions, the PD, Coke Stewart, who's
20 just been absolutely wonderful in all respects. I
21 know she's listening in here. While I can't get
22 into all the details, she's going to talk with you

1 all later about some of the efforts she's doing on
2 sustainability.

3 I did want to mention some changes to
4 our website that we have. We've updated our
5 inventors' and entrepreneurs' resource page and
6 placed it where it's more prominent. And we've
7 updated our patents basic page, which also we can
8 more easily get to. Our goal here was to more
9 clearly explain the application life cycle and
10 provide practical assistance along for each step.
11 And these are great changes, great improvement.
12 I'm highlighting it here because I hope that you
13 will take a look at the updated website and to be
14 able to give us feedback on that. And thank you
15 to Coke and the team for keeping those initiatives
16 going forward and others.

17 My last topic, and I do have some
18 breaking news. So yesterday, the Department of
19 Commerce, on behalf of the USPTO, filed for
20 federal registration of the USPTO trademarks.
21 Which you're probably asking yourself, why are we
22 talking trademarks in a PPAC meeting. But we

1 filed those registrations yesterday, and this is
2 something that we've been thinking about for some
3 time now at PTO and feel like this is a very good
4 step.

5 And here's the reason why. What we've
6 seen more on the trademarks side is we've seen
7 people using our trademarks to -- and the USPTO
8 logo and name, et cetera -- to commit fraud on an
9 applicant. So, we've taken a step to avail
10 ourselves of federal registration to be able to
11 protect all of the applicants. And, right now,
12 this is not something we're seeing this type of
13 fraud on the patent side, but we are certainly
14 seeing it on the trademark side, that, obviously,
15 with the registration, it gives us the ability to
16 better protect everybody across the board. So,
17 this is a really important step for us. I think
18 it will help us with protection for everybody.
19 So, I'm very confident this is a step in the right
20 direction and the many fraud prevention steps that
21 we're taking throughout the agency.

22 By the way, earlier, just about an hour

1 ago or slightly under that, we had a blog come out
2 from Commissioner Dave Gooder explaining this in
3 more detail. So, please take a look at that blog.

4 I know that was a lot. I felt like I
5 talked -- just to get in all in, Julie. [Audio
6 drops) the meeting.

7 MS. MAR-SPINOLA: Thank you very much,
8 Drew. I want to open it up for a few minutes for
9 questions to the Director, and if we can either do
10 that through Chat or email to the PPAC email
11 address, then that would be -- we'll be able to
12 take those up. Drew, will you be staying for the
13 entire meeting today? Are you able to do that?

14 MR. HIRSHFELD: I won't be able to stay
15 for the whole meeting, but I will be here for
16 probably another 40 minutes or so, 30-40 minutes.

17 MS. MAR-SPINOLA: Okay. And may I
18 suggest that folks can ask you questions while
19 you're here?

20 MR. HIRSHFELD: Absolutely.

21 MS. MAR-SPINOLA: As they come up, okay.
22 And I know that you are often very proactive

1 during the discussion and in the event. So, thank
2 you. Well, that gives us some more time to start
3 with our PTAB Subcommittee, and let me turn this
4 over to Steve Caltrider. Thank you, Drew.

5 MR. CALTRIDER: Thank you, Julie. We
6 have a full agenda today, so I'm going to keep my
7 introductory remarks short as well. I would like
8 to open with a thank you to Acting Director
9 Hirshfeld and Chief Judge Boalick and their teams
10 for implementing a solution to Arthrex so quickly
11 and for providing extensive resources as well,
12 hosting a Boardside Chat to the forum
13 practitioners about procedures for direct review,
14 are also leading us to -- Chief Boalick's here to
15 explain those in more detail and to discuss how
16 that process is being utilized to date. I would
17 also like to recognize the PPAC for their ongoing
18 commitment to continuous improvement.

19 Acting Director Hirshfeld touched on
20 this in his remarks that through a PPAC's
21 perspective, it's extraordinarily important to be
22 committed to continuous improvement and the

1 efforts by the PTAB, as well as by Patents, to
2 improve work product as it starts in the Office in
3 the filing stage and leaves the Office with the
4 final written decision, the PTAB has been really
5 remarkable and much appreciated. So with that,
6 I'll turn it over to Scott.

7 JUDGE BOALICK: All right, well, thank
8 you, Steve. And I guess thank you -- we have a
9 number of topics to speak of today with the first
10 being Arthrex. And so, I guess if -- I don't know
11 if we have the slides up right now, but if we
12 could go ahead and put those up. And then advance
13 to the next slide.

14 This is our overall agenda. So, you can
15 see, we'll start out with a talk about Arthrex and
16 the Director review process. We'll talk about
17 some 325(d) case studies that we've done. Talk a
18 little bit about training that we do in
19 collaboration with Patents. And some inventor
20 outreach efforts that we have, and, as you talked
21 about Steve, as did Drew, a little bit about our
22 continuing efforts in process improvement and that

1 collaboration and data-sharing.

2 So, without any further delay, we'll
3 move on to the Arthrex topic. And I'll turn
4 things over to Senior Lead Judge Kal Deshpande and
5 Judge Linda Horner, who is also currently serving
6 on detail as a senior advisor to the Office of the
7 Under Secretary. So, let me turn it over to them
8 and we'll get started.

9 JUDGE HORNER: Great, thank you, Scott.
10 So, I'll start with Arthrex. As most of us are
11 aware, on June 21st, the Supreme Court issued the
12 decision in Arthrex, and the court addressed the
13 Constitution's appointments clause, as it relates
14 to administrative patent judges, and considered
15 whether the APJ's are principal officers who must
16 be appointed by the President with the Senate to
17 advice and consent. And the USPTO and the U.S.
18 government argued whether they are inferior
19 officers who could be appointed by the Secretary
20 of Commerce.

21 The court held that the unreviewable
22 authority wielded by the APJ's during the

1 inter-parties review is incompatible with their
2 appointment by the Secretary to the Interior
3 Office and that the court devised a remedy that
4 provides that the Director may review final PTAB
5 decisions and, upon review, may issue decisions
6 himself on behalf of the Board.

7 We put on this slide links to various
8 source materials that are available on the PTAB's
9 webpage, including information regarding
10 implementation of an Interim Director review
11 process in light of Arthrex, a link to Arthrex
12 frequently asked questions related to the interim
13 process, and also a link to our slide presentation
14 that we presented on July 1st in a Boardside Chat
15 to the interim process and how it works.

16 So, as I mentioned, the office
17 implemented this interim procedure. It may be
18 initiated or sponsored by the director, for
19 director review, or it may be requested by a party
20 to a PTAB proceeding. I'm going to turn it over
21 to Senior Lead Judge, Kal Deshpande to discuss in a
22 little bit more detail the director review

1 process.

2 JUDGE DESHPANDE: Thanks, Linda. The
3 director review process, we've kept it very
4 simple. There's only two things that you need to
5 do concurrently in order to appoint (phonetic)
6 Director review. The first one is just filing a
7 rehearing request and the second is submitting an
8 email to an email address, I'll give it to you --
9 it's director_ptab_decision_review@USPTO.gov to
10 request a Director review. Filing those two
11 things concurrently will establish you for your
12 request for a Director review. It's pretty
13 simple, it's pretty straightforward. It's just a
14 rehearing request with an email to our Director
15 review email box.

16 There are a couple litigations or
17 constraints associated with the process. I'll go
18 over this just a little bit, but you can only ask
19 for a Director review or you can ask for a panel
20 rehearing request. You cannot do both. If
21 someone asks for both, we streamline those
22 requests for Director review. And you must file

1 your rehearing within 30 days. That's consistent
2 with our rehearing process. In order to complete
3 your Director review request, you need to be able
4 to file a rehearing. In order to do that
5 successfully, you must file within 30 days of the
6 answer to the final written decision.

7 Of course, you have to be a party to the
8 proceeding. You won't be able to file the
9 rehearing request if you're not a party to the
10 proceeding. It all kind of comes back together.
11 You have to be a party to the proceeding in order
12 to ask for a Director review request. In other
13 words, third parties can't ask for a Director
14 review of a proceeding that they're not a party
15 to.

16 As Linda mentioned, this process is
17 envisioned as an interim process. We have a
18 suggestions mailbox, it's Director Review
19 Suggestions @USPTO.gov. If anybody has any
20 thoughts on how the process is going or for
21 improvements, this is an interim process, we plan
22 on revising and correcting and making it better as

1 time goes on. So, that's just a -- a thought out
2 there is that if anyone has any suggestions, we
3 are welcoming those. I will turn it back over to
4 Linda to talk about some of the requests we've
5 just received.

6 JUDGE HORNER: Great, thank you, Kal.
7 So, I'll just add to what Kal's emphasized, that,
8 as of now, the current interim process is
9 available for inter-parties review and PGR or Post
10 Grant Review proceedings for parties to file a
11 request. And that to spunky (phonetic) review is
12 always a possibility for any PPAC final decision.
13 But the request can be filed only in the
14 inter-parties reviews or PGRs.

15 So, since the announcement of this
16 interim recess, we've received 14 timely requests
17 for Director review. That's requests from 14
18 individual final written decisions and petitions.
19 Those requests were a batch of related IPRs. But,
20 in total, 14 requests. For these tardy filed
21 requests, we're adding the e-mail that we received
22 in the Director Review mailbox to the official

1 record in PTAB end to end. And we're using a
2 special designated exhibit number, Exhibit number
3 3100. We're hoping this will facilitate the
4 public being able to easily locate these requests
5 by filtering through our bulk data for exhibits
6 bearing this number. We welcome any feedback if
7 that's not working as we anticipate, hoping that
8 will make it easier for being able to find cases
9 where these kind of requests have been filed.

10 As Director Hirshfeld mentioned, he
11 issued two decisions on the first two requests
12 this past Monday, and the other remaining requests
13 are still under consideration and currently
14 pending. We anticipate receiving additional
15 requests as the Federal Circuit has started
16 issuing limited remands on some pending appeals to
17 the office. And those limited remands are
18 providing a (inaudible) 30-day window in which to
19 request.

20 I'll just note we've also received some
21 requests are untimely, meaning that either the
22 case is still pending at the federal circuit and

1 hasn't been officially remanded to us yet. And
2 so, those requests might be filed a bit soon, but
3 those parties will have an opportunity to file
4 their request upon remand. So, they're just not
5 in our jurisdiction yet. And we do have a few
6 requests filed where the party's case has
7 terminated or come to a final conclusion years
8 ago, and then those requests were filed too late.
9 So, we will notify parties if a request is
10 untimely.

11 And I think we're ready to move on to
12 the next slide set, and I'll turn back to over to
13 Senior Lead Judge Deshpande to start the
14 discussion on 325(d).

15 JUDGE DESHPANDE: Before we get too far
16 into 325(d), I just want to give a little
17 refresher on what 325(d) is. And this is one of
18 our statutes that lets us guide into proceedings
19 that have already happened at the office and, if
20 they've already been happening at the office,
21 whether we give a deference to the office's
22 previous findings.

1 This statute, an important part reads
2 whether -- it asks whether the same, substantially
3 the same prior order arguments were previously
4 presented to the office. PTAB issued a
5 Presidential decision in Advanced Bionics that set
6 forward a framework as to how we'll be reviewing
7 cases under this light.

8 The Advanced Bionics framework is a
9 two-part test. The first part is whether the
10 same, or substantially the same, arguments were
11 previously presented to the office. And the
12 second is whether the petitioner has demonstrated
13 that the office erred in a manner material to the
14 patentability of the challenge claim. And a
15 little bit more to unpack into that, when you
16 think about what does it mean on something that
17 was previously presented to the Office. This can
18 be any proceeding that happens in the Office. It
19 can be examination, re-examination, re-issue or
20 any other AIA post grant proceeding.

21 I also want to review what we mean by
22 previously presented art. That could include art

1 cited by an examiner or it can include art that
2 was provided by the applicant, maybe on an IVS.
3 I'm going to turn it back over to Linda to talk
4 about some of the goals and any implications they
5 might have with any other Supreme Court cases.

6 JUDGE HORNER: Thanks, Kal. So one
7 thing to note is the impact of the SAS decision on
8 325(d). So when the Supreme Court issued its
9 decision in SAS, it required that the office
10 institute on all challenges or no challenges.
11 Previously, we had instituted on partial
12 challenges. So, we provided in a question/answer
13 on our webpage guidance on how the decision in SAS
14 would affect our 325(d) analysis. And what our
15 guidance was, was that the panel will evaluate the
16 challenges and the petition as a whole and
17 determine whether a 325(d) is sufficiently
18 implicated such that its statutory purpose would
19 be undermined by instituting all the challenges.
20 So, it's a case by case inquiry and, as you'll
21 see, as we go through the case studies, each of
22 these cases we looked at are very fact intensive

1 and case by case. And so, this issue of the
2 implications for SAS likewise is evaluated based
3 on the entire petition and what's presented.

4 The goals of the case study were to
5 provide insight as to how panels are applying
6 Advanced Bionics framework and show how that
7 framework requires, as I mentioned, a case
8 specific and fact-intensive inquiry. And then
9 look for any questions about whether we should
10 have changes to the ecaps card (phonetic) approach
11 or 325(d).

12 So, I'll start off with the first case,
13 and we're just going to give a high level summary
14 of each case, but we recommend these cases to
15 everyone's reading from cover to cover because
16 you'll see, as you look at these, these are good
17 representative cases, but they're very
18 fact-intensive analysis in each.

19 So, in Balt vs. MicroVention, the Board
20 found that a reference that was relied on in the
21 petition was previously presented to the Office.
22 So, under the first part of the Advanced Bionics

1 framework, the reference was previously before the
2 Office and so the panel then went on to look
3 whether there was a material error in anything
4 that was done during examination.

5 During examination, the examiner had
6 rejected the claims over the reference, and there
7 had been considerable back and forth between the
8 applicant and the examiner about the teachings in
9 the reference. The panel found that the
10 petitioner had not provided sufficient evidence of
11 material error in the examiner's -- or the
12 Office's prior consideration of the reference.
13 And the panel denied this petition on 325(d). So,
14 this is an example where material error was not
15 shown.

16 And I'll turn it back to Judge Deshpande
17 for the Roku case.

18 JUDGE DESHPANDE: The Roku case is a
19 great counterpoint to the Balt case. In the Roku
20 case, the Board of Similes (phonetic) literally
21 found that a reference was previously presented to
22 the office. In this case, there was a reference

1 that was listed on an IVS during examination. And
2 so the Board found that this reference, because it
3 was listed on an IVS was previously presented to
4 the office. That's the first part of the Advanced
5 Bionics framework has been met.

6 So, proceeding on to the second part of
7 the Advanced Bionics framework is whether the
8 office erred in a manner material to the
9 patentability of the claims. As we promised,
10 these would be fact-intensive and case specific
11 inquiries, the Board did look to see what the
12 examiner noted as the reasons for allowance -- and
13 in the reference that was cited on the IVS, it was
14 found that the examiner overlooked some of the
15 teachings in that reference as it was applied to
16 the patent challenge claim. So, the Board did
17 find that there was an error towards the
18 patentability of the challenge claim here.

19 You can see how it goes fact-intensive,
20 as Board will look as far as to see exactly what
21 happened here in examination in order to correctly
22 determine whether there was an error by the

1 Office.

2 I think we'll move to the next case with
3 Linda.

4 JUDGE HORNER: In NXP versus Impinj, the
5 Board found that the references relied on in the
6 petition were not substantially the same art as
7 previously presented to the office. The main
8 reference discussed in this case was a thesis.
9 The thesis was cited in the petition, and that
10 thesis was by the same author as some of the art
11 of record issued patents. But the thesis
12 disclosed substantially more than the cited art of
13 record. So, the thesis was more comprehensive and
14 had a fuller disclosure than the art that had been
15 considered by the examiner during examination.

16 The patent owner in their (inaudible)
17 pro-ray (phonetic) response, raised the 325 issue,
18 but failed to address the differences between the
19 disclosures in the thesis, that was the basis for
20 the ground (phonetic) of the petition versus the
21 art of record in the arguments made in the patent
22 owner preliminary response, and so the Board

1 instituted finding that the reference relied on
2 under the petition was not substantially the same,
3 because it included critical disclosure that
4 wasn't before the Office previously.

5 And Judge Deshpande will talk about the
6 last case.

7 JUDGE DESHPANDE: The GSK was a great
8 case to show our commitment to previous Office
9 determinations. In the GFK case, there was a
10 petition that was filed that included the same art
11 that was submitted in a previously submitted IPR
12 for a related patent. I know that' a mouthful
13 (phonetic), but we promised this would be case
14 specific and fact-intensive.

15 But in a related patent, there was an
16 IPR filed, and that prior art was submitted in a
17 later petition for a related case. In between
18 those two, the examiner had allowed the case
19 challenge in the GFK. The examiner had actually
20 looked at the prior art that was submitted in the
21 earlier IPR, and it found that the claims in the
22 later patent were distinct from what the prior art

1 that was submitted. So, the examiner made a
2 specific finding that the claims overcome the
3 prior art that was presented in the previous IPR.

4 So, when the examiner's made an express
5 finding and the petitioner was unable to provide
6 any further information as to any error was
7 determined by the Office. So, when the examiner's
8 made an express finding absent to showing of
9 material error, in this case, the institution was
10 denied and 325(d) was officially implicated where
11 both prongs in Advanced Bionics test were met.

12 So, this is a great case to show that
13 325(d) framework goes back to an Office
14 (inaudible) for a previous determination. I think
15 concludes our case studies.

16 JUDGE BOALICK: All right. I think at
17 this point, we'll move on to our next item, which
18 is talking about the training that we're doing
19 with patents. And, Janet, I believe you're up for
20 this as well as the next item.

21 JUDGE GONGOLA: Yes, good morning,
22 everyone. I want to talk with you about the

1 educational efforts that the PTAB is embarking on,
2 both with the patent organization as well as our
3 stakeholders. So, beginning with the Patent
4 Organization, we collaborate extensively
5 throughout the year in a variety of ways to bring
6 training from the Board to Patent and vice versa.
7 On this slide, you can see some of the examples of
8 that training. And I thought I'll talk just about
9 a couple of them as examples.

10 So, under the first bullet, the first
11 category is Patent Quality Chats. So, throughout
12 the year, four times, we host webinars held by
13 judges to talk with examiners about different
14 aspects of PTAB proceedings. We plan out the
15 content of the webinars with the Office of Patent
16 Training, based upon input from examiners, what
17 they would like to learn about from the Board.

18 So, you can see our April session
19 focused on how examiners can strengthen their
20 answers when a case comes on appeal to the Board.
21 And then in July, we talked about how the Board
22 handles cases where the Federal Circuit reversed

1 the Board decision. The Patent Quality Chat
2 webinars are really, really popular segments. We
3 do them twice and, on average, we have over 1,000
4 examiners in attendance. We've been doing them
5 for the last two years and plan to continue for
6 the foreseeable future.

7 The next example has to do with detail
8 assignments. Detail is a term we use in the
9 government to refer to a temporary work assignment
10 in a different business area from your regular
11 work. So each year, we have 20 examiners come
12 over to the Board to work with our judges in
13 drafting and getting ready for ex-parte appeal.

14 So, in that process, there's a
15 collaboration between the judges and the examiners
16 about the cases. The examiners have an
17 opportunity to learn about the decision-making
18 process, about what constitutes a strong argument,
19 what constitutes a weak argument, how to
20 effectively make points in written briefing. And
21 the intent is so that examiners take this
22 information that they learn from the judges and go

1 back, share it with their colleagues in the
2 examining core, and they, in turn, can incorporate
3 these skills into writing better examiners'
4 answers and better Office actions and prosecution,
5 in general.

6 At the same time, judges are learning
7 from examiners about nuances of the patent
8 prosecution. Some of the judges have been
9 examiners; others have not. We could all stand to
10 have a refresher every now and then. So, this is
11 a way that we can glean the latest and greatest
12 developments that are occurring in the examination
13 process from our examiners.

14 And then, on the flip side, Patents has
15 been very gracious in offering to the Board,
16 opportunities to take advantage of technical
17 training that they provide to examiners in certain
18 specific art areas. We also have access to all of
19 the training on the legal side that is given to
20 patent examiners. This is important for judges to
21 know how examiners are being trained, so that when
22 we are reviewing their work product in appeal, we

1 have a better sense of what the framework is, how
2 they're laying out their Office action, so we can
3 more efficiently find the arguments that bear upon
4 the particular issue that's on appeal. So, we are
5 really thrilled to be able to do this training,
6 cross-collaboration with Patents, and we continue
7 to look for ways to expand that
8 cross-collaboration.

9 Next slide, please. Moving from
10 internal training to our outreach effort, the
11 Board is particularly targeting ways in which we
12 can reach the inventor community. This has been a
13 group, in the past, that we've not had a
14 significant number of interactions with, and we're
15 very eager to change that. So, we've come up with
16 a variety of different ways that we can make
17 inroads into the inventor community.

18 First of all, as shown on this
19 particular slide, we have created a new website,
20 and it's called New to PTAB. And when you go to
21 the PTAB landing page, in the first column on the
22 left side of the screen, you'll see, in the red

1 circle with the arrow, there is a link to our New
2 to PTAB webpage. This page features information
3 about appeals, trials, and oral hearings. It's
4 distilled down to its very basics. Written in
5 plain English, so it's very easy to understand
6 what is required in these different proceeding
7 types. So, that's like a first stop that
8 inventors can go to, to learn about the Board and
9 how our proceedings transpire.

10 A second new activity that we're doing
11 is publishing articles on a monthly basis in
12 Inventors Digest. Inventors Digest is a
13 third-party publication, and they have offered us
14 space in each one of their issues to talk about
15 what the Board does. We've not had this
16 opportunity before, so we're super- excited to
17 have the platform to start kind of making that
18 inroad, explaining the very basics, and then
19 building upon it over time to get more and more
20 sophisticated in the information we're able to
21 bring to the inventor community.

22 Our third effort concerns Invention-Con,

1 which was mentioned in Director Hirshfeld's
2 remarks. We are appearing at Invention-Con on
3 Thursday, August 19th, for a workshop session.
4 And we plan to use this workshop session to tell
5 inventors four things about the Board.

6 First, we want you to meet some of the
7 judges to find out what are our backgrounds,
8 experiences -- who are these people deciding your
9 cases. Second, we want to show you where PTAB
10 fits in the full IP landscape. Where we sit in
11 relation to the district courts, the ITC, the
12 Federal Circuit, and the Supreme Court. Third, we
13 plan to offer you some suggestions based upon our
14 review of your work product coming to us through
15 those appeals and trials for things you might want
16 to consider in prosecuting your patent application
17 to make it stronger and better able to withstand
18 an issuance challenge.

19 Some things we plan to talk about,
20 nesting of claims, ensuring you have multiple
21 embodiments in your disclosure, ensuring you get
22 the best art in front of the examiner during

1 prosecution. And then, finally, we want to talk
2 to you about some of the myths that you may have
3 heard about the Board and clarify whether those
4 myths are false or whether they really should not
5 be called a myth, but instead a fact. So, we have
6 a kind of a session planned for you that we think
7 hits the issues you want to know most about PTAB.

8 And then, finally, the last item on our
9 slide, we are starting a brand new webinar series
10 called Inventor's Hour. This series will debut on
11 Thursday, August 26th. It will, thereafter, occur
12 on a monthly basis. And we're going to try
13 something new here. It's not a straight hour on a
14 given topic. Instead, it's an hour on a whole
15 bunch of different topics. We want everything
16 single Inventor Hour series to be relevant to any
17 concern you have about the Board. So, it' going
18 to be more like a news segment where we do short
19 vignettes into who the Board is, aspects of
20 appeal, aspects of trial, our statistics, our
21 interesting history about the Board. We want to
22 make the Board as accessible as we can to the

1 purposes, we divided up this inquiry into three
2 phases. The first phase highlights the strategic
3 coordination between PTAB and Patents. There are
4 so many efforts, large and small here, that are
5 too numerous to count, many of which have been
6 reported on previously. I think an excellent
7 example of which (audio drops) with the training
8 and cross-collaboration that was just addressed by
9 Vice Chief Judge Gongola.

10 The second phase which concerns how PTAB
11 accounts for Patents' work, and also just been
12 reported to you by Judges Deshpande and Horner.
13 This issue is something that has been in our radar
14 since the beginning of AIA. That belief of which
15 (phonetic) because it is required by Fetchie
16 (phonetic). Certainly this changed over time as
17 we learned more and adapted policy, such as
18 through Presidential decisions like Advanced
19 Bionics. And I am confident it is something that
20 will continue to evolve, especially with your
21 participation and input.

22 And, finally, we have Phase 3, where we

1 discuss how patents accounts for PTAB's work. And
2 as noted in the opening remarks by Acting Director
3 Hirshfeld, I am pleased to report that PTAB has
4 been and will continue to work closely with
5 Patents on this and are making progress, both on
6 the sharing of collected data and joint analysis
7 fronts. We look forward to presenting any result
8 to you in the future. Thank you.

9 JUDGE BOALICK: Thank you, Mike. And I
10 think now we will take questions. We see there
11 was one question in the Chat, having to do with
12 the Director review process that was asking if the
13 rules for rehearing apply to Director review or
14 from a party challenge, PTAB, for being wrong
15 regardless of the rehearing standard, and if it's
16 on the single request, how is it framed to cover
17 the standard. So, I'll turn that over maybe to
18 Linda and Kal to address that question.

19 JUDGE HORNER: Thanks, Scott. Well,
20 first, I would direct everyone's attention to our
21 question and answers posted on our webpage,
22 specifically Question D2, which covers what

1 criteria the Advisory Committee uses when
2 iterating Director review requests. It provides
3 some examples of criteria, including matters that
4 that the Board has misapprehended or overlooked
5 due to the rehearing standard. But it also
6 includes, for example, material errors of specter
7 law, novel issues of law policy, or issues on
8 which the Board's panel decisions are split, or
9 other issues of particular importance to the
10 Office of Patent Community et cetera. SO that
11 provides sort of a framework for possible areas
12 where Director review might be of interest and
13 advisable.

14 So, Director review is (audio drops).
15 We have that in our materials as well. And so,
16 I'll just remind everyone that, as Judge Deshpande
17 noted in his comments, that parties can request
18 either Director review or Panel rehearing, but not
19 both. So, in the single request, bear in mind the
20 criteria set forth in Question D2.

21 JUDGE BOALICK: And, so I don't know if
22 there are other questions about Arthrex or any of

1 the other PTAB topics. I will note that there
2 appears to be a question on the item that Drew
3 mentioned about trademarking. I'm not sure when a
4 good time might be to answer that. But I'll just
5 -- if you have questions, please let us know, and
6 then we'll turn the floor back over.

7 MS. MAR-SPINOLA: Scott, this is Julie.
8 Pardon me, Drew, go ahead.

9 MR. HIRSHFELD: You probably were going
10 to the question that came in the Chat on
11 trademarks. But that's what I was going to say
12 is, as I mentioned, have to leave shortly for
13 another meeting, actually, another public event
14 coming up, but there is a question that came in
15 about the trademark filing, let me just find it
16 here. So, the question was, which non-conflicted
17 employee of the Office gets to examine the
18 trademark application, and doesn't this need to be
19 done by statute to protect the CO of the Office.

20 So, obviously, I'm not surprised by the
21 question. We've given this a great deal of
22 thought about the oddness, and we recognize the

1 oddness of applying for trademark protection where
2 a USPTO employee obviously will be an examiner.
3 However, this case will be -- these filings will
4 be subject to all the same procedures and rules as
5 any other trademark filing goes forward. So, I
6 can't answer the specific question about which
7 examiner, et cetera. But I want you to know that
8 the same procedures will apply for these
9 applications as any others.

10 And I just wanted to point out that we,
11 of course, recognize, and I recognize, the oddness
12 of the situation. And even in Dave Gooder's blog,
13 Dave, of course is the Commissioner for
14 Trademarks. In his blog, he acknowledges this
15 issue as well. And I'll just say from my personal
16 standpoint, the Office should do, and I'm not
17 doing my duty if we are not taking upon the
18 responsibility to protect our stakeholders in
19 every way possible. So, notwithstanding the odd
20 situation that we have in front of us, I feel it's
21 very important for us to take a step, so that we
22 can better protect applicants. We've seen a

1 number of situations arise where people are taking
2 our marks and defrauding our stakeholders. So, I
3 hope you can all recognize that that is our
4 priority and we're going to take every step -- as
5 far as I'm concerned, we're going to take every
6 step we can to protect all of you.

7 MS. MAR-SPINOLA: Thank you, Drew. I
8 think that it helps to address the issue directly
9 and candidly. And I think that's all that we can
10 do for transparency at this point. And allow the
11 process to take place first. So, thank you for
12 that response. Are there any other questions to
13 Director Drew or to Chief Judge Boalick?

14 JUDGE BOALICK: Excuse me, I can see one
15 more question in the Chat, which is one that I
16 know has been very carefully considered, asking
17 about the authority of Drew's performing the
18 functions and duties of the Director to actually
19 issue the decisions for Director review. I guess
20 I'd offer Drew if he'd like to answer that, or I'm
21 happy to address that.

22 So, I think what I would say is that

1 this a question that has been very carefully
2 considered, and we strongly believe that Drew as
3 performing the functions and duties of the
4 Director has ample legal authority to issue those
5 decisions. It is an issue that's looked at very
6 carefully, but we are very confident that of the
7 answer.

8 MR. HIRSHFELD: Thanks, Scott. I have
9 nothing to add other than just to reiterate what
10 Scott said. This, obviously, of course, is being
11 considered and thought about and we're well aware
12 of some people's opinions in this regard, and so
13 we have certainly done our due diligence in this
14 respect.

15 JUDGE BOALICK: Great. And I see
16 another question about will the interim procedures
17 undergo sort of a notice and comment rulemaking
18 procedure. I guess at least what I can say for
19 right now is that, as we mentioned, these are
20 interim procedures. We're interested in the
21 public's input about what should transpire for the
22 future. I would say that is a possibility, but at

1 this time, I think we're gathering input and
2 information about what the next steps are.

3 MS. MAR-SPINOLA: Thank you, Scott. I
4 think that Jeremiah Chan has a question?

5 MR. CHAN: Yes, thank you, Julie. I had
6 a question actually for Judge Michael Kim. I was
7 kind of excited to hear about some of the
8 collaboration, cross-agency collaboration with the
9 process of data-sharing. Would love to hear a
10 little bit more about what kind of roadmap for the
11 next three to six months. And, frankly, where are
12 we trying to get to? What does that end state
13 look like on that collaboration?

14 JUDGE KIM: Sure. Thank you very much
15 for the question. So, that was addressed, in
16 large part, by what Acting Director Hirshfeld said
17 in his opening remarks. You know, finding why
18 claims are held invalid, the reasons, and the
19 basic questions, were they before the Office, you
20 know, the art that was applied officially before
21 Office, you know, if it wasn't, why not. And
22 really getting to fundamentally know what

1 (inaudible) all this, so that we can take all the
2 information and work with Patents to have a
3 feedback loop in the process.

4 MS. MAR-SPINOLA: Okay, Steve.

5 MR. CALTRIDER: I think we'll try and
6 stay on time here, Julie, and hand back things
7 over to you and to proceed to the next agenda
8 item. Thanks very much for everyone. Good
9 presentation, very informative.

10 MS. MAR-SPINOLA: And thanks Steve and
11 PTAB. I would encourage folks, if they have
12 further questions, to send them to us, and we'll
13 try our best to respond to them, either today or
14 after today's meeting. So, let's move on to
15 Patent Pendency and Quality. So let me hand it
16 over to Jeff Sears, our chair of the subcommittee.

17 MR. SEARS: Thank you very much, Julie.
18 Happy to be here today. We have a great
19 presentation coming up from the Pendency and
20 Quality side of the house. We are going to be
21 talking about two topics that don't get a lot of
22 air time, but are really significant, nonetheless.

1 The first is going to focus on design
2 patents. We focus a lot of utility patents, but
3 design patents, as we know are also a key aspect
4 of commercial protection for certain types of
5 products. And then we're going to turn to a
6 presentation on the petition process. I turn it
7 over now to Robin Evans, of the Office.

8 MS. EVANS: Thanks, Jeff. It's a
9 pleasure to share with PPAC. As you said, we
10 don't hear a lot about design, but you've heard
11 from Karen Young before. She is the Director of
12 TC 2900, specifically design. And she's going to
13 talk to us today, share about the quality of
14 design drawings and they've been working on this
15 for a very long time, and you've heard about this
16 before. And so, we want to bring Karen back, so
17 that she can talk about the improvements that
18 they've made thus far. So, I'll turn it over to
19 Karen Young.

20 MS. YOUNG: Check to make sure you can
21 hear me. All right, thank you. Next slide,
22 please. So, as I mentioned, thank you so much for

1 letting me join you today. I am Karen Young, the
2 Director of the Design Group. And when I talk
3 today about drawing, I am referring to the
4 drawings that are published with the issued
5 patent.

6 So, by way of background, back in 2016,
7 the USPTO received feedback that the images
8 published as part of the design patent grants were
9 degraded compared to the images provided to the
10 Office by the applicants at the time of filing.
11 So, the Office looked into the issue, and it was
12 noted that during the overall electronic
13 processing of an application, and by that I mean
14 the entire process -- the initial receipt of the
15 files, the movement of the files into the
16 examination tools, and in the last stages, which
17 is the publication and dissemination of the
18 patents.

19 During that overall process, there was a
20 specific conversion process where all the incoming
21 file types were converted to another file type, a
22 raster type. And this conversion was mainly

1 responsible for the degraded quality of the image
2 in the design patent grants.

3 Next slide, please. So to address this
4 issue, back in 2016, the USPTO changed part of its
5 process and moved to preserving vector-based
6 drawings submitted by applicants in.pdf. These
7 drawings are stored and displayed in a system
8 called the Supplemental Complex Repository for
9 Examiners. That's a mouthful, so we shortened
10 that to SCORE. So, the SCORE drawings are looked
11 at by examiners when they examine applications and
12 the SCORE drawings are pulled and used in a
13 printed, official paper patents that are mailed to
14 the applicant. They are also loaded into the
15 supplemental content of the electronic files of
16 our patent application files that are viewable by
17 our external stakeholders.

18 Next slide, please. I want to take a
19 moment to show you examples of the improved
20 quality that resulted from that process change.
21 On the left side, you'll see the image as it ends
22 up after the conversion process that was

1 identified as responsible for the degradation of
2 the image. On the right side, you see the
3 vector-based drawing image the applicant submitted
4 which is preserved and, again, this SCORE image is
5 used by the examiners. It's included in the
6 printed patent grant sent to applicants and it's
7 available to stakeholders in the supplemental
8 content area of the electronic file, so they can
9 view it. In the enlarged areas, especially, you
10 can see the cleaner, sharper lines of the
11 preserved vector-based image on the right.

12 Next slide, please. So, here's another
13 example where the drawing image of the tire tread
14 is so much better on the right side, which is the
15 image in SCORE. So, I've noted that the images
16 preserved in SCORE are used by examiners. They're
17 images received by applicants as part of the paper
18 patent grant and the SCORE images (inaudible) to
19 our applicants. I can't emphasize that enough.

20 So, these changes that were implemented
21 in 2016, they did greatly improve the quality of
22 the design patent drawings. However, let's fast

1 forward to today. The USPTO remains committed to
2 providing high quality patent drawings, and thanks
3 to feedback from both external customers and
4 internal reviews, we have noticed some issues that
5 have arisen.

6 So, I want to point out some of the
7 issues, provide tips to applicants to avoid these
8 issues and mention our ongoing effort to continue
9 to make improvements. So, if you can go to the
10 next slide, please. So, here I am showing a
11 portion of a design. On the far left is how the
12 drawing appears as filed in SCORE. In the middle,
13 is that same portion and how it appeared on the
14 issued patent. You can see that there's an entire
15 area whited out. And on the right side, in blue,
16 is a box that you can't see in the as-filed
17 version, but it's there, and it was revealed
18 during the data capture printing process as the
19 reason for the whited out area.

20 Let's go to another example. Next
21 slide, please. So, in this example, the portion
22 of the design I am showing is meant to be very

1 light, as filed and seen on the left. However,
2 the printed patent included blacked out areas as
3 shown in the middle. Then on the right, I'm
4 trying to illustrate that a translucent layer was
5 found to be present. That is the reason for the
6 blacked out area.

7 Next slide, please. I have two more
8 examples of issues that we've become aware of.
9 The first, as seen here, is in the published
10 patent drawing is pixelated. You can see the
11 difference between the As Filed and the As
12 Published.

13 Next slide, please. We're also seeing
14 some small gaps in the lines of the patent
15 drawings. Sometimes these are only visible when
16 you really zoom in on an image.

17 Next slide, please. So, the Office is
18 committed to continuing to work with the
19 stakeholders and working internally to improve
20 patent drawing quality. I believe communication
21 and awareness is key, as we work together on this
22 effort. And so to that point, I wanted to note a

1 few items. When the drawings are submitted as
2 vector-based drawings, they are treated as
3 vector-based drawings throughout the entire
4 process.

5 Next slide, please. If the vector-based
6 drawings have invented elements in them that are
7 raster, the entire drawing has to be processed as
8 a raster image.

9 Next slide, please. So, applicants can
10 help the Office by checking for hidden objects,
11 check for layering, and make sure all the drawings
12 are flattened before submission.

13 Next slide, please. So, internally,
14 steps that have been taken include training USPTO
15 staff to better detect those unexpected outcomes
16 in the final drawings. Where possible, several IT
17 and software improvements have been implemented to
18 correct some types of output errors that have been
19 noted. The most recent update was made on March
20 10th, where the software we believe has resolved
21 the pixation [sic] issues and the issue where
22 there is a gray output that's darker than the

1 source. We are exploring further solutions, for
2 example, to address the gaps in the lines and the
3 semi-transparent overlays that are being replaced
4 by the opaque blocks in the output. We will
5 continue to explore solutions for those items.

6 Next slide. That's my update for you
7 today. I do have my information here, and I'm
8 happy to assist you in the future. If you have
9 any questions, don't hesitate to reach out to me.
10 Thank you very much for letting me speak today.

11 MR. SEARS: Thanks very much, Karen.
12 This is Jeff. I do have a couple of questions for
13 you. They're really two in the same topic. The
14 first is how did the Office identify these drawing
15 issues? For example, how did the Office figure
16 out pixilation was happening. And second, how did
17 the office figure out what the underlying issue
18 was?

19 MS. YOUNG: So, that's a very good
20 question. It is a twofold effort of how we found
21 out about it. We did get feedback from our
22 external customers who received a patent that did

1 not look like what they submitted. So, we did get
2 some external feedback that helped us see that
3 there was a problem. We also had examiners who,
4 like I mentioned, they are trained to look at the
5 SCORE drawings. However, when they are searching,
6 they are looking at sometimes more degraded files,
7 and then they have to go into SCORE to see the
8 actual drawing. And when they saw the patent
9 drawing had overlaid images, that was like, this
10 is not right, this is not what I'm expecting to
11 see, and they brought it to our attention.

12 So, then the USPTO worked closely with
13 the folks -- our open area, our automation area,
14 worked closely with the folks responsible for the
15 publication and tried to get examples and work
16 through things to see what the actual issue was.
17 And I'm happy we've been able to resolve some.
18 Clearly, we still have some more items to address.
19 And we are continuing to review to make sure
20 nothing else happens as a result of a change in
21 the process. So, please, we welcome any input as
22 people see an issue, please let us know about it.

1 MS. MAR-SPINOLA: Karen, this is Julie
2 Mar-Spinola. How are you?

3 MS. YOUNG: I'm fine, thank you. Hi,
4 Julie.

5 MS. MAR-SPINOLA: Good. A couple of
6 questions, one from outside but one from me which
7 is, it sounds like the image issues are more or
8 less discovered after publication. Is that right?

9 MS. YOUNG: If it's a glaring issue,
10 it's found out during the conversion process, so
11 you don't realize there's an issue until you see
12 the final result, and the final result doesn't
13 look like the input.

14 MS. MAR-SPINOLA: So, I was just
15 wondering is there an earlier stage to review the
16 images, maybe even with the inventor, to determine
17 whether there are any image issues?

18 MS. YOUNG: Cooperation with the
19 inventor would definitely be something that we
20 might potentially look into. We did, though, as I
21 mentioned, train kind of the staff to kind of do a
22 quality review and to look for those unexpected

1 outcomes before the final release of the drawing
2 to try and catch things. And the software that
3 they have worked on deploying has been trying to
4 catch some of those (audio drops). So, I'm
5 hopeful that we can go more of an IT solution,
6 which would be a little bit maybe quicker than
7 having another interaction back and forth with an
8 applicant. But it's certainly something we could
9 consider if we need to explore more solutions.

10 MS. MAR-SPINOLA: Great. Thank you.
11 So, just turning to a question from the outside,
12 does the vector-based drawings preference suggest
13 that Adobe Illustrator is a preferred drafting
14 tool with DCI for raster images?

15 MS. YOUNG: I definitely can't comment
16 on a preferred drafting tool. I know there's many
17 out there that are equally well. I would say that
18 the most important thing is that if you can make
19 the images as sharp as possible, get rid of all
20 the layering, and when you submit them, you should
21 be able to go into the SCORE. And what you are
22 seeing is what we want to see on the end. So, if

1 you are happy with the way they uploaded, then
2 that's what we want to see on the other end. I'm
3 sorry, I can't comment on a particular tool.

4 MS. DURKIN: It's Tracy Durkin. I was
5 just going to add an important comment for the
6 public after sitting here, and what a great effort
7 you and the Office have made on getting to the
8 bottom of this. But I think the important
9 takeaway for the public here is that, when you
10 look at a design patent, particularly one that's
11 in the search files, that it's very likely in some
12 cases that the drawing as published on the patent
13 is not what the right is. And so, going into that
14 SCORE file and actually looking at the drawings
15 that were examined and the drawings that were
16 approved, is really important, especially if
17 you're evaluating a third-party patent and trying
18 to determine whether or not there might be an
19 infringement problem.

20 So, I think the important takeaway here,
21 until this is completely resolved forever and
22 ever, is you can't really take the patents, in

1 some cases, at face value. That you really do
2 have to go into that SCORE file. I think that's
3 particularly important for things like broken
4 lines that sometimes don't show up clearly or
5 solid lines can show up as broken lines,
6 particularly in that pre-2016 time period. So,
7 we're on the right track. Just a word of caution
8 to folks, especially if they're not familiar with
9 the SCORE file, I just wanted to make that
10 comment. So, thank you, again.

11 MS. MAR-SPINOLA: Jeff?

12 MR. SEARS: Thanks very much, Julie.
13 Thanks very much, Karen. Really, I would like to
14 laud the efforts of the Office on identifying and
15 addressing these issues. Really great effort.
16 I'm going to turn it over now to the Patent Office
17 to talk about petitions. Before we get to
18 petitions, I'd just like to make a couple of very
19 brief comments. Petitions can sometimes be an
20 obscure topic, but we, probably, whether as
21 applicants, attorneys, or inventors have filed one
22 or more of them. Petitions for Track 1, for

1 example, the expedited examination, petitions for
2 patent prosecution, petitions to revive. These
3 are all sorts of your common petitions. So, I
4 turn it over to the Office for the presentation on
5 petitions.

6 MR. HANLON: Good afternoon. This is
7 Brian Hanlon. I'm the Assistant Commissioner for
8 Patents, overseeing the Office of Petitions. And
9 this afternoon, you will receive a presentation
10 from Kristen Matter and Fenn Mathew. They're
11 going to speak to you today about how petitions
12 are processed within the Office and also provide
13 you with some statistics and electronic resources
14 that you can use for frequently filed petitions
15 and you can use to expedite your petitions. So
16 with that, I will turn it over to Kristin to start
17 the presentation.

18 MS. MATTER: Thank you for inviting us
19 here today. Oh, am I unmuted? All right. Thank
20 you, Brian. And thank you, Jeff and all the
21 committee members for inviting us here today.

22 Before I talk about the flow of

1 petitions, and I'm sorry, you can progress to the
2 next slide, please. So, before I talk about the
3 flow of petitions, I think it's important to
4 remember that, although there is an Office of
5 Petitions at the PTO, we don't actually decide
6 every petition that is filed. Petitions to the
7 Director are delegated to various officials
8 throughout the Office, and these delegations are
9 outlined extensively in MPEP 1002.02.

10 For example, 1002.02E list approximately
11 50 different petition types that are delegated to
12 the Deputy Commissioner for Patents who oversees
13 the Office of Petitions. And we do handle the
14 majority of petitions filed with the PTO. The
15 Technology Centers decide at least 20 different
16 petition types as well, and these are listed in
17 MPEP 1002.02C. For purposes of today, that's
18 really our focus, petitions that are handled by
19 the Technology Centers and the Office of
20 Petitions, since those are the most commonly filed
21 petitions with the Office. However, I believe
22 there are least 12 distinct business areas

1 included in MPEP 1002.02.

2 Next slide, please. This slide is an
3 overview of the general process of how petitions
4 work their way through the office. The process
5 starts when a petition is received by the PTO.
6 For purposes of this slide, we're not really
7 talking about ePetitions, but we're focused on
8 petitions received through mail, fax, hand-carried
9 or EFS web.

10 That application document is placed in
11 the electronic record and given a document
12 description, similar to every paper in the image
13 file wrapper. That document description is
14 important because it generates an internal message
15 to a specific business unit, who then either
16 re-routs the document, if necessary, or enters
17 that petition into POM, where it sits in a queue
18 until it get assigned and decided by an
19 appropriate official.

20 And I want to stay here for just a
21 moment longer and really emphasize the importance
22 of these document descriptions or doc codes.

1 Because petitions are handled by various areas
2 throughout the Office, one of the ways to help
3 reduce pendency is by initially routing the
4 petition to the correct area. When filing papers
5 via EFS web, applicants choose a document
6 description. So by choosing an accurate document
7 description for their petition, applicants can
8 help reduce processing delays and avoid a
9 situation where that petition just sits in the
10 file until someone happens to notice it. And the
11 same rules apply when mailing or faxing a petition
12 in, except the Office will find that document
13 description based off the use of a particular PTO
14 form or a header or label on that paper, for
15 example.

16 Once that petition is entered in a POM,
17 as I mentioned, the petition remains in queue
18 until it is docketed, generally in the order it's
19 received to an appropriate deciding official.
20 That official will take a detailed look at the
21 petition and usually grant it, dismiss it, or deny
22 it.

1 A granted petition is one where the
2 requested relief is fully provided. The
3 application will often then be routed to another
4 business area for further processing, such as
5 entry of an amendment that was filed as part of
6 the grant full petition to revive. A petition is
7 dismissed where the relief is not granted;
8 however, the matter may be reconsidered through a
9 renewed petition. And this includes adverse
10 decisions by Technology Center or Central
11 Re-Examination unit directors. Their decisions
12 can be reviewed under 37 CFR 1.181 by the Deputy
13 Commissioner for Patents who oversees the Office
14 of Petitions. And, finally, a petition is denied
15 where the relief is not granted and the USPTO's
16 consideration of the matter is concluded. It's
17 important to know that only certain delegations
18 can result in a final Agency action, but that does
19 include petitions delegated to the Deputy
20 Commissioner for Patents.

21 And that's all I have regarding the
22 process. I believe we'll take questions at the

1 end, so I'm going to pass this off to Fenn to
2 cover some numbers. Next slide, please.

3 MR. MATHEW: Thank you, Kristen. Good
4 afternoon, everyone. So, by way of background,
5 the Office of Petitions staff includes 20
6 paralegals, 8 attorney advisors, 7 petitions
7 examiners, and a management staff consisting of 3
8 deputy directors and a director.

9 As we can see from the table here, the
10 Office of Petitions decided about 44,500 petitions
11 in FY20, which was an increase of about 2,500
12 petitions from FY 19. You can also see, despite
13 an additional 2,000 petitions in FY20, the overall
14 average pendency of all petition types dropped
15 from FY19 to FY20, indicating that the Office of
16 Petitions was deciding in a much more expeditious
17 manner.

18 We've also included statistics for Track
19 1 and patent prosecution highway petitions on this
20 chart. The reason for that is Track 1 and PPH
21 petitions account for over 20,000 petitions per
22 year. So, a little less than half of the

1 petitions that are filed. And, of special note,
2 are Track 1 petitions. Track 1 petitions are
3 petitions for prioritized examination and they are
4 subject to a cap of 12,000 grants per year. So,
5 since applicants are providing or paying an
6 additional fee for prioritized examination, it
7 behooves the Office to handle those petitions in
8 an expeditious manner. And, in FY20, 98 percent
9 of Track 1 petitions were decided in 40 days or
10 less. So, as I have noted, those are two of the
11 most frequently filed petitions. Other frequent
12 petitions that are filed include petitions to
13 revive an abandoned application or to withdraw a
14 holding of abandonment, petitions to accept late
15 priority claims and papers, petitions to accept
16 late maintenance fees, petitions concerning patent
17 term adjustments, and petitions to make special
18 based on age or health.

19 So, later on in the slides, I'll be
20 showing some of the electronic resources, where
21 this information can be found along with pendency
22 numbers that can be found for those specific

1 petition types.

2 Next slide, please.

3 MR. SEARS: Fenn, before you move on,
4 this is Jeff. I have a question. It's a question
5 about pendency. So I know for any given taste, if
6 you file a petition that takes 40 days or 100 day
7 to decide, but certainly your pendency in that
8 case might be affected. What's your view on
9 whether the Office's handling of petitions,
10 generally, has any effect upon pendency across the
11 Office. And I'll give you my gut feeling on the
12 map -- there's about 40,000 petitions per year.
13 The Office gets about 600,000 new applications.
14 So my gut feeling would be the overall effect on
15 pendency is probably negligible. I'm just curious
16 if the Office has thought about it.

17 MR. MATHEW: Sure, thanks for that
18 question, Jeff. And the pendency can be impacted
19 in two distinct ways. So, we have petitions to
20 make special or for prioritized examination. So,
21 that's kind of impacting pendency on the front end
22 because granting of those petitions will allow the

1 applications come to the examiner in an expedited
2 manner. So, we kind of have some petitions that
3 will impact that and, specifically, I noted PPH
4 petitions and Track 1 petitions, so roughly 20,000
5 of those petitions are decided each year, and
6 those do have an impact on pendency on the front
7 end.

8 Additionally, we will have what we call
9 critical petitions. Petitions, for example, that
10 -- for delayed priority claims. Which could
11 impact examination downstream. And while we don't
12 have the high number of petitions of that
13 particular type, it does impact prosecution and
14 pendency and therefore -- it doesn't affect a lot
15 of the cases, but it does have an effect on some
16 pendency.

17 MR. SEARS: Thank you.

18 MR. MATHEW: So, continuing with this
19 next slide, this is just a snapshot of the current
20 fiscal year, specifically as of July 1st. This is
21 a graph displaying the undecided petitions in the
22 Office of Petitions by age. The overall pendency

1 is about 65 days for undecided petitions. As of
2 July 1st, we had about 7,800 undecided petitions.
3 As you can see, the vast majority of our petitions
4 are within three months that are yet to be
5 decided, so we're continuing to make strides in
6 our overall pendency with respect to petitions.

7 Next slide, please. So now we have some
8 statistics on the Technology Centers. As you can
9 see, the Technology Centers typically decide about
10 10 percent of the total petitions, in terms of
11 total number, about 4,600 petitions, as opposed to
12 the 40,000-plus that the Office of Petitions
13 decides. And we have some pendency statistics
14 here, specifically with respect to the Review of
15 Final Restriction Requirement and Relating to
16 Prematureness of Final Rejection. These are two
17 petition types that are often seen in the
18 Technology Center and that are very important with
19 respect to pendency.

20 Before I dive into the numbers, as an
21 initial matter, we'd like to reinforce one point.
22 There has been some suggestion that the Office

1 deliberately delays decisions on petitions
2 relating to prematureness of final rejection until
3 an applicant file an RCE, only to then dismiss the
4 petition as moot. So, we wanted to dispel the
5 notion that this is the practice. The Office in
6 no way sanctions or condones that type of
7 behavior. While we have had some outlier
8 instances where these types of petitions have been
9 dismissed as moot after filing an RCE, they are
10 just that. They are outlier instances.

11 The Office acknowledges and is cognizant
12 of the limited time period that applicants have
13 after final rejection And we continue to make
14 strides in deciding these petitions in a more
15 expeditious manner. And this is happening through
16 communication between the Technology Centers as
17 well as improved tracking tools.

18 And so that provides a segue into the
19 data on the chart, which kind of shows that we are
20 making those strides. So, we see, with respect to
21 the review of final restriction requirement and,
22 as I mentioned, relating to prematureness of final

1 rejection, the average pendency has dropped in
2 both instants. For the third petition type that
3 is there, For Matters before the Technology
4 Center, this is kind of a catch- all,
5 miscellaneous petition type. Some of them can
6 include petitions to withdraw a drawing objection,
7 resetting of time periods, and expungement of
8 papers. So, some of the petition types that fall
9 under that code don't necessarily impact pendency
10 in the same way as the first two petitions that
11 have been mentioned.

12 Next slide, please. So, now we wanted
13 to provide some resource that are available to the
14 public. So, the first is Patents Dashboard.
15 There's a link for Petition Data off of the
16 Patents Dashboard. And this can be found off of
17 the Data Visualization Center page.

18 So, as I kind of alluded to earlier in
19 the presentation, this page provides data on
20 Office of Petitions petitions. Specifically, it
21 provides data on frequently filed petitions in the
22 Office of Petitions, and many of them are the ones

1 that I have mentioned previously, earlier in the
2 presentation. They are divided by petition type,
3 they provide the average number days pending, and
4 this is a rolling 12- month average, as well as
5 the grant rate of the total petitions decided
6 within those past 12 months.

7 Additionally, we have ePetitions' and
8 non ePetitions' data. So, ePetitions are
9 petitions that are available for certain types of
10 petitions. For example, revival based on
11 unintentional delay in abandoned application. The
12 ePetitions, if submitted, are decided
13 instantaneously and have 100 percent grant rate.
14 Certain requirements need to be met in order to
15 file an ePetition, but if those requirement are
16 met, you will receive an immediate decision.

17 To contrast that, we have the data for
18 of the petition had been filed through standard
19 means, either through EFS web or through mail or
20 fax. As you can see, you're not going to get a
21 lower average days, zero days. So the ePetition
22 option, where available, is always advisable.

1 And, likewise, the grant rate is 100 percent for
2 ePetitions. You can compare the grant rate
3 between ePetitions and non- ePetitions.

4 Next slide, please. So, in addition to
5 the Patents Dashboard, we also have a Petitions
6 Timeline. Whereas the petition data off the
7 Patents Dashboard was limited to the Office of
8 Petitions, the Petitions Timeline provides
9 information based on all petition types. And the
10 page is well-constructed. There is a nice
11 navigation menu on the left, which shows petitions
12 and where they -- they're divided by stage of
13 prosecution. So, you can see on the left, we have
14 choices for Prior to Examination, During
15 Examination, After Close of Prosecution, Allowance
16 After Payment of Issue Fee, and Post Issuance.

17 So, as we can see, we see a little
18 snippet here and we see under the Prior to
19 Examination, we see it further subdivided into
20 different categories. So, clicking on one of
21 these links -- next slide, please -- it will bring
22 up to a more detailed page. So in this -- we have

1 a little snippet if you had clicked on the link
2 Related to Advancement of Examination Petitions.

3 So, once again, you will have the
4 petition type, you will the average days pending
5 of a decided petition, you will have the grant
6 rate percentage, and you will have the deciding
7 office. Additionally, you'll see on the column,
8 on the right- most column, there's an ePetition
9 option. If any of the petitions have an ePetition
10 option, there will be a link within the box next
11 to that petition type that will navigate you to
12 the ePetition page.

13 Under the petition type, all those
14 petition types are clickable links. As you can
15 see, there's numbers next to each of the petition
16 types. Those are internal codes. That's how we
17 kind of keep track and code of the different
18 petition types.

19 Other things to note, the deciding
20 office; in this particular example, you can see
21 that three of the four petitions are decided by
22 OPET or the Office of Petitions. One of the

1 petitions is decided by the Technology Center.
2 And we have the little legend at the top, since we
3 love our acronyms, to identify what each of the
4 deciding offices are.

5 The other plan for you to note, I mean,
6 the grant percentage you'll note under Petition
7 Type 644. You see the grant rate percentage is at
8 100 percent and you see that there's a little
9 asterisk next to that 100 percent. That is just
10 to indicate to the public that that is an
11 infrequently filed petition.

12 Next slide. Thank you. That's all we
13 had for our presentation, and we'd be happy to
14 take any questions that you might have at this
15 time.

16 MR. SEARS: Thanks very much, Fenn. I
17 have a comment and then a question for the design
18 part of the presentation. The comment, could you
19 bring up the pendency slide, basically the
20 histogram that shows the pendency of the petitions
21 across months.

22 MR. MATHEW: Sure.

1 MR. SEARS: Great, this is the slide.
2 So, something we worked on with the Office in
3 terms of pendency is what I heard referred to as
4 moving a mountain. Sort of putting your hands on
5 the mountain on the right-hand side and trying to
6 squash it over to the left. And things we look at
7 are how long is the tail and also how tall is the
8 tail. And when I look at this chart, what I see
9 is really tremendous progress by the Office. I
10 mean, this is a mountain that is almost pushed
11 entirely to the left. It's pretty close to
12 idealized, so I really wanted to laud the Office
13 for its great effort on attacking petitions.

14 Second, a question from the public
15 regarding designs, a question for the Office -- if
16 the published image differs from the image that
17 was submitted to the Office through SCORE, what's
18 the response for the applicant? Should the
19 applicant file a request for Certificate of
20 Correction to try to address that issue?

21 MS. YOUNG: Thank you, Jeff. That's a
22 very good question. Can you hear me?

1 MR. SEARS: Yes.

2 MS. YOUNG: We definitely would
3 encourage folks to go ahead and file for that
4 Certificate of Correction, absolutely.

5 MR. SEARS: Great. Thank you. Julie, I
6 see we are at 12:40, which is right on time for
7 the agenda. So, I will turn it over to you.

8 MS. MAR-SPINOLA: Excellent. Thank you.
9 Thank you, everybody for that. That was so very
10 interesting and informative, particularly on the
11 design patents. Everybody's always interested in
12 the pendency of the petitions. So, thank you very
13 much for those details. We're going to now take
14 about a 10-minute break. We will resume at 12:50
15 p.m. Eastern and see you in a few minutes.

16 (Recess)

17 (Recess)

18 MS. MAR-SPINOLA: It's now 1:50 and
19 we're back on from the break. Thank you, Jeff,
20 for your pendency quality presentation. Again,
21 very helpful, very interesting. We're going to
22 move now to finance and budget. Let me turn it

1 over to Barney Cassidy, our chair of the finance
2 subcommittee. Barney? Barney, are you on mute?
3 I'm not hearing you.

4 MR. CASSIDY: Can you hear me now?

5 MS. MAR-SPINOLA: Yes.

6 MR. CASSIDY: Okay.

7 MS. MAR-SPINOLA: Thank you.

8 MR. CASSIDY: Thank you. Thank you for
9 the introduction and the notice that I was on
10 mute.

11 It is an important topic that I'd like
12 to address before turning it over the Jay Hoffman
13 for the periodic review of finances. The topic is
14 related to the fees that users pay to the PTO. I
15 think everyone knows the PTO is funded entirely by
16 fees paid by the users and since the passage of
17 the Leahy-Smith American Events Act which ended
18 fee diversion, the diversion of those user fees or
19 other agencies or other uses.

20 Since then, Congress has annually
21 appropriated to the PTO all of the fees that the
22 PTO estimates will collect during the fiscal year.

1 This for the first time, however, the President's
2 budget has asked for a lower amount to be
3 appropriated namely that the amount that PTO
4 initially expects it will spend during the year.
5 And the delta is about \$64 million.

6 This change is concerning to the Public
7 Patent Advisory Committee so much so that we have
8 taken the step of writing the appreciators to ask
9 that they return to the subtle practice of
10 appropriating the entire amount of fees that are
11 collected -- that are estimated to be collected at
12 the beginning of the year. And I just want to
13 point out a couple of reasons why we took this
14 action and why we're so concerned about this.

15 First of all, these are fees that may
16 only be used for the purposes of supporting the
17 work of the PTO. They eventually must be used for
18 that purpose. And what the change that the OMB
19 has mandated in the President's budget does is it
20 takes \$64 million and sort of puts it in a
21 separate account that we can't get to during the
22 year. We have to go through a separate process to

1 get it later. We will get it later. But what
2 happens during the year is actually quite
3 important.

4 I think everyone recognizes that the
5 special quality of patents and trademarks is that
6 they are time based as the Constitution says,
7 these are rights that are given for a limited
8 time. And you have a limited time as an inventor
9 to apply. We have restrictions on when we can
10 examine them and when we must finish that
11 examination process. These are time- based rights
12 and the demand for those rights changes throughout
13 the year.

14 One year, for example, you may have a
15 spike of interest in vaccine patents related to
16 MRNA. You may have a spike of interest in
17 alternative energy patents or in artificial
18 intelligence patents. That requires the patent
19 office to respond, for example, by giving more
20 overtime to the examiner's expert in those
21 important areas that are important for the
22 inventors and eventually for the American people

1 and society as a whole.

2 This takes away that flexibility. We
3 can meet those needs, but that will require that
4 we ignore other needs such as the ongoing
5 operating of our IT equipment and processes and
6 personnel. So this steals flexibility from the
7 patent office when they need it during the course
8 of the fiscal year. And, you know, these -- as I
9 said, eventually end up back in the hands of the
10 PTO. But the problem is that the loss of
11 flexibility which is, you know, what any prudent
12 enterprise would do during the course of the year
13 particularly because this is not taxpayer money.
14 This is user fee based.

15 So that's my explanation of why we wrote
16 the letter. We're happy to take questions and
17 comments about that, but with that I'd like to
18 switch over now to Jay Hoffman and the
19 presentation that the PTO will provide about the
20 current status of our finances. Thank you. I
21 think you're on mute, John.

22 MR. MILDREW: Okay. Can you hear me

1 now? Okay. Great. Thanks, Barney. I'm going to
2 take over Jay Hoffman today. Jay had a scheduling
3 conflict and couldn't be with us today. So I'm
4 the Plan B, the back bench, whatever you might
5 want to say. I like to call myself the Deputy
6 Chief Financial Officer, but I've been called a
7 lot worse as well.

8 So I'm glad to be here today. I
9 appreciate your comments and why don't we jump
10 into the presentation. The good news is that our
11 financial position overall is strong and we're
12 going to share our typical standard quarterly rack
13 and stack for you today for '23 information here.

14 And we'll go through the usual three
15 years. You know, we're always looking in the
16 financial office at three years. The current
17 year, which is fiscal year 2021. The budget year
18 which is 2022 and the budget formulation year
19 which is 2023. Always keeping our eyes on all
20 three years.

21 So the next slide. Our '21 status,
22 financial outlook. Our outlook is largely

1 unchanged from what we presented to you in the
2 last quarter. As we get closer to the end of the
3 fiscal year, our spending projection tends to firm
4 up a little bit which is good. And so, so far so
5 good.

6 We're still on the path of ending the
7 year above our minimum operating reserve level
8 which is set at \$300 million. And so, we're
9 looking at as you can see on the chart there our
10 projected end of year operating reserve, that very
11 last line on the chart there under the patent's
12 column of ending the year with \$330.7 million. So
13 that's \$30 million above our minimum, which is
14 always makes us feel comfortable when we're above
15 our minimum operating reserve.

16 And we plan to spend more than what
17 we're planning to collect this year, which means
18 we'll be taking funds out of the operating reserve
19 and that's exactly why a fee funded agency like
20 ours has an operating reserve. So we have a
21 continuity of operations. We can plan for the
22 work we need to do in the year and then execute

1 accordingly.

2 Our estimated patent fee collection is
3 \$3.098 billion and you can see that number on the
4 bold line there, FY21 estimated fee collections
5 under the patent column there. The \$3.098 billion
6 that's our estimated fee collections for patents.

7 And through June 30th, quarter three,
8 our total revenue collections are above our plan
9 by 1.7 percent, which is great. And our
10 application filings are 1.8 percent above our
11 planned levels as well as maintenance fees are
12 above our planned levels at 3.5 percent. And I'll
13 show you on the next chart what that looks like
14 graphically.

15 You can see this chart shows the end of
16 year projections by C category. And just to
17 orient you to the chart here. The percentages
18 above or below zero are above and below our
19 current plan. So you can see that the percentages
20 actually above the bars indicate the percent
21 difference between our end of year projections of
22 the fee category and the annual plan for the fee

1 category.

2 So you can see patent maintenance is
3 almost four percent, 3.95 percent above our plan
4 and that's good. And as we noted on the last
5 slide, the applications filings and maintenance
6 fees are all above plan. Next slide.

7 Okay. So this is the -- this graph
8 depicts the end of year aggregate revenue
9 projections for the patent's business line. And
10 each day, we're calculating an end of year
11 projection. This is the 25-day moving average
12 projection of revenue based on trends that we've
13 experienced so far in the fiscal year and also any
14 factors that we know that maybe occurring in the
15 future.

16 So let me just give you an orientation
17 to the slide. The blue squiggly line there is our
18 end of year projections calculated every day. We
19 compare that blue line to the purple line, which
20 is the straight line there, which represents our
21 most up to date plan. And the plan currently
22 reflects \$3.098 billion and that's what was

1 referenced earlier in the slide just a few slides
2 before this one.

3 And the revenue is tracking at about one
4 percent above our plan, which is always good. We
5 have more revenue than you planned for. It's
6 tracking at \$3.127 billion or about \$30 million
7 above the plan or as I said about one percent.
8 Next slide.

9 So this slide here is the operating
10 reserve balance. The chart shows that patent's
11 operating reserve balance is again, it's a 25-day
12 moving average. You'll see that it fluctuates and
13 as noted earlier, we're currently above our
14 minimum level of \$300 million and that's that
15 straight line that goes across. You'll see it
16 fluctuates as the 25-day moving average adjusts
17 for the spending and revenues as they come in.

18 It really is when you're running an
19 organization like ours that's as Barney mentioned
20 100 percent fee funded, it really is about
21 managing cashflow and how important that is.
22 That's why any time we're above our minimum

1 operating reserve, it's a good thing. Okay. The
2 next slide.

3 So moving on from fiscal year '21 to
4 fiscal year '22. The House and Senate
5 appropriations committees held hearings in May for
6 our budget. Both hearings focused on other
7 bureaus within the Department of Commerce not on
8 U.S. PTO. The appropriation request in the
9 President's budget is \$3.994 billion, which is
10 based on a projected spending requirements not fee
11 collections.

12 Fee collections are actually estimated
13 at \$4.05 billion. It's a difference about \$64
14 million that Barney referenced in his comments
15 just before I started this presentation. But
16 again, not to be concerned because the fees
17 collected in excess -- any fees collected in
18 excess of our appropriation will be deposited into
19 the special Barney noted, the Patent Trademark Fee
20 Reserve Fund and will be available to you as PTO
21 through a Congressional reprogramming request.

22 And so, this is a change from

1 appropriating based on spending as opposed to
2 collections as a change from past practice, but it
3 is an Administration budget request item and
4 we're, as a part of the executive branch, we are
5 supportive of that change. The House Committee
6 just so you know had a hearing just so you know,
7 had a hearing on July the 12th and appropriated
8 USPTO at the President's budget request number.
9 So I just wanted to make sure that you were aware
10 of that.

11 Next steps for fiscal year '23 budget
12 formulation. Right now, we're working on our fee
13 estimates and requirements for fiscal year '12,
14 which will be submitted to the office of
15 management and budget on or about September 13th,
16 but before that goes, once the draft is finalized
17 within the USPTO, the PACs and the Department of
18 Commerce will get a chance to review later on this
19 month.

20 And then public relief of the budget for
21 fiscal year '23 is expected in early February so
22 it would be February of 2022. And it starts the

1 Congressional appropriations process all over
2 again.

3 And so, with that I will conclude my
4 presentation. And thank you for joining me and
5 I'll be happy to answer any questions you may
6 have.

7 MS. MAR-SPINOLA: Sean, this is Julie
8 Mar-Spinola. And thank you very much. Nice to
9 see you.

10 MR. MILDREW: Hi, Julie. Nice to see
11 you too.

12 MS. MAR-SPINOLA: Thank you. Thank you.
13 If we could go back. I think it was slide number
14 42 where you have a bar chart. If we can go back
15 to that slide?

16 Specifically on patent maintenance where
17 you're almost four percent above the forecast. Is
18 there a breakdown of which maintenance fees are
19 being paid?

20 MR. MILDREW: Julie, I don't have that
21 as part of this deck, but I'm sure we can get it
22 to you if that's something that you would like to

1 see.

2 MS. MAR-SPINOLA: I think so. I'm
3 sorry, go ahead.

4 MR. MILDREW: Yeah, please.

5 MS. MAR-SPINOLA: The reason why I'm
6 thinking about that is that I think it would be
7 interesting to see where the maintenance fees --
8 at what stage they're being paid for. There was
9 some concern maybe last year or so about whether
10 the last maintenance fee was being paid or not.
11 And so, I think that type of breakdown could be
12 helpful.

13 MR. MILDREW: And, Julie, we've actually
14 done some analysis on that very issue. And we'd
15 be happy to share that with you because it's
16 really interesting and it's a little bit different
17 than the narrative but I think we've been hearing
18 for the last couple of cycles.

19 MS. MAR-SPINOLA: Yes.

20 MR. MILDREW: So we'd be happy to share
21 that.

22 MS. MAR-SPINOLA: That would great.

1 Maybe we can plan for the next meeting to share
2 breakdown. I do think it is, you know, I've
3 always been interested especially on the fee
4 setting -- during a fee setting discussion to
5 figure out the best place for the maintenance fees
6 to be increased or not increased. Okay. So
7 Barney, let me give it back to you. I think
8 you're on mute.

9 MR. CASSIDY: So it's like you saw and I
10 really appreciate that whole presentation. I
11 don't have any other further remarks. And I think
12 we can move along if unless there are further
13 questions from feedback or from the chat?

14 MS. MAR-SPINOLA: I'm not seeing any
15 questions in the chat so thank you, Barney. Let's
16 proceed to artificial intelligence and technology
17 with Jeremiah Chan, our chair of the subcommittee.
18 Jeremiah?

19 MR. CHAN: Great. Thank you, Julie.
20 And hello everyone. It's a pleasure to be here
21 today.

22 As we continued to live through the

1 challenges of the pandemic, I am pleased to report
2 that the PTL has continued to make significant
3 progress with respect to its initiatives in IT and
4 VI. The sustained productivity of the team during
5 these circumstances is really a testament to the
6 PTO strong leadership and its preparation and
7 adaptability to change.

8 Today, we're going to adjust our normal
9 sequence of it and start with AI policy then we're
10 going to move to IT and AI updates. For AI
11 policy, we're going to have a reasonably published
12 AI patent dataset used in the recently issued
13 report inventing AI, tracing the diffusion of
14 artificial intelligence with U.S. patents.

15 These datasets were released by the
16 Office of the Chief Economist who assisted
17 researchers and policymakers focusing on the
18 impacts of AI invention. And I think it's a
19 terrific example of the cross-agency collaboration
20 that we've seen similar to the collaboration
21 previously mentioned by Judge Michael Kim on
22 process and data sharing between patents and the

1 PETA. We will also share highlights from the
2 previously issued report of the National Security
3 Commission on AI.

4 For IT initiatives, we're going to focus
5 on the main priorities of the team ever since the
6 beginning of the year which is cyber security,
7 resiliency, moving to the cloud. And we'll also
8 talk about the upcoming new structure related to
9 DOCX filing in January of 2022. And then to
10 close, we'll talk about AI initiatives and focus
11 on enhanced search and CTC autoclassification.

12 It's probably worth noting that in
13 discussing both IT and AI updates, we'll be using
14 our standard format, which essentially tracks the
15 agency's practice of agile development. We'll
16 talk about the milestones accomplished in the last
17 three months and then we'll move to the goals that
18 we have set for the next three months. With that
19 I will turn it over to Coke Stewart.

20 MS. STEWART: Great. Thank you so much,
21 Jeremiah. So what we wanted to do today was to
22 provide an overview of some of the activity across

1 government in the AI policy area.

2 And as many of you maybe aware of there
3 are active organizations in this field was created
4 by the government last year and that's the
5 National Security Commission on Artificial
6 Intelligence. Can we go to the next slide?

7 So this was created by the National
8 Defense Authorization Act. As you can tell this
9 is really a joint effort between the private
10 sector and the government. There are a lot of
11 heavy hitters on the committee. And in March of
12 this year, they issued an enormous report. I
13 think it's exceeding 1,000 pages. And the goal of
14 the report is really to address what our national
15 security posture is with respect to artificial
16 intelligence and what the government can do to
17 promote a better national security posture on that
18 issue. Can we go to the next slide?

19 So as I said, it issued a report, a very
20 lengthy report and one of the many chapters
21 related specifically to IP policy. Can we go to
22 the next slide?

1 So within that larger report, there were
2 really two high-level recommendations. One was a
3 recommendation that the U.S. government really
4 develop and implement a national IT strategy. And
5 that is to incentivize innovation in the area of
6 AI emerging technologies.

7 So specifically, the commission,
8 although their recommendations are binding in
9 anyway, proposed a lot of different actions for
10 the government. And some of those were directed
11 directly to DOC and USPTO. So they're asking us
12 to, you know, gather a subject matter expert in
13 this area, convene public deliberations, make sure
14 that we are collecting and reporting out on data
15 on IP policy.

16 So the good news is that we have a
17 longstanding AI IP working group at USPTO. We've
18 been meeting for several years. As many of you
19 are aware, we've issued our RCs. We've had a
20 report on AI issues. All of this is available in
21 the USPTLF site on our AI hub.

22 So this guidance from the commission is

1 very welcomed and it does channel very nicely with
2 the work that USPTO is already doing. Can we go
3 to the next slide?

4 An area that I think would be interest
5 to our stakeholders is their second recommendation
6 where it really drills down on a list of very
7 specific IP considerations and they identify 10 of
8 them. So as you can see, time eligibility.
9 Whether that is a net that's kind of capturing AI
10 inventions and whether that's an impediment to our
11 national security needs with respect to AI.

12 Issues involving China. Whether there
13 should be IP protection for new kinds of
14 intellectual property that might support
15 innovation in AI.

16 So this is a list of 10 areas that they
17 want USPTO to look at. So what, you know, they
18 did is they asked the Secretary to ask USPTO to
19 look into those areas. And they've also asked,
20 you know, the Vice President to take a role in
21 this and maybe for even there to be an executive
22 order.

1 So those kinds of formal instructions so
2 USPTO haven't taken place, but we are looking into
3 these areas in any event. We also agree that
4 these are very important areas for us to be
5 researching in the IT policy arena. So we're
6 moving ahead, recommendation or not, to be
7 researching these issues. To be evaluating what
8 we've done in the past? What we're doing current?
9 And to make recommendations to the department and
10 to the government on, you know, possible steps
11 forward to make sure that we're innovating in
12 these areas. Can we go to the next slide?

13 And just to mention a few other items
14 that are going on across government. There was --
15 the White House created a National AI Research
16 Task Force and they issued a request for
17 information recently that I would direct folks to
18 reviewing and potentially responding to. And the
19 point of that request for information is really to
20 identify ways to insured that everyone, all
21 Americans, have access to the benefits of
22 artificial intelligence research and innovation.

1 So that ducktails into the
2 administration's other efforts on equity and
3 making sure that, you know, we have an accessible
4 IP system in the United States. But the other
5 issue that they touch on is the creation of this
6 National AI Advisory Committee. And that is a
7 committee that is being created by the Department
8 of Commerce.

9 And the implementation of that directive
10 is being handled by NIST, which is another bureau
11 in the Department of Commerce who work closely
12 with on AI issues. So I also wanted to highlight
13 this because they are looking for AI experts to
14 join this government committee.

15 So if you have expertise in this area,
16 especially if you have expertise in AI and IT, we
17 would love to talk to you more about, you know,
18 what might be involved in serving on the
19 committee. Please feel free to reach out to me
20 and I will direct you to the right folks. But we
21 really want to make sure that we have, you know,
22 an excellent AI advisory committee for the

1 government.

2 And then the last thing I wanted to
3 mention relates to IP5. For those of you who are
4 not familiar with the term IP5, it relates to the
5 five IP offices across the world. And we work
6 very closely with them in a variety of issues
7 including AI. They have a very active AI emerging
8 technologies committee.

9 And we recently are a last IP5 head of
10 offices meeting agreed on a roadmap. And
11 basically, that just means what are the areas of
12 study that all the five offices agree would be
13 worthwhile for us to work together on? And those
14 include statistics, classification, utilization of
15 AI and various legal issues.

16 So while we're very active within the
17 USPTO in encouraging innovation on AI issues,
18 we're also very active across the government and
19 even on the international stage. So that's really
20 the update that we wanted to give today and I'm
21 happy to answer any questions or else I'll turn it
22 back to Jeremiah to hear from Andy Toole.

1 MS. MAR-SPINOLA: So this is Julie. I
2 have a question.

3 MS. STEWART: Sure.

4 MS. MAR-SPINOLA: I'm not sure you can
5 answer it, but let me just advance it in any
6 event. I don't remember the particulars or even
7 the country, but recently it was -- I read that
8 one of the offices has granted an AI patent.

9 And so, my question is if -- let's say,
10 the other countries have agreed to grant AI
11 patents and/or the U.S. -- maybe trailing on that.
12 How does the issue of them seeking foreign
13 equivalent through the U.S. -- how will that be
14 treated?

15 MS. STEWART: So I think what you're
16 referring to, Julie, you're absolutely right. Our
17 decisions in Australia and South Africa, I
18 believe, to grant --

19 MS. MAR-SPINOLA: Yes.

20 MS. STEWART: To permit an artificial
21 intelligent machine to file for our patent
22 applications in those countries? But with every

1 country has their own systems so they can do it a
2 little bit differently than we do. They may have
3 different applicable laws and regulations. But I
4 understand that those decisions may be appealed.
5 So they're not filing in those countries.

6 And we also have litigation already
7 issued in the U.S. But it's been a decision in
8 the U.S. and U.K. and other countries that so far
9 our laws do not permit artificial intelligence
10 machine to be applicants. With that said, we want
11 to make it very clear that if you are an inventor
12 and you're using artificial intelligence or
13 machine learning to conceive of your inventions,
14 they're eligible for examination and filing with
15 our office.

16 So we don't want anyone to get the wrong
17 impression that just because you're using these
18 tools that you should not be filing for patent
19 applications. And we're seeing tremendous growth
20 in this area, but we do know that, you know, folks
21 are trying to, you know, push the boundaries on
22 policy. Or maybe even advocate for changes in the

1 law with respect to what kind of inventorship is
2 permitted.

3 MS. MAR-SPINOLA: Great. Thank you.
4 Jeremiah?

5 MR. CHAN: Great. Thanks so much, Coke.
6 That was great overview.

7 Excited to move onto Andy Toole to talk
8 about some recently published AI found datasets.
9 I know I've got lots of colleagues and friends who
10 do research in data science. In the patent area,
11 we're very excited about this so, Andy, take it
12 away.

13 MR. TOOLE: Great. Well, thank you very
14 much, Jeremiah. And good afternoon everyone.

15 It is really a pleasure for me to be
16 able to highlight these two resources that USPTO
17 has released at the Office of Chief Economist has
18 been deeply involved with. Next slide please.

19 I don't think it's any secret to anyone
20 on this meeting or in this meeting that AI is a
21 very important national policy priority. It's
22 also important for the private sector and the

1 university sector. But the most recent wave of AI
2 particularly AI related to machine learning and
3 vision and other areas, subareas, like that.
4 There's not a lot of information yet that built up
5 about the different policies that we should follow
6 and how the trends are actually going to play out
7 as we move forward in time.

8 So what we really need are new resources
9 to help us understand that. And I want to
10 highlight two resources very briefly this
11 afternoon. One is our inventing AI report, which
12 was actually released in October of 2020. And
13 that report and in the next slide, I'll talk about
14 that in a little bit more detail. But that report
15 really does provide a broad overview of what's
16 happening in this AI space. And we've seen two
17 patent documents.

18 And the second thing I would like to
19 highlight in the next few minutes is the release
20 of a new public dataset. A very important new
21 source, I believe, that's going to allow us to
22 really create metrics, track metrics and use data

1 to understand AI policy better. And that is a new
2 dataset called the artificial intelligence patent
3 dataset. And in that dataset, we include all of
4 the patents that have some component of artificial
5 intelligence technology in them out of 13.2
6 million total patent documents that were searched.
7 So next slide, please. I'll be talking about that
8 in just a moment.

9 First, let me just spend one minute on
10 the report. Now, the report itself is based on
11 the same dataset that we released. And what we
12 did is we built a machine learning model. So we
13 used AI to identify AI, if you will. And what we
14 lay out in this report is very impressive growth
15 in patent applications and the diffusion of AI
16 across different inventors, different organization
17 types and even geography within the United States.

18 So for instance, a second bullet point
19 points out here that in the 16 years from 2002 to
20 2018, the annual AI patent applications increased
21 by more than 100 percent rising from 30,000 to
22 more than 60,000 annually. And now, they make up

1 about 16 percent of our total applications
2 received. This is data as of 2018.

3 And the patents also -- what's also very
4 interesting to me, and again this is included in
5 the report, is that AI is not just a single
6 technology, it's actually spreading in a
7 ubiquitous way across a variety of technology
8 classes. So by 2018, 42 percent of the CPC
9 technology classes had at least one document with
10 some AI technology in there. Next slide, please.

11 So we took the dataset that we used to
12 create that report and we added onto that dataset
13 two additional years of information. So we added
14 2019 and 2020. We also created a companion
15 document called the working paper that describes
16 -- and some people might say excruciating detail
17 -- the methodology that we undertook and the ways
18 in which we tested our findings.

19 So when we built the machine learning
20 model, we let it loose, so to speak, on 13 point
21 million patent documents. Those are granted
22 patents and public pre-grant publications. And

1 when it -- in identifying an incredible proportion
2 of patents that actually have AI in them.

3 Now, did we do it right? Well, that's a
4 big question. So what we did, and this is an
5 aspect of this dataset and of the report prior,
6 that nobody else has actually. We were able to go
7 to the experts within the AI Art Unit of the USPTO
8 and have them review manually some of our findings
9 and our predictions. So we had a random sample
10 that was reviewed by experts in the area. And
11 when we did that to test the, you know, the kind
12 of fidelity of our work and the accuracy of our
13 work, we found that actually it beats most of the
14 benchmarks out there in terms of what's been done
15 at other offices around the world, and even
16 academic researchers. So far, we're really happy
17 with that.

18 So both the dataset and the report are
19 available on the website. Since we released the
20 dataset in June, late, late June -- June 25th
21 actually of this year. There have been over 2,200
22 page views, over 375 downloads of the dataset and

1 again a similar number of downloads for the
2 working paper. So people are very interested and
3 I think this resource is going to do very well for
4 all of us.

5 The only thing I would like to add here
6 as a final comment is that this was, as Jeremiah
7 said, this was a great collaborative effort across
8 business units at the PTO including the patent's
9 organization, the CIO group, the OPIA group. And
10 I'm just -- I'm very impressed with what everybody
11 has contributed and we should all feel proud of
12 what we've accomplished here. Next slide, please.

13 So with that I'll end. And I will
14 certainly take questions if anyone has any. Thank
15 you.

16 MR. CHAN: Thank you, Andy. I think
17 it's a fantastic resource so I'm glad that, you
18 know, people are hopefully are aware of it. I
19 know many are already.

20 To your point about the difficulty in
21 doing it. I think one of the great things about
22 the dataset release is that there was also a lot

1 of transparency to provide it.

2 So the second dataset, data file
3 actually, contains the patent documents that were
4 used to train the machine learning models. And
5 so, for those of you who actually tinker with the
6 models and you're curious about how it was
7 trained. Andy's team has also provided that
8 information as well. So please take a look at it
9 and use it. It's a great resource. And with that
10 any questions for Andy or Coke?

11 MR. CALTRIDER: Jeremiah, I have a
12 question. Fantastic presentation, Andy. It's
13 really informative report. And I'm curious to
14 know whether or not the datasets include the
15 application with AI and kind of on ITR units? Or
16 if it only -- so if you -- if AI is being applied
17 to discover some synthetic rubber for example. Is
18 that getting captured in this if it's part of a
19 disclosure? Or does it sort out as looking for
20 things that is either claimed or somehow didn't
21 realize that AI is of the invention?

22 MR. TOOLE: Well, that's a great

1 question. Thank you. Thank you for asking that.
2 We do include a text analysis of the abstract of
3 the patent and of the claims.

4 So really the claims are a very
5 important part of how we identify the different
6 components of AI. So there are different -- there
7 are eight different categories of artificial
8 intelligence that we identify including machine
9 learning, diction, speech, AI hardware and several
10 others.

11 So the answer to your question is yes.
12 They are included. In fact, what was very
13 interesting to find was that these different AI
14 components when we search for them using the
15 machine learning model, they appeared in
16 technologies that we didn't really think were
17 going to have AI. Most of those were just areas
18 that you wouldn't think of, right?

19 So AI is in databases for sure. AI is
20 in other areas. And so those -- it's concentrated
21 in these areas you would expect, but it does occur
22 in these more obscure, let's say, technology

1 areas. And that's one of the great advantages of
2 using machine learning approach actually. Is to
3 be able to find it in these very difficult areas
4 to find.

5 That's the advantage over the query
6 approach which is the traditional approach in
7 which, you know, you find technologies based on
8 key words and patent classifications. But so the
9 answer is yes.

10 MR. CHAN: Great. Thanks, Andy and
11 thanks Steve for the question. Looking at the
12 time. We've got about a little over 15 minutes
13 left. So why don't we continue to move on and if
14 we have time at the end, we can kind of have
15 another opportunity for questions but thank you,
16 Andy, and Coke.

17 All right. Turning to IT initiatives
18 where we will focus on cyber security, resiliency,
19 moving to the cloud and some new updates with
20 respect to DOCX. I will turn it over to Jamie
21 Holcombe and Don. Jamie, take it away.

22 MR. HOLCOMBE: Great. Thanks a lot,

1 Jeremiah. And go, go, go. First up, cyber
2 security. Second, it's all about resiliency and
3 then we'll talk about moving to the cloud. Don
4 Watson, take it away.

5 MR. WATSON: Good afternoon, everyone.
6 We realize we operate in a heightened cyber threat
7 environment.

8 Many of us have seen in the news about
9 the Colonial Pipeline attack, the Nefilim attack
10 and even on the Fourth of July weekend, the CASEA
11 (phonetic) tool which is a lone access tool being
12 compromised effecting 200 businesses across 17
13 countries.

14 So we've been on a journey of continuous
15 attacks when it comes to cyber security. So the
16 last quarter, you know, we developed a
17 self-service security vulnerability dashboard. It
18 allows product owners to timely see their
19 vulnerabilities and to remediate them as quickly
20 possible.

21 We're also encouraging and getting our
22 product owners to transition their products off of

1 end support operating system platform, the older
2 OSs to reduce vulnerabilities.

3 One of the primary attack vectors
4 nowadays from attackers is through fishing emails.
5 So sometimes, you know, the technology we have in
6 place lets the emails slip through. So we have
7 these warning banners. Our incoming external
8 emails to help prevent fishing attacks to inform
9 the user. Hey, exercise caution.

10 And the last, we focused on assessing
11 and reducing risk for our publicly assessment
12 systems. That's an ongoing thing. We're always
13 assessing the penetration testing of our publicly
14 assessable systems who have the greater exposure.

15 In the next quarter, focused on the
16 deployment of technologies secure our end user
17 systems. Traditional antivirus is not enough
18 nowadays so we're deploying some new technologies
19 that use machine-based learning and other type of
20 capabilities to ensure we can improve our
21 monitoring and instant response capabilities.

22 We also taking a role -- emphasizing a

1 role-based approach to help improve information
2 system level of security. And lastly, the
3 zero-trust approach, and that approach is the
4 default. No one person is trusted from inside or
5 outside of a network. Verification is
6 continuously required to get an access to
7 resources on that network. And systems are
8 segmented and there's authentication ongoing to
9 make sure the right people have the right access
10 for the right resources and nothing further than
11 that.

12 That also helps with us ensuring that
13 someone can't get into our networks so our cloud
14 environments and move across and just create
15 havoc. And that's it now briefly. And I'll take
16 any questions.

17 MR. CHAN: Okay. Thank you, Don. It
18 looks like we have a question from Barney Cassidy.

19 MR. WATSON: Sure.

20 MR. CASSIDY: Well, hi. Just sort of a
21 dumb question. Can you give us a sense in order
22 of magnitude? How many attacks on the PTO system

1 do you experience in a year? Is it, you know,
2 10,000? Is it 100,000? What's the level of
3 attacks that are detected?

4 MR. WATSON: Thank you for the question,
5 Barney. Yes, it's actually hundreds of thousands.
6 And I'm talking about attacks that we are seeing
7 at our perimeter level, but we have our firewalls
8 and our intrusion prevention systems.

9 While there is someone trying to deliver
10 a malware into our environment or if it's someone
11 trying to create a denial of service by flogging
12 us with packets of, you know, IT packets and all
13 that. We see hundreds of thousands and what's
14 great is we have a very robust firewall and tree
15 prevention system in place, but we're stopping
16 those things. And so, I'm pretty confident in our
17 capabilities.

18 MR. CASSIDY: Okay. That was my follow
19 up would be, you know, do you have all the
20 resources you need because I think from the user
21 perspective, the confidentiality of unpublished
22 patent applications is very important to

1 businesses and inventors.

2 MR. WATSON: Absolutely yes. And we do.
3 We're on a journey to, again, I think the concept
4 of zero trust here is, you know, there's an
5 insider threat where someone does make it pass our
6 primary defense and we have that extra layer a
7 zero- trust model. It's an architectural model.
8 It can be based on either the way segment thing in
9 your network or the way you maybe use software
10 defined type software to do that. But we are
11 doing that to ensure that if it does occur that
12 the impact would be minimal.

13 So my confidence in our roadmap is very
14 high both from the inside threat and monitoring
15 perspective and also from the zero-trust approach
16 that we're taking.

17 MR. CASSIDY: Thank you.

18 MR. CHAN: Thank you for the questions,
19 Barney. Both really great. I do think, you know,
20 with the headlines, many of us do suspect that the
21 attacks are pretty bad, but we really don't know.
22 And so, understanding the magnitude, I think is

1 very important.

2 I know for me having time with Don and
3 Jamie to understand the proactive measures we're
4 taking are giving me lots of relief. And
5 hopefully, the public will now understand all the
6 efforts and focus that we have on security so.
7 Why don't we move on for now and I'll hand it over
8 back to Jamie? But thank you, Don.

9 MR. HOLCOMBE: Okay. Next up, we're
10 going to talk about our resiliency in the cloud.

11 MR. SIMMS: All right. Thanks, Jamie.
12 Hi, everybody. I'm Bob Simms. Director for
13 Infrastructure Engineeringin and Operations and
14 I'm going to give you an overview of how we're
15 doing on our data center migration and our cloud
16 journey.

17 So as part of our data center migration
18 efforts, we've completed our new plans and are
19 actively -- we stacking Seed equipment in our new
20 Manassas Data Center. Doing so gives us back
21 those critical infrastructure services ahead of
22 moving any equipment to the Manassas Data Center,

1 which decreases the amount of time that it will
2 take to migrate.

3 The good news is those efforts are
4 paying off. Our Boyers Data Center migration is
5 well underway and I will say, it's ahead of
6 schedule. So, the team is working very hard to
7 get those services up and running within the
8 Manassas Data Center.

9 So, at the same time, we're also
10 preparing for the Alexandria Data Center migration
11 to Manassas. And that is also looking good and
12 things are again ahead of schedule. So I'm happy
13 to report that. So on the cloud front, our comp
14 journey, we completed seven product migrations to
15 the cloud as of this month. And we've increased
16 our cloud migration adoption rate.

17 We've developed an intake process where
18 we assess the feasibility of moving a product to
19 the cloud. We look at the things such as
20 interdependencies, plan system requirements, the
21 size of the product, the data that's being moved
22 and a number of other factors to make a

1 determination on whether that product is going to
2 be fit for the cloud or not.

3 In the coming quarters, we've got six
4 products that we're going to be moving through our
5 cloud pipeline. So those are being assessed and
6 underway. And then we also take the opportunity
7 as we're going through these cloud migrations to,
8 you know, look at the current architecture. You
9 know, the architecture of the system that's on
10 Prim may not be exactly what we would want it to
11 be in the cloud. So we look at different ways to,
12 you know, increase the resilience. And of course,
13 anything we can do to make it more cost effective.
14 Next slide, please.

15 So this slide gets to some of the meat
16 of what Don had briefed just a few minutes ago. We
17 set a critical path to remove end of support
18 platforms. This is a direction that we've given
19 to our product line leads and managers through an
20 email on the 22nd of June to remove all
21 Window-based systems that have reach their end of
22 support date.

1 Our lead product owners are working
2 collectively within their product team to make
3 sure that that happens. They are prioritizing
4 that work. They're planning that work and the
5 goal is to have all those systems removed from the
6 network by December 31st of this year.

7 So much progress is being made and got
8 some systems off the wire and then we've got plans
9 established for the other systems to make sure
10 that they're completed by the 31st of December.
11 And I think that's my final slide. And happy to
12 take questions if there are any. Otherwise, I'll
13 kick it over to whoever is next.

14 MR. HOLCOMBE: I think it's Matt Seidel
15 is next. He will be up on AHAS.

16 MR. SEIDEL: Actually, I'm going to jump
17 in. I think DOCX is up next. Sorry to jump in.
18 AI is coming next. Just a spoiler.

19 So not a lot to update. Again, we had
20 the FR notice recently that went out. Just to
21 reminder the non-DOCX excerpt charge goes into
22 effect January of next year. But we did change

1 the authoritative document to DOCX. That federal
2 register notice went out in early June.

3 We continue to work with our
4 stakeholders to assist with the shift of DOCX
5 filing. Many, many training sessions that we've
6 held in the past, and we will continue to have
7 twice per week, were over 10,000. Just an amazing
8 amount of effort to try and make this transition.

9 I think last time at the PPACK meeting
10 we shared the training mode to help familiarize
11 folks with the ins and outs. Just a reminder,
12 multiple sections can be filed as one document in
13 patent center. Recently, we included drawings to
14 be included under the DOCX filing. And then
15 again, the real time content validations are only
16 available with the DOCX.

17 And again, that's huge in terms of
18 trying to minimize some of those things that would
19 result in incomplete applications, missing parts
20 and so on.

21 Really the only other two updates that I
22 have just in the interest of time. We're very

1 pleased. We offer a video on our patent center
2 homepage now. It's a three-minute video to
3 address the DOCX filing and retrieval aspects. So
4 if you haven't seen it, we can certainly provide
5 it in the link. Our patent center homepage.

6 It's just a quick overview of the filing
7 again to raise awareness. And then our CIO, Jamie
8 Holcombe and I, are planning on some listening
9 sessions probably in the early Fall as a continued
10 part of our outreach efforts. So with that I will
11 pass it over to Matt Such at long last to talk
12 about some of our AI initiatives.

13 MR. CHAN: One quick comment and thank
14 you, Rick, I appreciate that. But one quick
15 comment before we turn it over to Matt is that I
16 encourage the public to take advantage of Rick's
17 invitation for feedback.

18 At the last quarterly meeting, we got a
19 bunch of follow up questions from the public on
20 DOCX. Rick and team answered those promptly in
21 addressing the questions there. They've also been
22 collecting feedback and have been very responsive.

1 I've been very impressed.

2 And so, be listening towards that Rick
3 and Jamie are doing fine tuning for those. If
4 you're having any issues with DOCX and hopefully,
5 it will continue to get better and better over
6 time. So thank you for that and, Matt, you are
7 up.

8 MR. SUCH: Thanks, Jeremiah. So if we
9 can go to the next slide.

10 So what we have here is a three-month
11 look back and look forward on our AI tools efforts
12 for patents around using AI for search and
13 autoclassification.

14 So over the last couple of months, we've
15 been working to build out a feature that we are
16 calling More Like This to make that available to
17 our full examining corps. We have been spending a
18 lot of time as we've discussed in previous
19 meetings over working on a variety of different AI
20 base approaches that can be useful for examiners
21 during search.

22 And those have been in our pro-type

1 phase and we're now reaching a point where we are
2 promoting things out of the pro-type that we've
3 identified are bringing value and getting those
4 prepared for release to the full examining corps.

5 And so, over the next couple of months,
6 we're doing a lot of planning to lay the
7 foundation to be able to release the first AI
8 capability to the full examining corps.

9 Along with that we will be continuing to
10 work on additional new features within our
11 prototype and continuing to identify additional
12 capabilities through that prototyping process that
13 also demonstrate value and kind of racking and
14 stacking those for potential future release down
15 the road.

16 Turning to autoclassification. Just as
17 a reminder, we have kind of two different use
18 cases here. One is for identification of claim
19 subject matters, so-called C-stars. And as a
20 reminder as we discussed last time, we did
21 implement a portion of our patent filings back in
22 December. We continue to monitor the quality of

1 the C-stars that the machine is signing. And as
2 we reported last quarter, we continue to see no
3 statistical difference so that's very, very
4 positive.

5 Looking forward for the assignment of
6 the -- or the C-stars and assigning claim
7 indicators, we're going to be wrapping up an
8 assessment over the coming months to determine the
9 readiness of the system to expand across a wider
10 subset of applications and have a wider
11 implementation.

12 Turning to the full classification
13 program. This is an effort by which we are
14 looking to do classification on patent documents
15 using the cooperative patent classification
16 system. And we have recently made some updates to
17 the models that allow us to be able to identify
18 suggested symbols to place on those documents with
19 the hopes that those are in alignment with our
20 expectations of what we would normally see on
21 patent documents in terms of the numbers of
22 symbols and which symbols.

1 And so, over the course of the next few
2 months, we're going to be focusing on assessing
3 that output from these updated models and
4 determining the readiness of the system to do some
5 piloting in a live environment. So I can take any
6 questions now. Thank you.

7 MR. BROWN: Jeremiah, I have a question
8 if you have a second.

9 MR. CHAN: Sure.

10 MR. BROWN: So, Matt, I just have a
11 follow up from before. I had asked if you had
12 plans of -- or you were going to discuss allowing
13 this to be used by inventors in the public sector
14 in the future? I think it would be, you know, a
15 great opportunity to sort of, you know, close that
16 gap between, you know, original searches and then
17 what happens even as far as post-grant reviews.
18 Has there been any discussion on that?

19 MR. SUCH: We do discuss that. And that
20 is something that I do recall we've talked about
21 in the past.

22 We are continuing to evaluate that and

1 understand both the technical -- kind of technical
2 delivery mechanism that would need to be in place
3 in order to be able to provide that. But also,
4 make sure that we understand that the particular
5 AI capabilities are going to, you know, be of
6 value, right, to our stakeholders.

7 And so, one of the things that we're
8 looking forward to when we release the capability
9 to the examining corps is getting a wider set of
10 feedback from our examiners across all technology
11 areas, you know, to really understand at a deeper
12 level the maturity of this particular technology.

13 And as we learn how that maturity is
14 playing out at that wide scale that's really going
15 to be informative to help to go into that decision
16 making.

17 MR. BROWN: Yeah. Of course, it's going
18 to evolve. I mean, obviously there's going to be
19 future generations of that evolution. I just I'm
20 personally excited about this and, you know, as
21 I'm doing a lot of patent searching myself, I'd be
22 more than happy to, you know, get involved in some

1 of this with you just as a feedback possibility.

2 And you know, the sooner you discover,
3 you know, potential road bumps, the sooner you can
4 be open. And I really think this would be a
5 valuable tool for, you know, expanding innovation,
6 right? And getting -- making it easier for people
7 to understand where that existing prior knowledge
8 is.

9 MR. SUCH: Yeah, certainly. I do
10 appreciate those comments. I think that, you
11 know, that is a sentiment that we do hear. And,
12 you know, we are absolutely, you know, looking at
13 this question and, you know, trying to come to,
14 you know, the best decision possible in order to
15 better serve our stakeholders. So I very much
16 appreciate it from that perspective.

17 MR. BROWN: Looking forward to the
18 opportunity.

19 MR. CHAN: Okay. Thanks for the
20 question, Dan. And thanks for the answer, Matt.
21 I see we do have a question on the chat although
22 we are a few minutes over time. So I'm guessing

1 at this junction, we should probably move forward
2 and perhaps you can address it offline.

3 MS. MAR-SPINOLA: Thanks, Jeremiah. I
4 think we need to keep on time. I will take this
5 opportunity just to let folks know that the PPAC
6 with the office is considering maybe a new format
7 for our public meetings going forward.

8 We may test it out as a pilot for our
9 next meeting. More specifically, we're looking at
10 maybe having maybe breaking up that meeting rather
11 than having one long meeting. We would break it
12 up into maybe a lunch session similar to what the
13 patent office has been doing with their outreach.

14 If we are successful in doing that. I
15 think a benefit to that will be that each subject
16 matter will be more thoroughly covered and the
17 public will have more opportunity for one on one
18 or more direct communications and questions and
19 answers on that. So I apologize to Jennifer who
20 submitted the question, but we can definitely
21 respond to it offline.

22 So if we can move on now to our

1 outreach. Let me turn it over to Tracy Durkin.

2 MS. DURKIN: All right. Thank you,
3 Julie. So now we're going to leave the sort of
4 domestic front and take a look at what's been
5 happening internationally with the office.

6 Despite the fact that everyone is still
7 primarily working from home. And normally, these
8 international activities take place with
9 face-to-face meetings, there's still a lot of
10 progress that the office has been able to make
11 with their counterpart offices and really actually
12 have been able to move a lot of things along.

13 And so, I think our first presentation
14 today is coming from Valencia Martin Wallace,
15 Deputy Commissioner. And she's going to talk a
16 little bit about the IP5 test meeting report out.
17 And if you would also, Valencia, when you get
18 started. I noticed there was a question in the
19 chat a while back about, what are the five IG
20 offices? And so, this might be a great chance for
21 you to inform everyone about that as well. So
22 thank you.

1 MS. WALLACE: Thank you, Tracy. And
2 good afternoon to everyone. And I absolutely as
3 current to my slide. So we'll discuss the current
4 offices.

5 So this is as Tracy said, a report out
6 of this year's IP5 Heads meeting. If you could
7 move to the next slide. Thank you.

8 So just to start out. The Heads meeting
9 is actually a series of three meetings that were
10 the week of June 20th. The first meeting was the
11 June 21st meeting which was the IP deputy head,
12 which really was just to make sure that they
13 finalize and approved the agenda moving forward
14 for the IP5 Heads meeting.

15 All three meetings that occurred that
16 week were posted by the Japan patent office. So
17 the five IP offices consist of the U.S. PTO. ETO
18 which is the European patent office. JPO, the
19 Japan patent office. KIPO, the Korean IP office.
20 CNIPA, which is the China National Intellectual
21 Property Administration. And the WIPO as a guest
22 that comes in is the World Intellectual Property

1 Office, which they are not part of the IP5, but
2 they are there and they observe our meetings.

3 So the second meeting, which is the
4 slide you see here is our IP5 office and IP5
5 industry meeting. So the first meeting is with
6 the deputy to solidify agendas. The second
7 meeting is with the heads of office along with
8 representatives of industry from all five
9 countries.

10 So you see on the left board, the
11 industry delegates where AIPLA as well as IPO for
12 the United States, BusinessEurope. So these are
13 all professional IP professional organizations
14 that work with the IP5 throughout the year and we
15 have a meeting with them during the head weeks.

16 So it's BusinessEurope that works with
17 the European patent office. JIPA which is Japan's
18 intellectual property professional organization.
19 KINPA which is the Korean intellectual property
20 professional organization and PPAC which is a
21 professional IP patent's professional organization
22 working through China. And the next slide,

1 please.

2 So just very quickly on the IP5 industry
3 meeting. There were some meeting topics which the
4 order of business is really the IP5 Heads discuss
5 the topics that were worked on throughout the year
6 by the IP5 with industry. And it really is just
7 where they're just finalizing and making sure that
8 we are in alignment with our stakeholders.

9 So some of the updates from our heads to
10 the industry were on the new organization of
11 patent practices and projects that we have
12 undertaken in the work group of the patent
13 harmonization expert's panel. So that's one of
14 the working groups IP5 that you need to discuss
15 issues and new initiatives.

16 They also discussed the IP5 net AI.
17 That's the new energy technology and artificial
18 intelligence roadmap that we heard about from Coke
19 a little earlier. They also discussed cooperation
20 in post-pandemic era. Are we properly satisfying
21 our users and accommodating our users in this new
22 virtual world that we've been in?

1 And then we also talked about some of
2 the 2022 high- level meetings that will occur. So
3 could we move onto the next slide?

4 So the June 23rd IP5 Heads of Office
5 occurred. And leading the USPTO delegation was
6 Drew Hershfeld, Mary Critharis, the Chief Policy
7 Officer and Director of International Affairs was
8 also there and I also represented along with
9 several members of each of our staff. So it was
10 an all work environment. This was our second
11 Heads meeting, all virtual, and I participated
12 last year, which went very well, but this year was
13 even better. I mean it was virtually seen this
14 year and went very well. So once again there were
15 delegates from the five IP offices as well as
16 WIPO, okay. Next slide please?

17 So the meeting focus for this year was
18 as I mentioned before. Changing needs of users in
19 this post-pandemic. How do we get to the new
20 normal? And how do we harmonize as much as
21 possible within the IP5 offices and beyond? And
22 further cooperation on initiatives for our users?

1 So as part of the Heads meeting is an
2 endorsement of the programs and initiatives that
3 our staff in all five offices have worked on
4 throughout the year. One of those endorsements
5 from the Heads and all these were unanimous
6 endorsements from the Heads was the IP5 net AI
7 roadmap that Coke mentioned. So that's just
8 setting a roadmap of the topics that Coke
9 mentioned earlier, which were statistics,
10 classification, IT and legal matters which both of
11 AI and net.

12 Next was endorsed were two projects that
13 the organization expert panel will be moving
14 forward on. And I mentioned these last year as
15 well. Global assignment, which is being led by
16 USPTO and KIPO. And Allowable Features in
17 Drawings which is being led by the JPO.

18 So this year, we have a plan moving
19 forward for how these topics will be addressed and
20 moving forward on as opposed to last year as we
21 worked with industry, we really tried to narrow
22 down the projects that the IP5 would be working

1 with to make sure that we can accomplish them.

2 And we further talked about continued
3 interaction among the IP5 offices. And then
4 lastly, we spoke of the 2022 high-level meetings.
5 So specifically there, we talked about the next
6 meeting, next year's meeting which at one point
7 EPO was considering. They are the host for next
8 year's meeting and they were considering bringing
9 the three major forms together, IP5, which I'm
10 talking about now. ID5 which is industrial design
11 focus. And GM5 which is trademark focus of the
12 same as with ID5 with the five large offices.

13 We talked about that with industry as
14 well as through the Heads. We also discussed some
15 of the themes for the Heads throughout this year
16 leading up to next year's meeting. And those
17 themes being addressing accessibility of the IP
18 system for users and specifically for startups and
19 S&Es.

20 Also, what we will be taking up is
21 exploring how IP as a whole can contribute to
22 solving socioeconomic issues. We'll also be

1 discussing promoting greater visibility of IP in
2 general as well as advocating for a stronger
3 pro-IP agenda.

4 And then we also discussed a little bit
5 of the fact that next year's meeting will be the
6 10th year anniversary of our meeting IP5 with
7 industry and how we will celebrate that monumental
8 event which has been of great importance and
9 support to the IP5. And if we can move onto the
10 next slide?

11 So the next steps. I just mentioned
12 some of the next steps that we will be taking on
13 -- the IP5 will be taking on this year coming.
14 And I can also share with you that next IP5 Heads
15 meeting as I mentioned will be hosted on EPO but
16 ultimately it was decided that next June 2022, it
17 will just be IP5. We will not be in combination
18 with the other organizations and it will be held
19 in Munich, Germany. Can we move onto the next
20 slide?

21 So I guess if anyone has any questions,
22 I can certainly take a couple or we can hear from

1 Nelson Yang first and take some after that.

2 MS. DURKIN: I just would make a comment
3 that I hope that you are all able to meet in
4 person next June.

5 MS. WALLACE: Yes, next year the EPO is
6 planning that it will be an in-person meeting.
7 The first one for several years, but I'm glad you
8 brought that up, Tracy, because one of the areas
9 that we're talking about with the offices is how
10 do we have the appropriate combination of virtual
11 and in-person meetings?

12 I mean we've all, you know, found it
13 very, very useful. It's been a great year of fine
14 tuning how we cooperate with each other and meet
15 with each other virtually. But there's still a
16 strong need to meet in person and finding with
17 that right combination.

18 MS. DURKIN: Steve, do you have a
19 comment?

20 MR. CALTRIDER: Yes, I just have a
21 question on the global assignment. First, thank
22 you for a very interesting presentation. And

1 there's a great deal of interest as you know on
2 global assignment and I'm curious if the planning
3 on it so far as a timeline or target date under
4 which that might be put into place? That's the
5 first question.

6 The second question is related. That's
7 great to have one with the IP5, but is the intent
8 then to work with WIPO to get that more broadly
9 accepted beyond the IP5's as well?

10 MR. WALLACE: Those are great questions.
11 So we do have a very high level timeline, but it
12 does not include a final implementation date. And
13 as we meet, our work groups meet and we come to
14 further agreement with the other four offices. We
15 will update you as we're getting closer to an
16 implementation date.

17 And also, great question, Steve, about
18 working with WIPO. WIPO does coordinate with us.
19 They've been very interested in this. And this is
20 something global assignment as well as other
21 initiatives that we're working with WIPO to make
22 sure that it is more widespread and it will be

1 something that all offices will be able to use.

2 We're not quite there yet with the
3 global assignment, but that is, you know, our
4 shining star we're all travel toward.

5 MR. CALTRIDER: Thank you.

6 MS. DURKIN: Okay. Valencia, did you
7 want to turn it over to Nelson Yang?

8 MS. WALLACE: Yes, absolutely. Thanks,
9 Tracy. So Nelson Yang, Senior Advisor over
10 Business Solutions. And I call him IT
11 international extraordinaire. He's all things IT
12 international that he does wonder with. And today
13 he's going to talk to us about the IT5 statistics
14 report, the measures and give us a further
15 understanding of it. So take it away, Nelson.

16 MR. YANG: Sure thing. So thank you.
17 So thank you for the opportunity to be here today.
18 If we can go to the next slide?

19 I kind of wanted to first give a little
20 bit of background on the IP5 statistic report.
21 This is a report that the IP5 offices published
22 annually. And it provides various different

1 metrics on patent application filings and also
2 prosecution.

3 And one of the metrics that we provide
4 is application pendency both first action pendency
5 and final action pendency. And this is something
6 we've been getting some questions lately. So I
7 wanted to take the opportunity to kind of focus on
8 this particular area. Next slide.

9 So within the report, we actually have
10 the statement that kind of covers our basis so to
11 speak. We state that the pendency measurement is
12 intended to provide insights into the workload at
13 each of the offices. But while we also note that
14 while this may seem to be an indicator for the
15 backlog in handling applications within the
16 offices, it's not really particularly ideal
17 because there maybe periods where the applications
18 are waiting action from applicants. And so, that
19 creates some delays there. And currently both the
20 first action and final action pendency reflect
21 this issue. Next slide.

22 This is currently the format that we

1 present the pendency metrics. However, what I
2 have not included here is roughly the half page of
3 definitions that explain how the different offices
4 calculate their pendency metrics including
5 different starting points, different endpoints.
6 And so, understandable it has a potential to
7 create some confusion amongst readers who are only
8 looking at this table without looking the
9 corresponding definitions. Next slide.

10 And so, kind of part of what I want to
11 do in these next couple of slides is to kind of
12 give some insights and details as to how each of
13 the offices are calculating their pendency. And
14 with a particular focus on the first action
15 pendency.

16 Starting with the EPO. The way they
17 calculate their pendency is from the filing search
18 the report. And this search report doesn't really
19 have an equivalent at the other IP5 offices who
20 typical will use the first office action in this
21 pendency metric. If we go to the next slide.

22 At the JPO, they kind of measure

1 pendency through a different manner. Instead,
2 they focus on that request for examination as
3 their starting point and measure from the request
4 for examination to that notice of the first
5 action. And typically, it may take an applicant
6 up to three years to file that request for
7 examination so there is some lag time between the
8 filing and the request for examination. Next
9 slide.

10 KIPO uses a similar measurement where
11 they're actually measuring from request from
12 examination to the notice of first action. There
13 are some slight differences in the workflow
14 including the fact that the applicant typically
15 has up to five years to file that request for
16 examination at KIPO. But roughly that measurement
17 is comparable where it is measuring from request
18 for examination to that notice of first action.
19 Next slide.

20 At the CNIPA, they also measure from
21 request for examination to notice of first action.
22 However, there is an additional requirement where

1 that application has to be first published before
2 the application can begin examination. And that
3 publication typically occurs within 18 months of
4 the priority date. Next slide.

5 At the USPTO, which I'm sure most of you
6 are probably most familiar with. We typically
7 measuring filings -- measure pendencies from
8 (inaudible) to the examiner first action. And
9 this is because we don't really have a process
10 such as a request for examination or a search
11 report. And so, this is really our best way of
12 capturing that, that first action pendency. We
13 have begun looking recently at other ways where we
14 can present this pendency metrics are ways where
15 we can provide more consistencies across offices
16 or provide metrics that can better reflect offices
17 of both the USPTO and IP5 offices.

18 But this is one of those ongoing
19 exercises where we still are in very much in
20 discussions with both our stakeholders and with
21 other IP5 offices to kind of find a way that we
22 can really move forward and really provide more

1 transparency and clarity as well as like
2 information that would be beneficial to our
3 applicants and to our stakeholders in general.
4 Next slide.

5 I believe that's the end of my
6 presentations, but if anyone has any questions,
7 I'd be happy to try to answer them.

8 MS. DURKIN: Nelson, I have one
9 question. If we go back to that prior slide.

10 MR. YANG: Sure. Sure.

11 MS. DURKIN: You mentioned that there
12 could be some delays on the part of the applicant
13 during that blue bar. What types of things are
14 you thinking about that would hold those?

15 MR. YANG: So that's actually a really
16 good question. A lot of times, this could be
17 perfecting the application contents where they may
18 have an incomplete application that could delay
19 that completion of that complete application and
20 prevent the application from going further to that
21 examination phase.

22 MS. DURKIN: So they're missing inventor

1 names or something?

2 MR. YANG: Yeah. Missing inventor names
3 or if they've forgot to provide a specification or
4 a complete specification those would prevent, you
5 know, prevent that application from going further.

6 MS. DURKIN: Yeah. Because it seems
7 like now that the office isn't requiring the
8 declaration until the end of the process that
9 would have sped up the beginning so that's
10 interesting.

11 MR. YANG: Yeah.

12 MS. DURKIN: And there are enough cases
13 that are not ready that it skews the data?

14 MR. YANG: I think this is something we
15 really want to look more carefully at. I can't
16 say for certain and I highly doubt there will be
17 sufficient number of cases that was skewed
18 directly. But we definitely want to get more
19 granular and look at the different aspects and
20 figure out ways where we can really improve that,
21 the process.

22 And also, really have ways where we can

1 provide metrics that better reflect our goals here
2 at the USPTO and also at the IP5 level. And this
3 is something I think the traditional ways we've
4 been presenting it may not provide that insight
5 into.

6 MS. DURKIN: That makes sense. Any
7 questions? No. And I think you'll be turning it
8 over the Mary Critharis. Thanks.

9 Mary is the chief policy officer and
10 director for International Affairs and she's going
11 to update us on some of the things that have been
12 happening in her office.

13 MS. CRITHARIS: Thanks, Tracy. I just
14 want to make sure everybody can hear me?

15 MS. DURKIN: Yes, we can.

16 MS. CRITHARIS: Okay. Great. So next
17 slide please. So these are the topics that I'll
18 just discuss briefly. A little bit more of an
19 update on the IP5 perspective on the UN
20 Sustainable Development Goal, address the delay in
21 certification and legalization of patent documents
22 as well as the recent Congressional study. The

1 impact of subject matter eligibility
2 jurisprudence, innovation and investment and
3 summary of comments from Federal Register Notice
4 on section 171 particular the article of
5 manufacturer requirement as it pertains to
6 industrial design. Next slide please.

7 So building on Valencia's excellent
8 presentation on the review of the IP5 type of
9 office meeting. I just wanted to both go a bit on
10 one of the strategic topics. As Valencia
11 mentioned, one of the objectives for this
12 particular year was to identify major challenges
13 and changes in prosecution due to the pandemic and
14 to propose solutions to address them.

15 The IP5 industry group met in February
16 of this year and some of their priorities included
17 enhancing digitization in patent prosecution,
18 enhancing online Communication as well as
19 addressing Sustainable Development Goals. So if
20 we go to the next slide, we focus on what are
21 goals are with respect to these Sustainable
22 Development Goals. And I know a lot of people

1 ask, well, what are these goals?

2 So on the right side, we have listed the
3 17 Sustainable Development Goals that are set
4 forth by the UN. They run the gamut from
5 addressing, you know, hunger and poverty to
6 climate change, health issues as well as equality
7 and justice. Given the attention on IPR in the
8 global market place, the IP5 thought it was
9 important to identify ways that IP5, right,
10 contribute to solving and addressing these social
11 issues. And also, for ways to enhance the IP
12 system that promotes the offices' contributions to
13 solving these global challenges. So onto the next
14 slide.

15 What we did in this recent meeting, the
16 offices had an opportunity to share examples of
17 their contributions to these Sustainable
18 Development Goals. So the USPTO highlighted our
19 patent for humanity program and held that it
20 incentivizes innovation for humanitarian efforts.
21 We also highlighted our efforts, National Council
22 for Expanding American Innovation.

1 Other offices highlighted, I thought,
2 some interesting projects that they were working
3 on. China focused on some of their efforts to
4 help commercialize and brand agricultural products
5 for local farmers. KIPO talked about their
6 tutorials for IP for children. EPO also talked
7 about how they're reducing their environmental
8 footprint using green technology. And JPO
9 highlighted their efforts in working with WIPO
10 Green to advance IP systems with respect to
11 addressing, you know, climate change. So these
12 are just some examples of how the IP offices
13 contributed to promoting these development goals.
14 Next slide.

15 So from the next steps since was really
16 kind of a new strategic priority. I think
17 everybody really appreciates hearing everyone's
18 experiences. And so, we're going to continue to
19 compile and disseminate information on how the
20 offices contribute to these social issues. And
21 perhaps even maybe identify some best practices
22 and opportunities where we cannot just engage

1 separately, but engage collaboratively to address
2 some of these issues.

3 And obviously, we're going to continue
4 to explore ways to promote the IP system and how
5 its importance to these Sustainable Development
6 Goals. So that's really -- I just wanted -- but I
7 wanted to highlight this kind of new priority for
8 the IP5. Next slide please.

9 So now, I'm going to turn to a new topic
10 is delays in certification and legalization of
11 patent documents. First, I wanted to thank some
12 of the PPAC members for bringing this issue to our
13 attention. We've heard from other stakeholders as
14 well that there were some significant delays in
15 processing certified and legalized patent
16 documents for use in overseas applications and
17 filing abroad.

18 So there's two components to this.
19 There's the certification process that the USPTO
20 are understanding as the void is that or
21 certifying copies of the originally filed
22 application and for assignments. The office is

1 operating on a little bit over two-week period.
2 Obviously, we're looking to reduce that. We had
3 some delays due to COVID, but those time periods
4 seem to be trending downwards.

5 The other challenge is from legalized
6 documents from our State Department.
7 Unfortunately, we've had numerous conversations
8 with our State Department colleagues and they are
9 really backlogged due to COVID.

10 This is not a situation that is unique
11 to IP across the business sector for all types of
12 documents that need to be legalized and certified
13 by the State Department. Everything has been
14 delayed. We do not have any more information as
15 far as when this issue will be resolved by the
16 State Department, but we will continue to work
17 with them and obviously share any updates that we
18 have with you.

19 But in order to mitigate some of these
20 problems, we are looking to explore flexibility
21 from our other IP offices. So the attorney of
22 OPIA as well as the IP Attachés have been working

1 together to reach out to the jurisdictions where
2 we heard there was particular concerns. We noted
3 them on the presentation. They include Bolivia,
4 China, Egypt, Ethiopia, Panama, Saudi Arabia and
5 Thailand. And they are preliminary discussions.
6 Have highlighted where there's some possibility to
7 extend some of the deadlines that are in place due
8 to COVID.

9 I do want to report, we've just found
10 out yesterday, we do have an early success that
11 the Saudi IP authorities have agreed to some more
12 flexibility in claiming of receiving the certified
13 documents. They will issue a commitment form and
14 if applicants still have that form and indicate
15 that they will be providing the certified or
16 legalized document as soon as they can then it
17 will extend that deadline until the applicant is
18 able to submit the document.

19 They will be putting more information
20 about that new process on their website and we
21 also exploring ways at the PTO to alert our
22 applications and our users on these, you know,

1 challenges and office and measures that they can
2 take advantage of moving forward. So we are
3 exploring that. Next slide please.

4 I also just wanted to point out that
5 another way to mitigate some of these issues with
6 respect to delays is to really utilize the WIPO
7 DAS. That's the document access system that
8 allows for electronic exchange of priority
9 documents. There are 30 offices participating in
10 WIPO DAS for patents and we have 19 offices for
11 industrial design. We will encourage to other
12 offices to participate in WIPO DAS and to kind of
13 extend its coverage more broadly, but hopefully
14 those kinds of systems will also help alleviate
15 some of those problems.

16 But finally, we'd like to take this
17 opportunity to also reach out to PPAC members and
18 also for our stakeholders as we continue to
19 address this issue. We wanted to make sure if
20 there are any other jurisdictions in which there
21 are delays in obtaining any kind of certification
22 and legalization to please bring them to our

1 attention.

2 The circumstances in which attestations
3 are being required perhaps is not just patent
4 applications. It's power of attorney documents
5 that maybe necessary for court filings and the
6 type of attestation documents that are being
7 required by other offices. We really would
8 appreciate any kind of information you have so
9 that we can kind of, you know, take the next steps
10 and like said engage some of our attorneys and our
11 attachés who are working on the region to help
12 mitigate some of these problems.

13 And so, if we go to the next slide, we
14 have identified -- next slide please -- two
15 opportunities or avenues for seeking out input
16 from our office. We have a USPTO policy inbox
17 that you can send information to.

18 And also, David Gerk who is our
19 Principal Counsel and Director for Patent Policy
20 in OPIA. He is coordinating all of these
21 activities. So please feel free to reach out to
22 him and we'll make this information more broadly

1 available so that, again, stakeholders can reach
2 out to us and share the information with us and
3 then we can, you know, make the necessary
4 arrangements and discussions with your foreign IP
5 offices.

6 So onto the next topic. We wanted to
7 discuss briefly with you, our Congressional study
8 on the impact of subject matter eligibility,
9 jurisprudence on innovation and investment. As
10 you've heard at the request of Senators Tillis,
11 Hirono, Cotton, and Coons, the USPTO published a
12 Federal Register Notice to analyze the impacts of
13 the current state of patent eligibility
14 jurisprudence.

15 I think the particular response to the
16 American Axle case, the expansion of some of the
17 federal circuit jurisprudence to not just computer
18 related inventions, not the diagnostics but now to
19 more broadly industrial applications have caught
20 their attention.

21 They wanted us to focus on the impacts
22 of the jurisprudence on innovation in particular

1 in critical technologies like artificial
2 intelligence and quantum computing, precision
3 medicine and diagnostic methods as well. So next
4 slide.

5 So the Federal Register Notice was
6 published on July 9th and there's a robust set of
7 questions that we ask for people to share their
8 observations and experiences. Examples of these
9 questions related to patent prosecution, strategic
10 decisions involving portfolio management,
11 litigation issues, impact on research and
12 development, employment, marketing; investments;
13 production obviously and innovation and
14 competition. So we wanted to see not just how it
15 impacts the filing practices but also more broadly
16 a company's business portfolio.

17 Again, key impact on technological
18 fields. Also, we asked for experiences on foreign
19 jurisdictions as we heard that many stakeholders
20 have made claims that other jurisdictions are more
21 accommodating as respect to patent eligibility.
22 And also, address if there are any changes in its

1 business practices. Maybe they're highlighting
2 their research efforts to other areas to adjust
3 for the current state of patent eligibility
4 jurisprudence. The next slide please.

5 So in addition, we also went more
6 broadly. Not just the direct impact to the
7 business, but what are the impacts to the American
8 economy, the intellectual property system? What
9 are the key tenants of the Biden administration's
10 priorities to ensure that the American companies
11 can maintain their global leadership and they can
12 be competitive in the global market place?

13 So we asked more broad questions to
14 address the impact to the global economy. The
15 Federal Register Notice asks for comments by
16 September 7th and hopefully that will give us
17 enough time then to publish the report, which is
18 due to Congress in March of 2022. Next slide
19 please.

20 And here are -- and I'm not going to
21 spend too much time on -- but here's just a brief
22 overview of a lot of the USPTO 101 actions. Back

1 in 2016 and '17, we held roundtables on our
2 particular guidance that we issued in 2015 as well
3 as we asked stakeholders for their views on the
4 impact of subject matter eligibility jurisprudence
5 on their practices. And we also asked them at
6 that time whether they thought any legislative
7 redress was necessary and what that legislative
8 action would look like?

9 We published that report in 2017. Since
10 then, we've issued a series of guidance and
11 guidelines. Most notably in January of 2019, we
12 issued our PEG guidelines on subject matter
13 eligibility. Next in 2020, the Office of Chief
14 Economist published a report on adjusting to Alice
15 and some patent outcomes after the Alice decision.
16 And since our guidelines, there was a more
17 increase -- actually, I say decrease in patent
18 subject matter eligibility rejections, but there
19 was also an increase in the consistency and
20 predictability among the technologies so that was
21 a good outcome.

22 Again, now in 2021, we've got this

1 request from the Hill on a study on the impact of
2 subject matter eligibility jurisprudence. And so,
3 again the report is to be finalized and sent back
4 to Congress by March of 2022.

5 So next, I'm going to turn to the final
6 topic for today. And this is the Federal Register
7 Notice on section 171. We published a Federal
8 Register Notice last year asking the public for
9 their input on the article of manufacture
10 requirement as it relates to new and emerging
11 technologies such as holograms, virtual and
12 augmented realities including graphical user
13 interfaces. And especially focused on these types
14 of designs that are not embodied on a physical
15 article of manufacturer.

16 We noted that other jurisdictions have
17 been changing their laws and their practices in
18 order to accommodate these types of new designs.
19 We received 19 comments and these comments
20 represented different groups from academia to
21 universities as well as stakeholders and trade
22 associations. And we are currently preparing a

1 draft summary report of the comments for
2 publication and hopefully in the near future.

3 So I think that is all we have for you
4 today. I'm glad to take any question.

5 MS. DURKIN: Thank you, Mary. That was
6 a great summary of what's been going on over the
7 past few months. And I really want to commend the
8 office for what you were able to do particularly
9 on the legalization issue. That, you know, COVID
10 obviously created that and we couldn't have seen
11 it coming, but, you know, some situations that
12 we're aware of during PPAC and elsewhere and you
13 know as well.

14 There is, you know, a real potential for
15 loss of rights and the ability for the office to
16 step in and particularly the attachés and the
17 relationships that they have with the foreign
18 offices. I think was a real welcome activity this
19 last quarter so thank you for that.

20 Does anyone have any questions or
21 comments for Mary? Okay. Then we will get two
22 minutes back extra into the agenda and I will turn

1 it back over to you, Julie. Unless you want to
2 just keep going and turn it over to Susan and Dan.

3 MS. MAR-SPINOLA: Yes. So thank you,
4 Tracy. Thank you, ladies, for great presentations
5 and let's do take advantage of the time and turn
6 it over to Judge Susan Braden and Dan Brown,
7 cochairs in the legislative subcommittee. Dan and
8 Susan?

9 MR. BROWN: Well, we had agreed Susan
10 was going to introduce it, but I don't hear her.
11 She maybe muted. So I'll make it short and sweet.
12 I mean we'll turn it over and start with the
13 meeting. And I don't know if she had anything
14 prepared to say so I don't want to just babble
15 here so.

16 MS. MAR-SPINOLA: Susan? Okay. Maybe
17 there's some technical issues that can be resolved
18 in the background. Dan, why don't you start?

19 MR. BROWN: Okay. I'm just going to
20 turn it over to the office and let them report
21 out. It's been a very busy quarter from -- well,
22 I'm new to the PPAC. I think that, you know, a

1 lot of things have transpired so.

2 MS. MAR-SPINOLA: Okay. So with that
3 for Tamara Foley.

4 MR. BROWN: Yes.

5 MS. FOLEY: Yes.

6 MS. MAR-SPINOLA: Hi, Tamara. Welcome.

7 MS. FOLEY: Thank you. I'm assuming
8 everyone can hear me?

9 MS. MAR-SPINOLA: Yes.

10 MS. FOLEY: Great. Thank you. Next
11 slide please. Great. So I'm going to start off
12 talking about some of the legislative activities
13 that have been happening recently. First, I'm
14 going to start off with the Senate, U.S.
15 Innovation and Competition Act as I'm sure
16 everyone has been hearing about. That passed the
17 Senate on May 28th by a vote of 68-32.

18 It's a fairly large bill. The bill
19 included the number of sections that touch on IP
20 including one that directly effects the USPTO. In
21 section 6204 of the bill, this includes the IDEA
22 Act that we've discussed in previous PPAC

1 meetings.

2 This would require these USPTO to
3 provide for the collection of voluntary
4 demographic data including race, gender, military
5 or veteran's status or any other category the
6 director deems appropriate. I won't go into
7 detail on the other sections listed here, but they
8 include the creation of an IT violators list,
9 enforcement of IT provisions and trade agreements,
10 et cetera.

11 I will note that the list here is not
12 exhaustive and these are only some of the IP
13 related provisions inclusion results. If anyone
14 has any questions on any of these or other
15 provisions, please feel free to reach out to our
16 office. The next slide please.

17 These are a continuation of some of the
18 other provisions from the U.S. Innovation and
19 Competition Acts. The last bill mention on the
20 side is from ranking member Issa. He introduced
21 the Save Money on Auto Repair Transportation Act.
22 It amends Title 35 to provide an exception from

1 infringement of design patents for a certain
2 component parts of motor Vehicles. This bill has
3 been part of a larger bill he previously
4 introduced.

5 Finally, what was not included in this
6 slide. I just wanted to define for everyone.
7 Last week, the Senate Judiciary Committee report
8 out for bills related to drug typing. Similar
9 bills were introduced in the last Congress. The
10 bills dealt with (inaudible) petitioned before the
11 FDA, case for delay agreements and a study on the
12 pharmaceutical supply chain.

13 Of particular interest to us is the
14 Affordable Prescription for Patients Act of 2021,
15 which in addition to amending the (inaudible)
16 Commission Act to prohibit product topping, but
17 also amend Title 35 to limit the number of patents
18 that can be asserted by a biologic company against
19 the biosimilar competitors.

20 We will continue to monitor the progress
21 of all these bills and provide any updates. And
22 I'll pause there to see if anyone has any

1 questions on the bills. Okay. Next slide please.

2 MS. MAR-SPINOLA: Hold on. I think
3 Judge Braden is speaking, but we can't hear her.
4 Susan, if you can hear me maybe pose your question
5 in chat and we can at least temporarily get your
6 question in. Tamara, you want to continue?

7 Tammy:

8 MS. FOLEY: Sure. Tammy is fine. Tammy
9 is a lot easier. I think so I'm just going to
10 touch really quickly on some Congressional
11 activity outside of the legislative activities.

12 The Senate IT Subcommittee held a
13 hearing on patent quality and the problems that
14 low quality patents can create for small
15 businesses and entrepreneurs particularly from
16 patent assertion entities. There are no USPTO
17 witness on this panel. During the hearing,
18 however, witnesses discussed changes to the
19 examination process, fees and increasing resources
20 for the USPTO as ways to improve patent quality.

21 Several Senators also acknowledged that
22 the work at the USPTO has done and continues to do

1 to improve patent quality. All of the Senators
2 and witnesses agreed that the USPTO should have
3 access to all its fees. And so, in doing so would
4 help improve patent quality. Judge Braden?

5 MS. MAR-SPINOLA: Judge Braden are you
6 back on?

7 JUDGE BRADEN: Can you hear me now?

8 MS. MAR-SPINOLA: Yes, perfectly.

9 JUDGE BRADEN: All right. I think it
10 was something with the headset. I just want to be
11 sure that when you talked about the four bills
12 that went through, we didn't have a slide up.

13 MS. FOLEY: No, we didn't. We didn't
14 get a chance to put up slides on that.

15 JUDGE BRADEN: All right, okay.

16 MS. FOLEY: But I did describe them,
17 yeah. Yeah.

18 JUDGE BRADEN: All right.

19 MS. FOLEY: Okay. And then speaking of
20 drug pricing. I'm just going go over it really
21 quickly. I'm sure Jay talked about or the finance
22 office talked about the appropriations bill that

1 was passed by the House.

2 But moving quickly to (inaudible) and
3 drug prices. And in addition to the bills that we
4 had discussed earlier both the Senate and the
5 House held hearings on drug pricing. In the
6 House, the hearing's focus -- the focus of the
7 hearing was primarily on AbbVie's continued
8 increase in price for its drugs and the role that
9 the government negotiations could play in lowering
10 drug prices.

11 However, the discussion of patent
12 (inaudible) PTO's in particular was raised
13 numerous times in the discussion, the changes to
14 USPTO key structure and improving patent quality
15 was discussed.

16 In the Senate hearing, the members
17 stressed the need to do something about reining in
18 cost as well drug prices for consumers. While a
19 variety of solutions were discussed including
20 those that were mentioned in the bills I discussed
21 earlier. There was actually extensive discussion
22 of patent tickets. And several of the Senators

1 expressed concern there was potential abuses of
2 the system. We will continue to monitor
3 Congressional action on drug pricing and provide
4 any updates to this group.

5 And then finally the last thing I wanted
6 to report was last week. The USPTO received a
7 letter from a bipartisan group of Senators on the
8 IT subcommittee that asked the PTOs to engage in
9 funds the American Conference of the United States
10 to study and recommend whether and how a patent
11 small claims tribunal could be established. They
12 are certainly reviewing the cost in the letter. I
13 can take any questions. I believe that's all I
14 have.

15 MS. MAR-SPINOLA: Go ahead, Judge
16 Braden.

17 JUDGE BRADEN: I just wanted to say a
18 couple of things. One is it's not the American
19 conference of the United States. It's the
20 administrative (inaudible) to the United States.
21 That's a different group and it's run by the
22 judges and that might confuse people.

1 The second thing is I wanted to
2 acknowledge in (inaudible) has been very active
3 with the subcommittee. They changed, I believe
4 and couldn't make it today. But she's been a real
5 teammate of ours with Tamara and we appreciate
6 their diligence of following daily events. Thank
7 you.

8 MS. MAR-SPINOLA: Thank you, Susan.
9 Thank you, Tamara. And then we appreciate the
10 updates there. There is a lot going on and I
11 suspect there will be more activity by the time of
12 our next meeting so thank you for that.

13 We can now move onto innovation
14 expansion update and that is with Jennifer
15 Camacho, chair of the subcommittee. Jennifer?

16 MS. CAMACHO: Thank you. We have a
17 freeze up date today and in just a few minutes. I
18 wasn't handing it over to the Valencia because she
19 has the full times there. But there are a number
20 of different things that are in the works. And
21 so, we're really excited to get the update today.
22 But we're really looking forward to the next time

1 we chat. We expect to have additional updates at
2 that point.

3 MS. WALLACE: Thanks, Jennifer. Yes,
4 it's very brief today, but I just wanted to make
5 sure that everyone understands that while you may
6 not have heard as much from us recently, we are
7 working just as feverishly on our strategy on
8 promoting the expansion of innovation on having a
9 stronger, more diverse and inclusive innovation
10 ecosystem and to make sure that everyone realizes
11 that with this change in Administration really
12 things have not changed for us.

13 Before Drew Hirshfeld was the acting
14 directory. He was commissioner and he was fully
15 supportive. And in his present role, he has been
16 fully supportive and more than that he has really
17 promoted more and pushed us even further. We have
18 regular weekly meetings with the Department of
19 Commerce about the direction we're going and the
20 strategy and with our initiatives towards an
21 inclusive environment.

22 We're still working hard. Even though

1 you haven't heard us don't think that this is not
2 moving forward because it is. And in fact, as
3 everyone probably already knows but deserves being
4 said, our President Biden and his full priorities
5 were racial equity where the economy and both are
6 squarely things that we are working on. So you
7 will be hearing from us. We still have the
8 expectation that our strategy will be published
9 this year and just stay tuned.

10 MS. CAMACHO: Thank you, Valencia. I
11 also would like to take a moment just to encourage
12 everybody to take a look at the website and
13 particularly the events that we have going on.

14 Because there are a number of events
15 which really broadened out and it's fantastic.
16 There are Spanish language events. There are
17 educator events. There are innovation chats.
18 It's really growing. It still got the events that
19 the office is putting out there and I really think
20 there is something there for everybody, inventors.
21 It's all inventors, small business owners.
22 There's a tremendous amount of effort and outreach

1 there. And I really do encourage everybody to
2 take advantage of it. There's a great wealth of
3 resources available to procure interested in
4 innovation and entrepreneurship.

5 MS. WALLACE: I'm sorry. Just one
6 second. Thank you. That's a huge year. Thank
7 you so much for bringing that up and please do go
8 to our webpage. To the regional offices, our
9 headquarters. We're all feverishly working on
10 events and programs and education and partnering
11 with other organizations to keep this moving
12 forward.

13 MS. FOLEY: And with the virtual
14 capabilities these days, you can attend it
15 anywhere. It's really fantastic. Thank you. Any
16 questions? With that, I'll hand it back over to
17 Julie.

18 MS. MAR-SPINOLA: Thank you, ladies.
19 I'm looking forward. I know PPAC is looking
20 forward to learning about the strategies and
21 hopefully by the next meeting, but we do know that
22 a lot of activity and a lot of hard work is going

1 into this, and a lot of thought-provoking ideas
2 are coming out. So thank you for that.

3 So we are down to our last subject and
4 it's an important and new subject for us to hear
5 about from Coke Stewart. And this is the
6 director's initiatives on sustainability. This is
7 something that Drew mentioned at the opening. And
8 so, let me hand it over to Coke Stewart performing
9 the functions and duties of the deputy under
10 Secretary of Commerce for IP and deputy director
11 of the USPTO.

12 I waited at the very end to share that
13 super title and very impressive. But I didn't
14 want to take up time until this was sustainability
15 segment. Thank you. Coke?

16 MS. STEWART: Thanks so much, Julie.
17 You have to take a breath before you try to get
18 that all out.

19 Well, I just wanted to give a little
20 overview before I turn it over to Sarah Brown who
21 is going to speak on this, which is that the Biden
22 Administration does have these administrative

1 priorities and multiple pillars that they talked
2 about.

3 You know, as early as even before the
4 President took office, we have transmission
5 meetings. And those include economic recovery in
6 view of the pandemic, racial equity and it
7 included environmental sustainability and climate
8 issues. And so, we rapidly set up working groups
9 that are interdisciplinary working groups across
10 our agency. And Sarah Brown helps lead our
11 working groups that address climate issues. So we
12 have two main pillars of that climate working
13 group. One relates to kind of what we do
14 operationally and another addresses IP policy. So
15 I will turn it over to Sarah Brown to report out.
16 Thanks so much, Sarah.

17 MS. BROWN: Great. Thanks so much,
18 Coke. We can actually go ahead and jump right
19 into the next slide.

20 And first, I just wanted to thank the
21 PPAC for giving us the time to come in and discuss
22 this issue today. This is an area of USPTO's

1 operations that doesn't get a ton of outside
2 attention, but there really is some great work
3 going on here. And so, we're really excited to be
4 able to share some of that with the committee
5 today.

6 Just by way of introduction and
7 background. USPTO has a longstanding energy and
8 sustainability program at the agency. These
9 initiatives are primarily led out of our office of
10 the Chief Administrative Officer. And I want to
11 take a moment just really quick to recognize
12 USPTO's CAO, Fred Steckler.

13 Fred and his team have done a really
14 great job over the years of identifying and making
15 some targeted investments that really are win/wins
16 for the agency and our stakeholders. They reduce
17 our environmental footprint but at the same time
18 they result in long-term cost savings for the
19 agency.

20 So we have that sort of as our starting
21 point. And then as Coke mentioned with the new
22 Administration coming in, they've really put an

1 emphasis on environmental stewardship across the
2 board.

3 From day one, what they make clear that
4 one of the top priorities of the Biden
5 Administration was going to be addressing the
6 climate emergency. And in support of this there's
7 been a series of executive orders over the last
8 eight months that are really aimed at making sure
9 that there's a whole of government approach on
10 climate.

11 A lot of these orders are focusing on
12 how the government can engage with its partners
13 and deploy its resources and programs in order to
14 mitigate and build up community resiliency to some
15 of the worst effects of climate change. So from a
16 policy perspective given USPTO's focused mission,
17 we really have a narrow slice of that that we're
18 working on. But there are components of these
19 orders that are more directly applicable to USPTO.

20 Importantly, there are elements of the
21 orders that are focused on government agencies
22 really leading by example. Making sure our

1 buildings are energy and water efficient and that
2 our operations are climate resilient.

3 And beyond that the executive orders
4 along with the identification of this broader
5 Administration priority on climate have really
6 been good to set the tone and give us an
7 opportunity to highlight some of the great work
8 that is being done at the agency in this area.
9 And so, that's what we're going to share a few
10 examples of with you today. We can move to the
11 next slide.

12 So as you all know, USPTO is a big, you
13 know, 13,000 person organization and that means
14 that we are in the somewhat unfortunate position
15 of being able to produce a lot of waste. In 2020,
16 USPTO generated 885 tons of solid, nonhazardous
17 waste. But we really do what we can to try to
18 mitigate the impact of that. So of those 885 tons
19 of waste last year, none of it ended up in
20 (inaudible). We were able to (inaudible) 70
21 percent of that to a state-of-the-art waste to
22 energy facility right here in Alexandria where it

1 gets converted into reusable energy.

2 The rest of it about 230 tons, we were
3 able to divert through either reuse or recycling
4 programs. So in addition to having on campus
5 bottle, can, paper, plastic recycling. The agency
6 also recycles or donates a lot of its furniture
7 and electronics.

8 So since the beginning of 2020, we have
9 actually donated more than 2,500 pieces of
10 computer equipment that is no longer needed at the
11 agency or no longer meets the agency's very strict
12 IT security standards or compatibility standards.
13 We were able to donate that through a program of
14 the general services Administration called
15 Computers for Learning. So those pieces of
16 equipment, monitors, computers, printers were able
17 to be transferred to schools.

18 Also, leveraged a lot of GSA programs to
19 redistribute furniture and equipment that we
20 aren't able to repurpose internally. And even
21 though these have slowed down a little bit during
22 the pandemic. Just to give you an example, in

1 2019 we were able to recover about \$550,000
2 through GSA auctions. So that again is a
3 financial benefit to the agency and it's also, you
4 know, making sure that that equipment does not end
5 up in a landfill.

6 And we're also making steps to reduce
7 the amount of waste that the agency generates in
8 the first place. A good example here is a set of
9 measures that we're taking around printing
10 including adjustments to our default settings and
11 installing new print management software. These
12 kinds of measures are expected to result in a 35
13 to 40 percent reduction in paper usage in the
14 years ahead. So we can move to the next slide.

15 Okay. Another really big area where
16 we're working hard to manage our impact is around
17 energy consumption. So first, we have been
18 optimizing our facilities for several years now to
19 ensure that they consume less energy. In 2020, we
20 reduced total energy usage on our main campus by
21 10 percent. And certainly, the fact that we were
22 in a maximum telework posture for half of the year

1 contributed to that, but you can see from the
2 chart there that that's really only part of the
3 story. USPTO has been successfully reducing the
4 energy that we consume for the last decade. And
5 in fact, our campus has been energy star certified
6 every year since 2012.

7 And, you know, it's not something that
8 automatically happened. It takes a lot of effort
9 and it's been a lot of years in getting us to
10 where we are today. A notable recent example of
11 something that we've done to manage our energy
12 consumption is over the last two years, we have
13 replaced about 34,000 fluorescent lamps across our
14 main campus with LED lamps.

15 And each one of these replacements saves
16 51 watts a year which might not sound like a lot,
17 but once you multiple that over 34,000 it adds up
18 to a reduction of about three million kilowatt
19 hours each year, which is about five percent of
20 our overall energy consumption. And then
21 translating that to dollars that's about \$180,000
22 per year that we'll be able to save.

1 And then we're also took steps earlier
2 this year to consolidate our office space. And we
3 vacated one of our outlying buildings in
4 Alexandria. Brought those staff back onto our
5 main campus buildings and this reduced our space
6 footprint that we're having to manage by 55,000
7 square feet.

8 Then looking outside of our facilities,
9 we've also taken a lot of steps to reduce vehicle
10 emissions. So USPTO has -- we have a pretty small
11 vehicle fleet. It's just six vehicles which we
12 lease through GSA. All six of those vehicles are
13 now hybrid vehicles. But even more substantial
14 than that is the impact of our telework programs
15 on the emissions of our workforce.

16 And so, as you all know even before the
17 pandemic, USPTO had really robust telework
18 programs in place. We had estimated that in a
19 typical year the fact that these employees were
20 not commuting every day leads to roughly a 50,000
21 ton reduction in emissions each year. And yes, I
22 said that correctly. It's 50,000 tons of emission

1 reductions. And last year, we estimate that that
2 increased to 75,000 tons. So that is pretty
3 significant. Next slide.

4 So purely from an environmental
5 stewardship perspective, we're really proud of
6 these sustainability achievements, but from your
7 perspective as stakeholders and importantly as the
8 payers of fees to USPTO to finance our operations,
9 we really do want to emphasize that the kinds of
10 things I'm talking about here show a clear,
11 significant financial benefits for agency.

12 I mentioned the introduction of print
13 management software. That investment paid for
14 itself in the first 18 months and we expect that
15 it is going to reduce paper and toner to such an
16 extent that we'll save about \$450,000 a year going
17 forward.

18 Moving over to hybrid vehicles that's
19 reducing our fuel costs by selling our surplus
20 furniture. We're able to recover a share of that
21 through auction. I mentioned that the move to
22 vacate one of our office spaces that's going to

1 save USPTO about \$2.2 million each year moving
2 forward. And then I already mentioned the
3 expected savings of \$180,000 from that investment
4 in replacing our fluorescent lights with LED
5 lights.

6 So this is not something where we have
7 to choose between environmental stewardship and
8 financial stewardship. There really are a lot of
9 things that we can do that are supporting both of
10 those goals. Next slide.

11 Okay. So just a few more examples.
12 Looking back, so much of our focus has been on
13 sustainability and cost savings and that still is
14 very much an area of focus for us, but in addition
15 following the administration's lead, we're also
16 paying close attention to resiliency. In other
17 words, making sure USPTO's operations are
18 resilient to the risks that come with climate
19 change.

20 And so, I just want to hit on a few
21 examples here of things that are very recent or
22 are ongoing activities. On the sustainability

1 front, we just recently implemented an internal
2 demand response program and when that is
3 activated, it sort of automatically senses how
4 much activity is happening in the agency. How
5 much power load there is and in areas within the
6 buildings where there's not a lot of load, it
7 automatically dials back the AC so that we're not,
8 you know, pumping tons of air into space that
9 really doesn't need it.

10 So we are for the future exploring
11 possibilities of finding these kinds of automated
12 solutions for things like, you know, occupancy
13 sensors and daylight sensors for our lighting so
14 that, you know, if no one is around or if there's
15 sufficient daylight, we're not continually keeping
16 the lights on.

17 On the IT front, we are nearing the end
18 of a multiyear effort to optimize the energy use,
19 airflow and temperature controls in our
20 datacenter, which that's going to make it more
21 energy efficient but it's also going to reduce the
22 risk of power related system outages. Again,

1 finding those win/wins for the agency.

2 And we're also in the process of
3 relocating our disaster recovery site getting to
4 resiliency. This is part of a bigger effort to
5 make sure that we have the space and power that we
6 need to have failover capabilities for all of our
7 IT systems, which I'm sure you've all heard about
8 that over the last couple of years. But since one
9 of the big risks that we're accounting for is, you
10 know, what happens if there's a major climate
11 event that takes the main data center offline?
12 Begin able to have that redundancy really helps us
13 out from a climate resiliency perspective as well.

14 And then finally, I noted before our
15 telework programs. Those continue to evolve in
16 addition to having a big impact on the level of
17 emissions from the agency. These are also helping
18 us to be very climate resilient from a continuity
19 of operations perspective if there's an extreme
20 weather event this helps us to be able to have our
21 operations very disbursed.

22 And, you know, there are functions

1 where, you know, just a year, a year and a half
2 ago, we did not think they could be done remotely.
3 We're starting to learn that many of these can be
4 done remotely. And so, we're taking those lessons
5 learned and we're incorporating them into our
6 telework items for moving forward. And I'm sure
7 that the committee will hear much more about that
8 in the future as we move forward with some of
9 these program modifications. Okay. Next slide.

10 So speaking of moving forward, I'm
11 looking to the future as I'm sure you can tell, we
12 are always looking for areas where we can improve.
13 As Coke mentioned while the recent executive
14 orders haven't had a ton of direct requirements
15 for the USPTO, we are really embracing the spirit
16 of these orders. And in March, we set up a
17 climate working group. That working group is
18 comprised of a handful of really passionate
19 individuals from patents, trademarks, our office
20 of policy and international affairs and also our
21 mission support organizations. And as Coke
22 mentioned, we have two different swim lanes for

1 this working group.

2 Part of the group is looking at, you
3 know, various areas of our operations where
4 through additional capital investments or changes
5 of practices, we could improve the sustainability
6 of our liberal corporations at the USPTO. And
7 more also (inaudible) updates to USPTO's patent
8 and trademark programs in order to identify ways
9 where USPTO might be able to facilitate green
10 innovation or encourage growth in the green
11 economy.

12 And so, all of this is in its very early
13 stages right now, but we're really excited to see
14 what the next several years will bring on this
15 front. And with that I will pause for questions
16 or yield the floor.

17 MS. STEWART: I just wanted to add --
18 first of all, Sarah, thank you for that phenomenal
19 presentation.

20 As you can tell, Sarah, that these
21 initiatives are in capable hands with Sarah
22 helping to lead the effort. And as you can sense,

1 Sarah is -- her home office is the office of the
2 Chief Financial Officer. So she can rattle off
3 these financial statistics and cost savings better
4 than anyone. And she is currently in the office,
5 obviously, under the Secretary and senior advisor
6 to the director for operations.

7 And as Sarah explained. All these
8 initiatives are really not, you know, projects
9 that, you know, make us feel better about what
10 we're doing assignment. These are really is savvy
11 plans that do what we can to better use the
12 staples or fees that we're receiving on a daily
13 basis.

14 And the other point I think Sarah made
15 which is so excellent is that this isn't about,
16 you know, some long-term climate change issue.
17 This is about resiliency as of today. And, you
18 know, what we do weather events. If there's a
19 loss of power? If there's a hurricane? If
20 there's a snow storm? You know, all of these
21 kinds of resiliency measures and disbursed
22 workforce prevents us from keep working sometimes

1 to the chagrin of those who used to enjoy those as
2 snow days in the Washington capitol area.

3 You know, we keep working because we
4 have a telework ready workforce. So I just wanted
5 to thank Sarah again and thank you, Julie, for
6 permitting us time to talk about some of these
7 initiatives that we're working on in the front
8 office.

9 MS. MAR-SPINOLA: Thank you, Coke. And
10 thank you, Sarah. I have to go with what Coke
11 said about your presentation. Very helpful, very
12 informative and a strong dose of passion included
13 in that so thank you very much.

14 I think that, Coke, what you said about
15 resiliency, you know, and it's focused more or
16 less on the present. I think and less on the long
17 term. But I think when you look at the aggregate
18 of resiliency that has helped the long-term
19 efforts and climate change, right? So kudos to
20 the patent office. And I'm more than happy and I
21 thank you for even asking us for time to make that
22 presentation here. It's definitely a social

1 interest that I think is worth promoting or at
2 least discussing with our external stakeholders.

3 So if there aren't any questions and I
4 don't see any in chat. Let me just ask the PPAC
5 members if you have any questions?

6 MR. CHAN: Actually, I have a question,
7 Julie. Really enjoyed the presentation, Sarah.
8 And it was great to hear about these wonderful
9 initiatives.

10 My question relates to -- I mean, all of
11 the different organizations and companies, many of
12 them out there trying to move toward a smaller
13 environmental footprint. Have we done any reach
14 outs to do best practice sharing? I mean I think
15 about examples like datacenter power management
16 and temperature control, much of which has been
17 outsourced -- I mean open sourced with a variety
18 of companies.

19 Have we been kind of sharing and
20 learning from other organizations who are trying
21 to do very similar things that you mentioned?

22 MS. BROWN: Yeah, I don't know that we

1 have an active campaign to do that, but we
2 definitely are in contact with other federal
3 agencies particularly on the telework front. Very
4 much involved in sharing best practices. I know
5 that our CIO, Jamie Holcombe, is very active in
6 sharing best practices with industry and, you
7 know, engaging in conversations there.

8 Beyond that I would have to get back to
9 our CIO to find out the specifics of, you know,
10 how much they engage with external partners
11 regarding what we're doing on the resiliency
12 front. But we're happy to get back with some
13 responses on that.

14 MR. CHAN: Thank you.

15 MS. MAR-SPINOLA: Anyone else? All
16 right. Jeremiah, thank you so much. And again,
17 thank you, Sarah, for your presentation. I think
18 this concludes our meeting. And but before I
19 adjourn, I'd like to thank everyone, PPAC members,
20 the patent office members as well as all the
21 attendees in today's meeting and our external
22 stakeholders for attending. And for having

1 engagement enough to ask us questions and keep us
2 all on our toes.

3 I want to especially thank Jennifer Lo
4 who is kind of our shepherd. She has kept us all
5 together and on time and has been very gracious
6 about that as well as our WebEx tech team who
7 keeps this program going virtually.

8 Our next meeting will be November 18th.
9 That is our last meeting for the year. And that
10 will be the time that PPAC will highlight what we
11 will be covering in our annual report which will
12 be published around November 23rd.

13 So with that I'd like to adjourn the
14 meeting. Do I have a second?

15 MR. CASSIDY: Second.

16 MS. MAR-SPINOLA: Barney has second it.
17 Thank you very much. Everybody stay safe and be
18 happy. Take care. Bye-bye.

19 (Whereupon, at 3:03 p.m., the
20 PROCEEDINGS were adjourned.)

21 * * * * *

22

1 CERTIFICATE OF NOTARY PUBLIC

2 COMMONWEALTH OF VIRGINIA

3 I, Mark Mahoney, notary public in and for
4 the Commonwealth of Virginia, do hereby certify
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8 under penalty of perjury; that said transcript is a
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