

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Thursday, November 21, 2013

PARTICIPANTS:

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P R O C E E D I N G S

(11:34 a.m.)

CHAIRMAN FOREMAN: Good morning, everyone. I'd like to welcome everyone to our final meeting of 2013, for the Patent Public Advisory Committee. 2013 has been an interesting year. It marks not only the final implementation of the American Invents Act, but also dealing with the effects of the sequester. I'd like to really take this moment to thank and commend the office for navigating us through these difficult and uncharted waters. It's been a challenging year, but I feel, and I think the rest of PPAC would agree, that they performed this flawlessly.

PPAC was organized to be a resource, not only for the office but also for the stakeholders of the U.S. Patent system, and I'm pleased to announce that yesterday, our 2013 Annual Report was delivered to the President and Congress, and is now available online at the USPTO website. And hopefully everyone will have an opportunity to read through it, and learn more about what has happened in 2013.

I want to thank everyone who is in attendance here in Alexandria, and those who are online. And at this point I'd like to turn the meeting over to Bruce Kisliuk.

MR. KISLIUK: Thank you, Louis. Appreciate it. I'm going to give opening remarks today instead of Peggy Focarino, Commissioner of Patents. She's at a meeting at DOC, hopefully will be joining us after the lunch break. So, again, thank you, Louis. Good morning, everyone. It's great to be here for another exciting PPAC meeting.

I want to particularly start by extending our thanks to the entire Patent Public Advisory Committee for all the hard work and countless hours that went into preparing and writing the PPAC Annual Report for FY '13. We are currently reviewing all the recommendations presented in that annual report. We hope to spend some time at the next PPAC Meeting discussing those recommendations.

As Louis mentioned, the annual report is now posted, so those in the public wishing to read it, it's available on our USPTO website.

Since the last PPAC Meeting in August, we've been very busy here as well, including continuing our efforts to lower the backlog of unexamined patent applications, working on our efforts to reduce the RCE backlog, continuing to train on the First-Inventor-to- File Provisions of the American Invents Act, and working on White House legislative priorities and executive actions, designed to protect innovators from frivolous litigation and ensure the highest quality patents in our system.

Moving forward with our satellite office program, I'm sure that you're all aware of the great news earlier this week on the selection of a permanent location at the Silicon Valley Office. Through the tireless efforts of our Satellite Office Team, the San Jose City Hall Building has been selected as the permanent site for the USPTO's Silicon Valley Satellite Office.

As Louis mentioned, at the beginning of this fiscal year we faced a new challenge, and that's operating without access to our FY '14 fee collections. With the good stewardship of our CFO, who will be reporting later today, we managed

to survive that as well. And in spite of the sequestration and the budget uncertainty, we've all been very busy working on these various efforts that I mentioned and have been able to continue moving forward with progress.

During FY '13, we were able to reduce both our new case and RCE backlog as well as our first action and total pendency. This reduction in our backlog has allowed many patents to issue which truly helped drive business growth, technological development, and job opportunities throughout the country.

As of Tuesday of this week our new case backlog stood at a little over 586,000, which is down from over 735,000 back in 2010, which is about a 20 percent decrease. This reduction in our backlog has occurred despite a 6.2 percent growth in filings in FY '13 over FY '12. And as we continue to reduce our new case backlog, we also recognize that the RCE backlog is an area that our applicants and stakeholders are understandably concerned about.

Working with the cooperation of PPAC, we've been aggressive in seeking advice of our

stakeholders on how to address this backlog, which has grown from a little over 63,000 at the end of fiscal year '11 to a little over 95,000 at the end of fiscal year '12, which is almost a 50 percent growth.

We have good news with respect to that RCE backlog, and through the efforts of everyone in this room, as well as the entire Patent Corps, we finished FY '13 with an RCE backlog at a little over 78,000. This is a significant decrease, in fact a 30 percent decrease in the RCE backlog since February 2013.

As of November, again - 19th, the RCE backlog stands at about 82,000. A little bit later in the meeting Jackie Stone will be providing a more thorough update on our new case and RCE backlog reduction efforts.

And so moving on to today's agenda, first will be CFO Tony Scardino, who will provide a detailed discussion of our budget and finances. And I'd like to particularly point out and thank Tony for the great effort him and his team did, amazing work over last year and these last few months, for bringing constructive thinking to

many of our problems and keeping us open in a time of crisis. So thank you very much.

And after Tony we have our updates on the Patent Trial and Appeal Board from Chief Judge Smith; Patent Quality from Deputy Commissioner for Patent Examination Policy, Drew Hirshfeld; the Manual of Patent Examination Procedure or the MPEP update from Rob Clarke, the Editor of the MPEP; an update on the Central Re-Exam Unit, from Remy Yucel, Director of the Central Re-Exam Unite. Legislative updates from our Director of Government Affairs, Dana Colarulli; and an update on IT activities from our Chief Information Officer, John Owens. The latest on our Patents End-To-End project from Portfolio Manager, David Landrith; and finally, a discussion of our International Initiatives and Patent Prosecution Highway, by Mark Powell, Special Advisor to the Commissioner for Patents.

As always, I look forward to the dialogue with the PPAC, the comments from the public, and we welcome everyone's comments and questions as we move through today's agenda. And now I'll turn the discussion over to Tony

Scardino.

MR. SCARDINO: Thank you, Bruce. Good morning, everyone. So, it's an exciting time once again. It seems like Ground Hog Day. The first meeting of the fiscal year, I always tell you the same thing, we are operating under continuing resolution, shocking.

But I want to go back to FY13 for a second, because it was a really challenging year, really exciting year. Obviously with first inventor to file going into place, with new fees being - a new fee schedule being established in March as well. And then we had sequestration.

So we had some positives and some not so positives, but the year ended very strong. By the end of the year we came out of what we called the bubble and the dip. We actually ended the year with a very healthy operating reserve on the patent side of the House.

A total of \$134 million and change was actually sequestered of patent fees; so of our collections, of course, that remained unavailable for expenditure. However, we did end the year with an operating reserve going into

2014, of approximately \$287 million. And that, as Bruce mentioned, enabled us to stay open during the Government shutdown, or what's officially called the lapse in appropriations. I want to just give a little background on that.

You know, as of October 1, most Federal entities didn't have an actual appropriations act, but (USPTO) had authority to spend prior-year (available) collections. So that \$287 million was able to carry us through -- it probably would have carried us through five or six weeks, we figure. But it certainly carried us through the first 17 days of the fiscal year so we didn't really miss a beat. We operated as we would normally, while we were planning to possibly shut down, if we had to, in a few weeks' time. So that was one of the unintended, nice things about having an operating reserve. We never planned for sequestration, but we certainly do plan for dips in collections, so I hope that folks understand that that's one of the reasons why we have an -- we build an operating reserve.

So, moving to '14, of course as I mentioned, we are under a continuing resolution

until January 15. What that means is we have the authority to spend and collect a prorated portion of last year's appropriation - specifically, three-and-a-half months' worth, which is, like, 105 days divided into 365, you get an amount that you collect and spend. And that's what we are doing. Plus we have the authority to spend monies from our operating reserve if necessary.

So now if we end up having our spend rate being a little higher in the beginning of the year for certain costs that just come up in the beginning of the year, we've got the operating reserve to, kind of, rely upon, and then we would pay it back later in the year when fees come in, and we have the authority for that.

So, things are looking very positive right now; however, having said that, as I mentioned, the continuing resolution does expire January 15th, and also the debt ceiling limit -- the discussion and challenge that everyone has early in February -- so we are cautiously, but optimistically, proceeding at pace. We are going to be hiring, we are -- spending money as planned, due to robust -- how would I

say -- projections for fee collections this year, as well as the operating reserve, we should be in very good shape.

But we are ever mindful of the fact that we could have a full year continuing resolution, we could have a reduction in appropriation for that matter. You know, once the agreement is struck, you know, if all Federal agencies may see a reduction in spending authority, as well as sequestration could come into play again.

Again, the operating reserve will help us through all those events, but we don't want to exhaust it, so we are being prudent there, working with Bruce and others to make sure that we are spending money where it's most appropriate, most prudent. We are going to be hiring again. We've turned IT development back on, as John Owens will tell you later this afternoon. So things are looking very good, but we have no control, like anyone else, as to what happens after the turn of the year in January and February.

And that brings us to, as I just discussed, FY15. We submitted a budget to the Office Management Budget as did all Federal

agencies back in September. They are in the midst of reviewing it. We'll get a turnaround back, what's called the pass back -- they will give us comments and thoughts, they could adjust our spending levels -- later in November -- well it's actually probably not going to be until December. Due to the shutdown things are a little slowed up in terms of getting a response back; but right now all indications are that the President still intends to submit a budget to Congress the first Monday in February.

So in January, once we get decisions from the Office of Management and Budget in the White House, we'll be sharing a revised budget with you for comment, and certainly hope that it has no surprises. We've gotten a lot of support so far. We don't anticipate many changes, but it's always possible.

And the last thing I have, is the strategic plan. As you know, we've been working on that. That's also due with the President's Budget on the first Monday in February. That's still the goal. We've made great progress. We had a public information session earlier this

month, and you've all received copies of the draft. We still continue to welcome comments, but we are on schedule to submit it in early February.

Any questions or thoughts? I know I went through that pretty quickly, and it's pretty exciting stuff.

MS. SHEPPARD: Thank you, Tony. You've mentioned -- you said it's exciting stuff, and it's an exciting day. I'll say that it's exciting in a much more positive way, than it was six months ago, or one year ago.

MR. SCARDINO: Absolutely.

MS. SHEPPARD: We at PPAC really do applaud you and your office, and the PTO for weathering the storms extraordinary well, and coming out in this position better than we ever thought you could have. You didn't miss a beat at all, serving the clients and the country over this time.

With that said, and you mentioned it, I think it's very important, even in times of plenty to be conservative, and that's the reserve fund has been -- I'm sorry -- the operating

reserve was your -- was where you went to during the -- during the shutdown, to make sure that the office stayed open. And should anything happen with the CR continuing with the appropriation levels, or with a sequestration coming next year, if you do have to draw down on those -- and I know you're aware of this -- to try and keep it at a healthy level, because this may be continuing for another eight years.

And as you dip into those funds, they tend to go away and you won't have those as a reserve anymore -- as operating reserve. There's also the Reserve Fund which has not been utilized yet, and we are hoping --

MR. SCARDINO: The Fee Reserve Fund, correct.

MS. SHEPPARD: -- the Fee Reserve Fund, which we are hoping that, as Congress intended, that at some point you would be able to have those funds set -- stocked away so you can use those in times of need also.

MR. SCARDINO: Right. And let me just clarify for a second. The Fee Reserve Fund, why it's never been used is because we've never

deposited any money there. Right now our current estimates are that we, for the first time (since the fund was created in 2001), could collect more fees than we are authorized by Congress. The President's Budget request level after CBO scored it, is actually a bit lower than our latest estimates for fees, to the tune of \$30 million to \$40 million.

So this could be the first year we ever test the Fee Reserve Fund, and I'm confident. We've talked to folks within the Administration as well as congressional staff on the appropriations committees, and that the intent of AIA was ready access, and that's a 15-day period -- waiting period -- once we submit a spend plan to the Hill.

And I'm confident that we've had great support from our partners up in Congress, and I think they will continue to do so.

MS. SHEPPARD: Along with the support you've gotten, the support outside of Congress but from -- I would believe from the states, on the satellite offices, and we want to commend you there, because the amount of -- we were concerned

about the funds that were going to be taken away from the office to stand up those offices. And at this point it looks like you'll be able to do those without significantly drawing down from any of the reserves. Is that correct?

MR. SCARDINO: That is absolutely correct. We've got a schedule for opening three satellite offices. Denver would be the first, Silicon Valley -- now San Jose -- will be the second, and then Dallas will be third. And they have been very, very positive developments in those regards in terms of free rent in Silicon Valley, and in Denver we are getting some money through GSA from the Recovery Act for the fit-out cost.

So it's really been wonderful working with the folks at the state and local level, to support us coming to those areas.

MS. SHEPPARD: And lastly, one more thing from me before I turn it over to others who probably have very relevant questions. Originally you had a -- you were planning for a soft landing, and reducing the amount of hires over the next -- out to 2018, and I believe

this -- the reduction was going start this upcoming fiscal year, but you're going to be hiring this upcoming fiscal year, but that's just to replace the people who you did not hire last year. Are you still intending to trend down to keep the level of FTEs stable so that you won't have to reduce at any time in the future?

MR. SCARDINO: Absolutely. As Robert would, I think, support me on. We have every intention to do this as prudently as possible. We will have a soft landing for sure. The challenge has last year we were originally going to hire 1,500 examiners, that went down to 1,000, in terms of our plan, and with sequestration we actually hired, I think, 538.

So this year we will hire more than we'd initially anticipated, and on top of that, the workload has actually grown. The application filing rate last year grew at a higher rate than we thought it was going to, which is all good, it just means that we need more folks on staff. But we are constantly -- you know, Bruce and his folks are constantly working on this infamous patent model that's very complex, and takes everything

into account from attrition, to workload, to grade levels.

That really helps us balance the revenue and workload coming in, versus the cost that we are spending for that. With overtime and all the variables that go into play there. So I'm very confident we will continue to have a soft landing.

MS. SHEPPARD: Thank you.

MR. SOBON: Thanks, Tony. And again, I also commend you and your office for -- and the entire staff for what you were able to do during -- both at the Government shutdown as well as the effects of sequester. I had a couple questions related to that. Obviously we have not been silent, and in our report we talk about the concerns that we have received from constituencies. The users who actually pay fees into the Office, that the sequester has taken fees that they pay, as I said before, for services, away from the Office.

I'd like to first ask you, you know, aside from this report, we've had various other reports over last several quarters about the

effects that that had, particularly on the IT development. So if you could comment.

What -- aside from the fact that, yes, basic operations we were able to be sustained, in fact, you're admirably reducing pendency in certain key areas. But what hasn't happened due to -- can you comment on what hasn't occurred in the office due to sequester?

And then related to that is -- I have actually maybe a sort of a nerdy question, but I -- but one related to our work during the fee-setting process. There was significant discussion around the -- especially the fact that you tilted the balance in fees, from early fees to reduce the fees for the initial filings and applications, and levering towards the end of life of patents to higher fees at renewals.

I'd be also curious if you can -- if it's too early, if you can comment at least a little bit about the elasticity of those second and third renewal fees, and how that is coming in now, post-fee increase. And if you can maybe give some comments now, for it's too early to tell? So those two questions.

MR. SCARDINO: Those are quite -- quite a couple of questions there. Let me try to take them in order. Sequestration, what did we cut? Again, as I mentioned sequestration of patent size was \$134.3 million. The bulk of the cuts were felt on the information technology side. Approximately \$80 million, we say, in cuts there, and what we mean by that is we've got -- we had a series of projects, some enterprise-wide but a lot of them patent-specific, such as patents end-to-end, that we had to pull back.

With contracts, existing contracts, with contractors on board doing development, and we either shut them down or we went to just bare bones; kept a few people on just to do maybe one scrum, one development team, just to keep the project, kind of, on life support.

So that was the bulk of it, and then we also did what you could do, i.e., wherever you could training, travel, all the things that are kind of viewed upon as discretionary, although they are integral to building your infrastructure and keeping your folks, you know, obviously trained to do their jobs as well as keeping our

stakeholders abreast of where we are internationally as well as domestically.

So I don't want to minimize the cuts. We just did what we could because we only had six months to make them. So thankfully, the way things worked, the operating reserve that we had going into fiscal year 2013, was roughly \$110 million on the patent side. So that helped us through as well. As much as sequester made funds unavailable, we still had some more than what was appropriated to us -- available to us.

So that was helpful, and then we knew towards the end of the year, going to your second question, the elasticity wasn't there as much as we'd anticipated. The second half of the year came back stronger, especially the last quarter, than we had anticipated, which is why the operating reserve grew from \$110 million to \$287 million. If we didn't have sequestration, granted, we would have spent more money, but literally that means another \$134 million that would have gone into the coffers. Then you're talking over \$400 million reserve.

Again, we would have spent more money.

I'm just trying to give you an idea of the fact that the fee rates are very positive in terms of the -- it hasn't we haven't seen a change -- as I said, the application levels continue to increase. Now the difficult part is maintenance fees, as you mentioned.

MR. SOBON: Yes. Yes.

MR. SCARDINO: Because it's such a large window, three-and-a-half to four years, we won't really know that for quite a while, but so far, initial estimates are that we haven't seen any kind of elasticity there.

MR. SOBON: Interesting. So in your -- in the new budget for this year, are any of those IT projects being restored? What are the things that are -- what's going to be happening now going forward?

And also beyond IT, another key sector that I think that was, at least from our understanding, hit, and I can see that from the things that we've been working on, on the international arena, where the PTO couldn't be in the room. Or at much smaller delegations for international work, which is critical as we try

to harmonize. Are those things being restored too in the upcoming budget? Can you comment on that?

MR. SCARDINO: Sure. So as I mentioned, John Owens will brief you later today. I'm not sure if John will actually sit down because he's so busy, because we've turned everything back on, so it may just be a walk by. Just keep that in mind. John is just as busy as can be. I'm being facetious, but it's absolutely true. He's got more projects than he knows what to do with, and he's been -- so what John did, very prudently, during the shutdown, was plan for a hiring. So that he could get more program managers in, so that he knew, come October, we were going to restart all these projects and he needed able managers to, obviously, oversee the projects.

So he can update you on that a bit but we are going, again, prudently as Christal mentioned, we can pull back later in the year if something happens in terms of sequestration, or we get a funding level that doesn't match what we think we are able to spend and collect this year.

But we are planning for the best while -- or I guess we should say, we are hoping for the best and planning for the worst.

So we are totally turned on.

Everything that was cut back last year, and more, everything that was in the President's Budget for 2014. So what happens is, when I say fully loaded President's Budget, that means we are going to go to every meeting that we usually would go to in full force. So all the travel, all the training that we've cut back on we are going to fully fund again. The money is there, the funding there, and the support is there from both our stakeholders as well as Congress.

MR. SOBON: That's good news. Okay.

Thank you.

MR. THURLOW: Hi, Tony. Thank you very much. So this is all very positive news. Thank you, for the update. For people that -- like myself -- that just work on day in and day out, just patent matters and don't focus enough other than seeing the fees, I just want to be clear on a few points. So forgive me.

We hear discussions about these

reserves, operating reserves, fee reserves and continuing resolutions and all of it is, do you have money to do day-in-and-day-out stuff? So the operating reserve, at least as of today, my understanding is that it's a lot of money, \$287 million, no restrictions at all for the PTO to use that money. There's nothing that -- at least today --

MR. SCARDINO: No restrictions -- right. No restrictions in the sense that it's in our coffers, we can spend it. Having said that, we have a partner in Congress, and we are very clear to say it's not a rainy-day fund. We don't just make up things we are going to spend it on.

MR. THURLOW: Right.

MR. SCARDINO: It becomes part of our spending plan. So we tell the world, Congress and everyone else, we are going to spend \$3 billion this year, and we only collect 2.8 billion, we will dip into the operating reserve for the extra \$200 million.

MR. THURLOW: Okay.

MR. SCARDINO: We are not just going to

go spend an extra \$200 million just because we feel like it.

MR. THURLOW: Right.

MR. SCARDINO: So it's -- there's no limitations, there is also an understanding that it's supposed to spent on what we say it's going to be spent on, to support the activities here.

MR. THURLOW: My second point is -- again this is all good news -- the concern is, is that based on what we wrote in we PPAC Report and so on, is that sequestered still raises concerns, \$134 million, so even that -- even though you have that surplus now, I think the big point is, we don't want the drum beat to stop. That PTO should keep all the fees that it takes in.

On the positive side, and to follow all the hard work that Dana is doing, and all the discussions up on the Hill, you know, when Former Under Secretary -- Former Director Kappos testified, the biggest thing I took out of that was they said, USPTO should get all of its fees, and I've seen a couple congressmen say that, even I think, as early as yesterday, there were some

amendments to the Bill, that Dana could talk about later, but they've basically said, PTO should get all those fee.

So to the extent, I'm sure Louis and everyone will agree that the PPAC can support that drumbeat, I think we'll do, so.

MR. SCARDINO: Thank you very much. I'm not going to fight that argument, or that position at all. But I'm not going to comment further either.

CHAIRMAN FOREMAN: Any other questions or comments for Tony? Again, Tony, I thank you for the presentation, and this is such a divergence from where we were months ago where it was always bad news and uncertainty, and I want to commend you on a job well done. So thank you.

MR. SCARDINO: Thank you.

CHAIRMAN FOREMAN: I'd like to turn the floor over to Chief Judge James Smith, who will be giving us a presentation. Chief Judge?

CHIEF JUDGE SMITH: Good afternoon. As you probably see from the number of slides and the amount of time allotted, there is considerably more information to share than there

is time to share it. We are very thankful for the time we had with the Sub-Committee yesterday to step through some of the items of information to have -- I think, a good, robust discussion about several things.

If you would like to begin with questions right away, I have certainly no objection to that, or you could overrule it even if I did. Or I can go into four or five things that I think might be particularly useful to look at, so. Okay.

Let me first find out -- there we go, the magic button is working. I want to shoot ahead to a picture. I think very germane for this week. As you probably all have seen, the USPTO has announced plans for a permanent space in San Jose, having reached a deal with the City of San Jose and the -- through a very generous and useful contribution to the effort by the State of California.

It should be clear to everyone, however, that notwithstanding that very positive development, or not awaiting that positive development, the Patent Trial and Appeal Board

has been operating for the USPTO in Northern California since April of this year. We have nine judges there located at our site, at 345 Middlefield Road in Menlo Park.

We happened on very good, useful space at very low cost. The facility, the campus there is actually controlled by the U.S. Geological Survey, and they had extra room. We have room there for as many judges as we will be able to seat initially in the San Jose space. So our plan is, essentially, to do our best to make sure that when we move from this site, to the permanent site at the end of 2014, that we will have the full complement of judges, and would shortly thereafter be trying to impose on our friends in the patents organization, maybe to get more space for judges.

As we will discuss in a little while, our need for judges continues to be very great because of the number of filings that the PTAB continues also to, not only be great, but to increase at a great level.

Do you have any questions about our operations in California, or any of our other

sites?

MR. HALLMAN: I have one quick question that's more a matter of curiosity than anything else. As we've taken on more judges at each one of these remote sites, just in general, and I'm not looking for a detailed, specific answer, from a geographic standpoint, have people come into these new positions from what I'll call the local area around the satellite offices? Or has it been people moving in from someplace else, or has it been a mix?

And again I -- this is not the kind of thing I'd expect you to know, but I just wanted to get a sense of that.

CHIEF JUDGE SMITH: Actually it's something I know very well, and which we are studying very carefully. I think I could give you probably to the number, the judges in each of the sites, and whether or not they relocated. In California, I think we may have had one or two relocations, but the submissions of applications and the actual presence of the judges there draws almost exclusively from the local Bar.

In Detroit, for example, we have nine

judges, I believe six of them were actually in the Detroit area. Three moved from other places in the Midwest. All of our Dallas judges either were in Dallas, or Houston, or previously had been there and were looking for the opportunity to move back, and were, for example, already members of the Texas Bar.

The same has essentially been true in Denver where we now also have eight judges, six of whom either were in the Denver area or moved back to there, having lived there previously, and two who came from other parts of the country.

MR. HALLMAN: Thank you very much.

CHIEF JUDGE SMITH: Speaking of judges, how is our effort going at adding to the number of judges? Currently we have 177 judges on board. For those of you who have been seeing these reports for a while, you will observe that that number is not growing as dramatically in the last three or four months, as it has in the last 12 to 13. We certainly are not sufficing -- or not leveling our effort at the 177. Indeed we have another half-dozen judges who've been approved by the Secretary of Commerce, who we

expect will join the Board sometime between now and the middle of December. And we have a slate of another 20 candidates whose interviews we hope to complete by the middle of December.

We very much need to keep this effort moving forward, we have the same major challenges that we had before including, for example, and ex parte appeal backlog that is still quite significant. We did -- 7:00 a.m. Wednesday, today is Thursday? Yeah. It seems so long since yesterday, at 7:00 a.m., we did our weekly tally of docketed ex parte appeals, we were at 25,492, so slightly lower than the 25,000, I think 520 may be the number on this slide.

For us that's a significant number to have gotten it below 25,500, below the 27,000 high that we had reached at some point early in 2012. It is perhaps -- and I may have a biased view on this -- more of an accomplishment than it might seem to be. I think it would be good progress in any event, but during the time, the last three or four months or so, we've increasingly moved judge resources from the ex parte appeal area to the AIA area.

In part because -- and here's the big statistic of the month -- in October '96 new AIA petitions were filed. As of this morning, at 7:00 a.m. we had 89 petitions in November, which has us, you know, essentially two-thirds of the way through the month. Unless Thanksgiving saves us we will top 100 petitions this month in the AIA area. Which means we are clearly on pace for 1,200 new AIA filings in fiscal year 2014.

You know that the requirements of the AIA are such that the trials need to be completed in a year. So, essentially, in any given year in which we take in that many cases, it tells you the number of trials that then need to be completed in the subsequent year. So we are already very -- scheduled to be very busy through, at least the early part of 2015, if no more cases came in the door.

If the trend continues to be a triple-digit trend for AIA filings, we have a lot of judge recruiting that we need to do.

CHAIRMAN FOREMAN: Thank you very much, Chief. And I thank you again for yesterday during the Sub-Committee Meeting, very helpful

information that you provided. Just to the point that you just made about the ex parte appeals and the judges, and the 177, sometimes I think there's a misconception outside the PTO, that all 177 judges are just working the new AIA proceedings, because that's the hot topic these days.

It does present a concern when you say that resources are being shifted from the ex parte appeal area to the AIA area, for obvious reasons. With that number, it has been coming down, you're doing a very good job at decreasing the amount, but if the filings in the AIA area continue to go up, obviously the concern is that, on the ex parte side, that those numbers go up, and so on, as resources shift, so. I know you're going work on it with hiring and so on, but you can understand our concern, I guess.

CHIEF JUDGE SMITH: It is a reasonable concern. I think it is probably appropriate for me to indicate or urge on you the expectation that the ex parte appeal backlog will at some point inflect again, and unfortunately to go upward. That is that our current rate of reduction will, at some point, stall depending on, of course, the

amount of AIA resources required.

That is a necessary shift to make, and a necessary choice about the use of the resources, because the ex parte decisions are not statutorily required to be completed in a year, and the AIA decisions have that requirement on them. Essentially we view cases being in three buckets, an AIA bucket with a firm statutory period in which they must be resolved. The special dispatch cases including interferences, re-exam matters and the like, which don't have a similar, very defined period, but are required to be essentially at the front of the line, and where we are still trying very -- in a very determined way to complete them in a limited period of time.

Then the ex parte appeal cases, which we care about just as much, but where we are not in violation of the law, if it takes two-and-a-half years to three years for them to run to disposition, in comparison with the requirement in the AIA area.

MR. THURLLOW: A quick follow up on that. One of the things we discussed, I mentioned to Annie and we discussed briefly yesterday was,

I think the office has done a great job on the RCE approach, but to the extent that I think when people file those pre-appeals -- pre-appeal briefs, and the appeals, sometimes I think that's -- it's on the office side I guess, and sometimes I think the PTAB is involved in it, when in fact PTAB doesn't take jurisdiction until the examiners answer.

So to the extent we can prevent cases from getting all the way up to the Board, and maybe that's something the office can look at -- Annie with your help and others.

MS. KEPPLING: That's exactly right, and I echo what Peter has said, but I wonder if you've considered some other alternatives, particularly for this backlog, and looking at some creative options. Like an option for mediation instead of just, you know, doing answers and things. Or -- and I do feel that while the Pre-Appeal Brief Conference and the Appeal Conference are valuable programs, I am not that they are used to their fullest, and permitting participation that have on with this before.

I think that could help eliminate some cases going to the Board, where there's an opportunity to get some resolution at a lower level. And I just wonder if there isn't an opportunity for the Board to look at these -- the backlog that currently resides there, and consider whether you offered applicants that ability to go back to the corps with an -- you know, with the availability of a more robust interview. And the ability to make amendments to the claims, that they might not be able to find some allowable subject matter, or modifications that would take it off your books.

And finally, I know that in the past where we had changes in the case law there were groups of individuals sent to the Board of Appeals to look through cases that were sitting there, and weed out some of the cases that didn't need to go to you, it was premature based on the fact that the law had changed, and while the cases were sitting there. So you might be able to eliminate some of the backlog in that way too.

So I just think you need to try to look at other creative approaches than just the

routine way it's done now with case going up and it is decided.

CHIEF JUDGE SMITH: Those are very good thoughts, and in a way we are somewhat careful about revealing because we don't want to do it prematurely. We have continued to look at creative approaches, to handling the workload, and to a certain amount of constant reengineering of the process to speed up times and reduce amount of resource required to get to dispositions.

Fundamentally, the backlog is a function of not only case being disposed, but how many cases are being received, and we are as contented to reduce the backlog by reducing the number of cases received, or needing treatment as we are -- cases being disposed. We are, for example, looking very carefully. We have two committees that the Board devoted to this effort looking at even more summary dispositions. Ones where possibly the applicants would agree if they wish to, to an abbreviated answer which might result in a quicker path back to prosecution.

There are all sorts of legal hurdles, so it requires a robust discussion with the

General Counsel's office, and the like to see what freedom we actually have. But we are not content with business as usual, we want to be very -- challenge ourselves to out-of-the-box thinking as much as we can.

MR. SOBON: Chief Judge Smith, a couple related questions. I think you were alluding to this, but I understand that you have reorganized the overall department and as I understand at least anecdotally, that some judges are now assigned to various sectors, like CBM versus the various contested cases. Is that something you can publish? Or that we can have more visibility into the structure of the PTAB?

CHIEF JUDGE SMITH: We can put out some additional information, including on the website as to the organizational structure. In some ways there, perhaps, has been less change, and maybe anecdotally is being reported. Essentially, the structure of the Board is very much the same in principal degree.

We have two Vice Chief Judges, and then a group of lead judges. We have more lead judges now than we had before. And that -- necessarily

means we have changed because more of them, and to some extent we have changed some of the assignments of the leadership. That would have happened, and the way in which it happens actually follows a very understandable progression. It was reasonable to have, say, six or seven lead judges when we when we had 90 judges, and reasonable to have several more now that we twice as many judges. So that's one of the changes we have carried forward with.

Another change we have put in place is to have a bit more definition of a division principally responsible for ex parte appeals, including ex parte reexamination appeals, and another group principally responsible for the AIA work, including all the different types of AIA trial proceedings.

That said, we are not being rigid in our approach, which means there's only so much to be derived from looking at the division of sections and the like. We have several judges who are handling principally, AIA cases, who also are working on ex parte appeals, and several judges devoted, more or less, to ex parte appeals who

also are working on AIA cases.

And we are trying to keep that flexibility to leverage several of the capabilities including, for example, the technical expertise of the judges, where for example, we had a PhD Microbiology Judge who's is primarily on biotech cases, but biotech ex parte appeals, a panel need may arise on a biotech case in the AIA area, and we don't want a rigid division of our judges to prevent us from being able to leverage the capability of that judge to help decide such a case.

MR. SOBON: Okay. A broader issue, I'm -- personally been receiving a number of concerns, to the point of anguish, from various users, who are being brought in to contest the cases. And you mentioned this, the statutory requirement for one year, although there is six months for certain cases for good cause to be extended. That all the various procedures that we debated quite at length during the implementation phase of AIA within PPAC, with you and your office, and the public, that those procedures and the requirements, and in some

cases the view of rigid requirements of page limits, inability to bring live testimony especially for secondary considerations.

Other kinds of considerations are, working to almost -- and some people consider this due process problems for the rights of patent holders in these contested cases. I know we are about one year into -- or little over one year into some of these cases, some of them are starting already now, the PGR. I haven't addressed this with the broader PPAC but it seems to me it might make sense for us and with PPAC it could provide the auspices for this, that we -- and maybe you have thought of this, within the office of having something like a town hall, or an information gathering session, specifically devoted to the public, being able to offer their perspective in a way, the broad perspective to the office and to us, and about the concerns that are being raised. And I say this in the context of, as we all know, and it's been brought up recently, the availability for review for under the APA, for administrative actions of these sorts, is circumspect by the fellow circuit.

I would suggest it might make sense for us to have broader look back and hopefully look forward, in terms of how well these procedures are working, and whether they are working hard towards patentees, in how this is being structure. And what are your thoughts about that?

CHIEF JUDGE SMITH: Actually we have planned at the nine-month make, particularly targeting an event, prior to even the conclusion of a first year, essentially a PTAB Conference with external participation, comments, views. And we have the data and all the contractual provisions fully completed to move ahead with that, and just prior to when we were going to announce it and move ahead with the advertising, the evil hand of sequestration required our cancellation of the proceeding.

We essentially have kept all the plans in place and the contractors for carrying forward with that at the earliest date that the climate and the permissions are in place so that we can do that. We think it is very important to know just how much inducement of anguish we are

bringing about, and to seek to reduce it to the extent possible. We hope our user base also will understand that there's a certain amount of anguish that is shared which is to say, we are -- the imposition of the one-year requirement on the completion of proceedings is not merely on the parties, it is as much on the tribunal as it is on the parties.

And striking the right balance between what the statute requires and due process for the parties is the challenge, and certainly one, better engaged if we have a robust dialogue about it.

MR. SOBON: Well that sounds -- I'm very -- partly glad to hear that the plans are there in place. I would encourage the office to really prioritize that. I think it's something that would be well received by the public and by the user community, and I for one, I think that PPAC would welcome participating and helping in that kind of public forum, I think it's right up our institutional alley to assist you in doing that. I would highly encourage the office to prioritize that given that, it sounds like we have

a greater uplift in budget availability to do something like this. I think doing that at a reasonable -- some timeframe would be very useful. Thanks.

CHAIRMAN FOREMAN: Any last question?
Christal.

MS. SHEPPARD: Just quickly. I agree with everything that's been said, creative solutions are necessary. I didn't do the math just now, and you have a lot of numbers here, but one number I didn't see is that -- step back second -- statutory deadlines are important, they make sense, but given your current staffing levels, and the amount of things that are coming in the door, at what point does that break. So how -- if you do the math now knowing that -- how much has to be done within a year, with your staffing levels, and a lot of those people being new -- how many cases per judge, and how much time do they have to do each -- for each case?

CHIEF JUDGE SMITH: We have done the math, and have been looking at the math fairly rigorously, for quite some time. Here is the context in which the PTAB has done the analysis,

and what we view as our responsibility. As you are also aware, the statute grants to the Under Secretary and the Director the opportunity to turn off the tap on AIA cases, for any number of reasons, capacity being only one of them.

The other policy reasons and the like, the statute is fairly permissive with regard to permitting the Under Secretary to possibly disappoint the parties, or would-be parties and limit the number of proceedings. In that context, we viewed at the PTAB, our responsibility being that of fully analyzing the need and our resources, so as to be able to inform the Under Secretary as to what our capacity is, so that it would not sneak up on us, and overtake us when we reach that point.

Which has included all the things you mentioned and perhaps a few more things, what is the average capacity of a judge, a panel. How many motions are we seeing per case and how much does that burden, so to speak, the progress of the case after it's been instituted en route to the one-year determination. We've put together --- we are working on putting together

all the numbers. Vice Chief Judge Boalick, who I believe is seated behind me, has helped lead the effort in conducting that analysis.

Of course, you will understand that it's also very much a contingent analysis, again, along the lines you described. How many cases come in, how many judges come in, how quickly do the cases come in, how quickly do the judges come in. How quick does the judge ramp up to be able to hand that -- handle cases to reach either a low, medium or high level of proficiency. All those things are in the process of coming to be, and not definitively determinable in advance.

But we are working on that around the clock to make sure that we provide -- we discharge our duty, so that the Under Secretary can discharge his or hers.

MS. SHEPPARD: You didn't give me a number.

CHIEF JUDGE SMITH: Because the number is undetermined.

MS. KEPPLINGER: Christal, do you mean for the ex parte or the AIA cases?

MS. SHEPPARD: Mainly for the AIA cases

because the problem is that the ex parte cases you're going to get pushed aside because there is no time limit on those.

MS. KEPPLINGER: Well, yeah. But in terms of the time -- they do have -- they have requirements, sort of, like examiners do. In general, like an average time that they're supposed to spend on -- or they have -- a certain number of opinions that they need to get out. So they do have rigorous standards for the ex parte cases.

MS. JENKINS: Just real quick. I just want to commend you, as always, for a very detailed presentation. And I commend the audience to look at this information, it's so helpful. It's helpful for clients. It gives you an understanding of all the efforts that you've been putting into this, and we appreciate greatly. What if you had a number -- I'll go where Christal is going but not -- a different way.

I hear that you need judges, is there a magic number, or is there a number, a target that you're looking for that will help address this? And whatever that number is, I think that the PPAC

should help in some capacity to try to find qualified people to be judges, so.

CHIEF JUDGE SMITH: We are targeting to add 60 more judges between now and the end of the third quarter of fiscal year 2014. So by June or so of next calendar year, to have another 60 judges on board, we have office space for twice as many in Menlo Park, Dallas, and Denver, as we currently have, so we could absorb some 30 of those 60 judges just in those locations. We are in the process of a space expansion in Detroit, which will allow us, also almost to double the number of judges that we have in Detroit, and we have certainly space for the remaining number of that 60 here in Virginia.

And a bit more to Professor Sheppard's question. Were we to reach that number, and were we to see no more than about 100 AIA petitions per month, and not much growth in the ex parte appeal, then we think we would have what we need to carry forward without needing to miss the AIA deadlines.

CHAIRMAN FOREMAN: Thank you. Thank you, Judge Smith. And as Marylee mentioned, I know

you've spent a great deal of time putting together this presentation, so I would encourage members of the public to review this information online. It is available for anyone who would like to see it online, and we look forward to an update three months from now at our net PPAC Meeting.

CHIEF JUDGE SMITH: If I may, one more work. It would be wrong of me, in light of your very kind comments about our written materials and the work spent on putting the information together, not to acknowledge the excellent colleagues of mine at the PTAB who do work on that, including Acting Vice Chief Judge Boalick, Acting Vice Chief Judge Horner.

I also want to mention Krista Flanagan, the Confidential Assistant to the Office of the Chief Judge, who has worked with Ms. Lowe in getting material to the PPAC, and engaging our interactions, is just, in my view, as much as we possibly could ask for in terms of effort.

CHAIRMAN FOREMAN: Great. Thank you. Thank you, again. And so we are a little bit past schedule, but that's all right. We've got a scheduled lunch break at this point, from 12:25

to 1:30. However, to kind of differ from what we've done in the past we are going to have a lunchtime speaker that will begin around 12:45.

And so members of PPAC, you're free to go grab lunch real quick and bring it back in here. Members of the public, we invite you and welcome you to come back and hear our presentation from William Smith and Joseph Mallon, on Compact Prosecution, and that should begin right around 12:45. So, thank you again.

(Recess)

MS. KEPPLINGER: Okay. I think we are ready to get started. It's my pleasure today to introduce a couple of speakers that we are fortunate to have with us. One in person and one online, to give a presentation on some ideas that they have about prosecution.

And with us today is Bill Smith. He started here at the Patent Office just a little before I did, and he's a Chemical Engineer. He actually -- I've known him since I started at the PTO, and he was actually my personal sounding board, as an examiner. I would write and bounce things off him. Here's what I'm going to do.

Hey, does this sound right? And we were actually in a car pool together for many, many years, so.

He started as a Patent Examiner, he ended as a Judge at the Board of Appeals, and APJ, and he did biotech there. I'd like to think that he's being my sounding board in biotech had something to do with that, since he's currently Of Counsel at Woodcock and Washburn.

And also, we have on line with us Joe Mallon who helped write the paper. He's a Partner at Knobbe Martens, and he does -- he focuses on chemical and life sciences practice area.

And Bill is the Vice Chair of the Patent Office Practice Committee at the IPO. And Joe is a member of that Committee and so that's how they came to be writing this paper. So, thank you very much, Bill, and --

MR. SMITH: Okay. Well, I thank the Committee for squeezing me in at lunch time. I appreciate you taking time out of your day.

As Esther mentioned, Joe and I met through our work with the IPO Patent Office Practice Committee over the last so many years,

and we found we had a lot of ideas in common concerning patent prosecution. And before we get into the presentation, while IPO published our paper, the views expressed therein are purely those of Joe and myself, and are not to be attributed to anybody else.

So if you like them, Joe and I will take the credit. If you don't like them, Joe and I will take the credit, if you don't like them, Joe and I will that credit too.

So this morning I was getting ready, and I was trying to think of an analogy how to describe the existing Compact Prosecuting system we are working under. I finally came up with, I think, is an apt analogy. And it's, think of a older, overweight, balding white-haired male. Who, every morning he wakes up, he finds out there's more creaks and groans in the body than there were the day before, and his doctors are about ready to buy a new BMW.

Compact Prosecution as we know it, started in the late '60s into the '70s, since the Patent Office moved from the Department of Commerce over to Crystal City. And they

transitioned from the older plan of basing examiners productivity on purely how many office actions they wrote in a given pay period.

And what happened is, prosecution just dragged out and people didn't get serious till the third, fourth, fifth Office Action in it. So Compact Prosecution, the major tenet is the Second Office Action will normally be made final. So we've been working under this system for as long as I've been in the Patent system. I think it's starting to show its age, and starting to show wear and tear.

And when I came into the Patent Office I think this concept was impressed upon me by group directors and SPEs, I think it's a truism we should all embrace is, Patent Examination process should be collaborative and collegial effort, to identify patentable subject matter that is conducted in an efficient, effective and transparent manner. And I think that as we go through our thoughts in this paper, you'll see that we have tried to adopt these goals and put them into use on a day-to-day basis.

The goals of what we call CP2.0, well,

increased efficiency, reduce unproductive activities in the patent examination process, we do that mainly by eliminating final rejections and the attending after-final practice, which as we are aware is a matter of discussion now, and oftentimes a matter of great frustration to patent applicant. And reduce artificial pauses in the examination process as we find them. We want to focus on final rather than interim objectives. And what is the objective of patent examination?

It's to bring a case to allowance appeal or ultimately an abandonment. Not the pseudo abandonment that's counted for RCEs, but a final decision by applicant that we either do not want to spend resources on this case, or that the Patent Office just has such a great case, that you know what, we now know our inventions are not patentable.

And we want to focus on the final objective, instead of where we are now, where we are focusing on final rejections and office actions. We also want to bring increased resources to bear in what we call stalled cases,

not every case, but I think we all recognize a stalled case where we find it. And we want to involve and empower supervisors, and mediators to get involved in a meaningful manner to bring their wisdom and insight to bear on these cases.

As Esther said, I was her sounding board. And there was a lot of that when I was growing up as an examiner, and I think a lot of that has gone away in large part because of the hoteling. And it's not a criticism of hoteling, I work from home myself, but with every positive step, sometimes we give -- there are unintended consequences. And I think that bringing more resources to bear at an appropriate time, and in an appropriate manner, can get these cases moving forward.

Other goals, improved docket management, and then the continued emphasis on patent quality which this administration has been focused on like a laser, and which we applaud.

Coincidentally, as we know, the PTO came out with their draft Strategic Plan, and we found that the thoughts and goals expressed in our paper aligned quite nicely. These are the

objectives from the PTO's draft Strategic Plan. Refine Optimal Patent Pendency including enhanced transparency, increasing efficiencies, and patent examination capacity to align with Optimal Patent Pendency, which we think is what our paper is all about.

Continue to enhance patent quality and there's always an opportunity to do that and then maintain the PTAB's ability to provide timely and high quality decisions. I think after listening to Chief Judge Smith, in the previous presentation, with his challenges and balancing his resources between the AIA trials, and the ex parte appeals, I think that the thoughts in our paper should help relieve the ex parte appeal.

Well, what's the main point?

Eliminate dead zones. Right now, and this is the way it's been for what, over 40 years, you file an application, you get an initial examination, and you get one chance to respond by right, by way of amendment or evidence.

Second Office Action is under the precepts or the present concept of Compact Prosecution it's normally made final. As we know

you have no right after final to amend the claims or present further evidence. What we proposed to do is to take away the concept of a final rejection. And without a final rejection, then we don't have after-final practice. And this, in and of itself could save months in dependency of a case.

What we propose in terms of reducing unproductive activities without a pause to a final objective to allowance, appeal, or a final abandonment. If we keep the case fresh in the examiner's mind, and in the applicant's mind; this will encourage interviews. This has certainly been another wonderful initiative, under the current administration, beginning with Director Kappos, and continuing to encourage examiner interviews. I think all the data, all the experiences tell us that the more interviews we have in a case, the better the chances are, we are going to arrive at a reasonable resolution of the issues.

All too often just dealing in sterile paper, it's like two ships passing in the night. We need that person- to-person contact to be able

to bounce ideas off, propose language, listen and learn. Keeps subject matter fresh in mind, as we now know what happens after you get a final rejection? Nothing is entered after final; file and RCE perhaps.

Well, we now know that RCEs are being taken up, it's six to seven months, and I've just heard of a case where it was 1.7 years after it was filed, and in that case they had had an interview with the examiner, and they thought they were very close to getting the case allowed, and 1.7 years later when it's picked up, it had a new examiner, who had no understanding of where the case was. So that was basically a huge, huge step backwards, because they had an artificial stop caused by the final rejection.

Foster collaborative mindset. I think that as we -- if you we move to a more continuous workflow in front of the examiner, the examiners will be able to take possession of a case once they pick it up, and they'll be able to see that they're going to be able to see it through to a final resolution in a more efficient, effective manner.

They take possession of the case, it

becomes a collaborative measure. We are not so worried about whether there's a final rejection pending, or is there one coming up, it's going to enhance communications between examiners and practitioners.

And again, we want to focus on the long-term objective, we want to have search for patentable subject matter, and we want to discourage that short-term focus, where, all too often it's, how can I get the case to final rejection, I know they're going to file and RCE, and then I'll pick it up down the road. I'm going to pick up the next case. But we want to smooth all of this out, once we start examination on a case, let's come up with a system, where we can reasonably conclude it.

Additional resources can help stalled cases. What we propose -- and again, we are not wedded to any of this, this is just us thinking out loud, and hopefully starting a conversation today, where we can move towards a more continual workflow and produce the efficiencies and effectiveness that we think will occur.

Supervisory approval for a third Office

Action; this actually find support in existing MPEP provision, where the MPEP says the third Office Action in an application needs the SPE's approval, and the MPEP encourages the SPE to get involved, personally involved, and to try to resolve the issues. And all too often, it's not that applicants have a monopoly on good ideas, it's just that by having increased resources, a fresh set of eyes looking at the case, and perhaps being able to further explain why the claims are unpatentable, an applicant can have that ah-ah moment, just like examiners can have that ah-ah moment during an interview.

So we think it's important that as the cases go on, that we do have more resources brought onto the case. At some point in time, we would like to see along the lines of what we now have as an appeal conference, an examiner and two neutral conferees. With the current appeal conferences, I think it's important to note that any of these additional resources that are brought to bear, all they can do is to remove existing rejections.

It's always the examiner's authority to

actually determine a claim is patentable. But just like a Board decision, reversing the examiner does not mean those claims are patentable. All the Board decision means, in a reversal, is that the rejection before it for review was not supported by sufficient facts and reasons. So on that record the claim is patentable, but of course the patent examiner, now that they are apprised of the weaknesses in their case, perhaps there's an easy answer or easy way to overcome those weaknesses, perhaps.

We see that all the time now where, unfortunately, we have to file a pre-appeal brief conference request, the five-pager, only to have the case reopened. Okay. And that was usually after a protracted -- after final practice, and months wasted in the process.

Appeal, we still retain the appeal, current appeal option after second rejection. We don't think that there will be as many appeals after the Second Office Action. Why? Because we haven't come to this artificial halt; we can respond to the Second Office Action by right, with amendments or evidence. We can continue the

conversation with the examiner. We can continue to build momentum with the examiner. And I think the statistics will show that if we can have that full right after that second office action, in so many cases we are so close, if we don't have this artificial halt by way of a final rejection, that the case can quickly be resolved in only one more, maybe at best two more office actions.

Option to attend the appeal conference, as you heard from the Chief Judge, the Board is still overwhelmed with ex parte appeals. And from my experience both at the Board as a APJ, and now being on being on the outside, I will say that in my view, and only my view, a lot of these appeals are frustration appeals.

We've worked with the examiner and the SPE as much as we can, but we have just not been able to reach an agreement or receive a -- what we would view a credible statement of why the claims were unpatentable, so we'd go on appeal. And if you look at the appeal statistics, the number of cases that are reopened after the brief conference request, the number of cases that reopened after an appeal brief is filed, as well

as the number of cases that are just outright reversed at the Board, it's clear that there's room for significant improvement in these cases that are now going on appeal.

And we think that if we have the option to attend an appeal conference where we can present our side of the case, a lot of these cases will not be going up to appeal.

Option to request mediation after examiner's answer, when I was on the Board I often felt the Board would be better served as - to serve as the Mediation Board instead of a final determiner. That both sides had good points, but at the same time we could see a middle position where we think people could end up with, but under the current system, it's either an affirmance or a reversal. We can't bring the two parties to the table and discuss the issues.

Perhaps an option for a Track One appeal, as you heard from the Chief Judge, we are still at 25,000 appeals pending. It doesn't look like that's going to go down significantly any time soon.

Okay. Changes to docket management; and

again, this is just Joe and I thinking out loud. And again, we want to start a conversation. In the concept of balance disposals, let's go to something where the examiner has just charged with examination of X-number of new cases per year, and that can easily be determined and negotiated, and just tell the examiner, this is what they are expected to do over the fiscal year. And, perhaps, it should be disposal of X- number of cases per year, but it's -- there's ways to get around this concept of a balanced disposal, and by this way we can get rid of the current pay period base count system.

I think that the current pay period count system, and the way dockets are monitored on a per-pay-period basis, creates an awful lot of stress and tension with the patent examiners. And by going away from that finite, every two weeks I'm expected to do something, to a more open -- where, I know what I'm expected to do over the course of a fiscal year, and I can use my own professional judgment as to how I'm going to go about and do my work. I would hope examiners would find that liberating and exciting.

And I think that perhaps, along with our thought of focusing on the end objective, is to come up with some sort of reasonable actions per disposal metric. I believe the managers are now measured in part by that. I know the patent offices always track that, but I think that if we do away with final rejections, it's going to be more than what we try to do now, because the two-point-something because we are trying to cram that into the concept of the case, it's going to get a final rejection. So I think this gives us more of an incentive to focus on bringing these cases to a quicker resolution.

Docket first, continuation, divisional based on priority date, dockets, AIPs and subsequent continuations, individuals based on filing date, again, we know the patent office is always caught between, let's get old business done while concluding ongoing business. And this may be a reasonable way of achieving an appropriate balance.

Quality, continue the real-time quality review, that was another great innovation brought to the office by Director Kappos. The

QIR system development, and we think strengthening the Ombudsman Program, and this goes hand in hand with the thought of bringing increased resources to bear on stalled cases. It would just be very helpful if, at some point in time, we would have a -- ability to have an independent review of a case. And I think in my experience so many cases that end up on appeal would not end up on appeal if we had a truly independent set of eyes on a case.

And then increased transparency we've talked about this before, a detailed performance data, at least on a art unit - by art unit basis in terms of pendency, and all the productivity statistics that the office keeps track of. This will give the public, and particularly patent applicants, a real-time view of the expectations when they see which art unit their case is in. And will also give the public and patent applicants a chance to provide input to the office.

Okay. And I don't know how much time we have left. I hope I didn't go over. And I'd be glad to answer any questions.

MS. KEPPLINGER: If you don't have a final rejection, then how do you sort of -- how would you even get to continuations? Because right now, of course with the final rejection you have -- the prosecution ends, and while there's some after-final practice, not a whole lot, the applicant, at least, knows what the next step is. So how do you create a reasonable amount of prosecution but not overly burden the examiners?

MR. SMITH: Well, I think from my experience, especially now on the outside, why do we file continuations, there's two main reasons. One is that we've achieved allowance of claims of reduced scope. That we believe we have a good reason to why the broader claims are allowable, but we'll go ahead and take out the application on the narrower claims and file a continuation to pursue the broader claims.

I think that with -- on those cases if we had independent set of eyes at some point in time, it may be we could bring those cases to a final conclusion, where we would reduce the need for a continuation. And I think that the same way with RCEs, in that in essence, this proposal, by

doing away with the final rejection, puts the continued examination into the RCE. That surely we are just paying a fee to keep going forward, but what we have done is eliminated those dead zones of that final rejection, and the after-final practice that all too often now does not result in a productive conclusion.

MS. KEPPLINGER: A question over here.

MS. DEVORAH: Thank you. Hi. My name is Carrie Devorah, I'm from the Center for Copyright Integrity --

MR. SMITH: Could you please speak up?

MS. DEVORAH: My name is Carrie Devorah, and I'm with the Center for Corporate Integrity. And one point before I get to my question. There's a gentleman who is approaching Congress, he says he has a patent that's been in process for 16 years. I've encouraged him to come out here and --

MR. SMITH: Okay. I have a hearing problem, I'm having a hard time hearing you, if they could turn the volume up, or --

SPEAKER: Use the microphone.

MS. DEVORAH: Hello?

MR. SMITH: There you go, that's better.

MS. DEVORAH: Okay. I have a question, but a point to make. There's a gentleman that reached out to me -- My name is Carrie Devorah, Center for Corporate Integrity -- he's alleging to have a patent in process for 16 years. I've encouraged him to come out here, and I'm surprised that with all the correspondences, it seems nobody has reached from -- The point I want to make is, I hear the conversation, I hear about patents. I hear the conversation in the judiciaries on patent trolling and all those issues, issues, and it seems that patent trolling actually may have been seeded here with all patents coming out, and not a clarification as to responsibility.

And so while you're talking about being burdened here in terms of getting patents moving forward, the legal system now is being burdened on the other side with people who have patents and the public not aware of what patents are, and every item that we now possess, and how many of them are interfaced with each other.

So what I'd like to find out, is there any responsibility being accepted by the USPTO for what's now becoming a new hot issue in Congress, the patent tolling? That possibly you've released patents that maybe shouldn't have, and maybe there are some other things -- suggestions you want to make?

MR. SMITH: Well, is your question directed to the PTO?

MS. DEVORAH: Hmm, yes, to the PTO. I can't -- you know, my experience, the people here are awesome and rock stars, but that's because I'm a different personality, not looking to blame someone. But there's a lot of people that don't take the time or have the proximity to come to the USPTO, and know that you are all everyday people really trying to do a good job, and that it takes responsibility on their part to communicate.

So there's a breakdown somewhere. So my question right now is to the USPTO on whole. There is a language barrier that needs to be opened up, you're discussing it here within your own system, needing an ombudsman, not sure if that's going to solve the problem, in all

seriousness. Most people don't even know what one is, let alone how to spell it.

I think it's simplifying language. It's making numbers. In one session, I was over at GIPA, a number was way at the bottom, that number should be way at the top. So there's a different to market and present stuff. So going back to the issue of patents, you've got backup of patents here, Congress is now being approached by patent trolling, the legal system now is being burdened by people that are getting slapped with infringements, for things that they use like Wi-Fi, that they didn't even know how patent on.

MS. KEPPLINGER: Maybe I could -- maybe I could speak up for a second, and then --

MS. DEVORAH: Sure.

MS. KEPPLINGER: -- and then Peggy Focarino could add to it, but thank you, for the question. I think Congress is looking at those issues.

MS. DEVORAH: Badly. The problem is they don't have you here.

MS. KEPPLINGER: The thing that you have to recognize is that no system is perfect,

particularly this system that examines a tremendous number of applications in a short period of time, so you're never going to get perfection in that system. But what has been added, there were already safety valves for that, besides litigation. The most recent AIA legislation added additional programs that are designed to correct any of those errors should they occur in patents that shouldn't have been granted.

So I spent my career here at the PTO, I'm not there -- here now, I left it years ago, and I'm on the outside, but I can assure you that the PTO has always tried to maintain the highest standards of quality and issue only those patents that should be issued. But having said that, in our view, and I think, probably, I could speak for everyone around this table, we believe that patents are the engine of innovation, and have driven the economy of our country in a very positive way.

Now the latest issue with trolls, there may be some bad actors out there, there may be legitimate non-practicing entities. So

hopefully it will all get sorted out. But I also think Peggy probably has something to say about it.

MS. DEVORAH: Congress is struggling in that they are having characters put before them to give opinions that some of them have a purpose in being there. When I speak to staff here, I get a very different story --

MS. KEPPLINGER: Excuse me. Actually we have a limited amount of time for the lunch, and so we need to move on. I'll see if other people have questions. And Peggy?

MS. FOCARINO: I can't add much more to what Esther said, but certainly we are committed to improving quality, and we'd like to have the highest quality possible. Are there things in the system that we can improve? Absolutely. And we are opened to that, we'd want to see how the new trial proceedings play out, because they offer a lower-cost alternative to the litigation that you're talking about.

And there's a lot of things happening to attack some of the bad actors, as Esther said. And it takes time to make changes, but USPTO is

extremely open to ideas, comments, anything that we can do to improve quality.

SPEAKER: Why not let the citizen have this table too, in addition to all the --

MS. KEPPLINGER: Well, I think we are citizens. We aren't PTO people. I happen to be, but there is -- I used to be, so I spent my career here, but the others did not. They come from all different walks of the industry. So there are criteria for the selection of the people on the Committee. So I think we are all trying to represent the perspectives of the public.

CHAIRMAN FOREMAN: Do we have any other questions for Bill Smith and his presentation?

MS. KEPPLINGER: I was going to say, Robert, I'm sure you have some --

MR. BUDENS: Yes. Obviously this can -- you know, I cannot remain totally silent on this. I will limit some of my comments because -- otherwise I might end up getting in trouble.

With all due respect to Judge Smith, because I've had a lot of respect for you for many years; looking at this from an examiner point of

view, I appreciate some of the things you said, and I appreciate the chance to have a conversation on stuff like this, and I think some of the points in here are things that do need to be discussed.

When I at this policy as a whole, and this proposal, what I see is a veiled -- basically a veiled attempt -- conversations -- I'm sorry -- I've had with Esther for years, you know, on the PPAC here off and on, and with others and stuff. What I see is an attempt to create a system that gives applicants and their attorneys more bites at the apple for less expense, and putting examiners in a position of undue pressure, and influence, and potential political pressure.

And so I would pose a couple of thoughts and questions. First of all, looking at slide four, on the focus on final rather than interim objectives, allowance appeal and abandonment; I believe that we -- this system, as it is, is already focused on those outcomes. And examiners are always going to be focused on trying to get to allowable subject matter, or trying to get the case abandoned, or onto appeal, and off

their desk, to a final discussion.

So somewhere in there, you know, this isn't just an issue of getting rid of final rejections, for the sake of final rejections, because that doesn't change the motivation to get to allowances and appeal. Eliminating final rejections only -- and also then putting the examiner under the pressure of having to get every subsequent rejection, third on, approved by a supervisor, creates undue influence, and undue pressure, and is basically just a way of getting, you know, the -- out from under the primary examiner's authority.

Reducing artificial pauses, I'm not sure what the definition of artificial pauses is. Is the applicant community willing to give up extensions of time? That is certainly an artificial pause, and that probably accounts for half of the prosecution time of a case. So, you know, issues there.

Involve and empower supervisor's clauses and mediators, okay. Supervisors are already involved, they run the Art Unit and they supervise.

Clauses are not in the chain of command of supervisors, and we would fight that, you know, tooth and nail, because a lot of times the clauses -- first of all, even the supervisors do not understand, necessarily, the technology at the level that the primary examiner does. This is a great concern to me. Okay. We have supervisors all over this agency, you know, who are supervising Art Units in areas that they didn't examine in. Okay.

We have group directors doing the same thing. Okay. That is -- but now you're telling me that the examining corps should sit there and say, okay, let them have the ability to just wantonly override every decision of the primary examiners. That's a problem.

Continued emphasis on patent quality, everybody supports that, I don't -- improve docket management, we are already trying to do that. Refine optimal patent pendency, that's a discussion that I've been advocating for, for at least the last good year, of saying it's -- trying to get this Board, and the Committee, and Congress, and everybody, to ask the question, is

10-month pendency really the right answer?

So there I want to commend, you know, that that's a discussion, I totally agree with you, we need to have. But doing some of these other things, encouraging interviews, the office is already doing that, and I think, we are seeing improvements in interviews. But encourage productive exchanges. I would love to see that. What I'd like to see is any comments or discussions, on how we do that on both sides of the table, okay.

Examiners already have in our performance element, the requirement to provide stakeholder customer service, or whatever. What is the other side of the table willing to do to encourage productive exchanges? You know, are you -- because those exchanges can happen any time now, in the system we have now, okay. And if they do occur, more often than not what happens, we get to allowable subject matter very quickly.

The first-action interview pilot is evidence of that. But I don't see that happening on both sides of the table, and I'm pretty sure the Bar is not going to jump at the opportunity

of having the office issue sanctions on them if they don't exchange -- you know, do productive exchanges. So there's lots of other issues that I have with these, and I'm sure we will take up if the agency attempts to implement this.

Oh, one last thing. End concept of balance disposal, you may not be aware of this, Judge Smith, but initial examination of X-cases per year, the agency tried to cram that our throat a few years ago. It was called Flat Gold Program and, you know, if you think that's going to be an easy fix, you know, for the examining corps, that has -- that fight has already been fought once and it did not -- was not pleasant. And management knows full well, we are going to stand on that issue.

So I think we -- I think there's some good ideas in here that we ought to explore, I think there -- you know, the program as a whole, I'm very leery of, and concerned about, because I don't really think it's going to get there. There's a part of me that's looking at it, and saying, you know, be careful, it might be like ObamaCare. You think you're getting one thing

and you may get something totally different that you can't afford, and don't want in the end result.

On that note I will just make it clear that we will have some interesting discussions on -- you know, if this goes forward.

MR. SMITH: If I may, quickly, just some thoughts here. Robert, I appreciate your input. And again, our thought is to start a conversation, nothing in this is wedded in any whatever. The main thing, I think the biggest frustration now is with the final rejections in the final -- in the lack of after-final practice. And in regard to your increasing cost, now that the patent office can set their own fees, I think if, in reading the whole paper, we expect that there would be increasing fees for each time we go -- reopen prosecution without having to go through that final rejection.

So, I think with the added ability of the PTO to, obviously, determine how much it costs to deliver a service, and also the present thought that nobody wants these cases going on forever, and there should be a financial penalty perhaps,

as it goes on. But I think just a simple thought, if we could focus on one thing, is to eliminate the idea of a final rejection, and getting rid of that artificial delay and pause.

Because right now having to wait -- having that interview after final -- being this close to getting the case allowed, and then not having the case picked up again, anywhere from six months to a year-and-a-half is difficult.

MR. BUDENS: I appreciate that comment. You do raise an interesting question about scaling costs, because the -- one of the concerns I have in your proposal, is that you eliminate the final rejection, okay. The final rejection is the only tool that the examiner has to try and get the applicant to be coming in and having -- you know, with the appropriate amendments, and their own claims, or whatever, has to be done. You eliminate that final rejection, on the -- there's no incentive on the applicant community to come to the table and talk turkey.

So it may be that scaling fees or something, if that's something the applicant

community is willing to do then, you know -- and of course, management, that gets down to the examiner, that's an interesting possibility.

MR. SMITH: Well, one final word. I just hope that this is the start of a conversation, and we look forward to seeing how these thoughts can be developed and, perhaps, implemented down the road. Thank you for your time.

SPEAKER: Thank you.

CHAIRMAN FOREMAN: Thank you, again, for that presentation. And again, this was for lunchtime entertainment. It obviously turned into a much more spirited discussion than we anticipated. I hope everyone's food sat well as a result. But before we move on, Andy?

MR. FAILE: Yeah, just -- Bill, a quick question if -- a quick question if I may.

MR. SMITH: Yes.

MR. FAILE: Again, thanks for the presentation. I will note that Bill and Joe have written a paper under this -- the next level of detail, and it's interesting read for those who haven't gotten to that --

MR. SMITH: Right. The paper was kindly published by IPO, it's available on their website. If you go to the IPO, Log Journal Patent sections you can download a copy. Thank you, again.

MR. FAILE: And just a quick question, Bill, if I may?

MR. SMITH: Sure.

MR. FAILE: On slide seven, picking up on a thread that Esther had started, and this is just a clarification question.

MR. SMITH: Right.

MR. FAILE: In the 2D model on the bottom, without a final rejection, or final rejection practice, is there -- as the office actions increase in number, it looks like there's additional mechanisms such as, supervisory review, mediation, et cetera that brings some of the facts to bear --

MR. SMITH: Right.

MR. FAILE: Is there an end to the number of responses an applicant can do, or is that basically unending?

MR. SMITH: Well, like right now it's

unending. All you do is just keep filing an RCE but, I think, in our experience, the more resources that are brought to bear, we are going to reach a point in time -- applicants don't -- by and large, don't keep these applications pending just for the fun of it. They have business decisions to make every day, and part of that is their own internal budget, and also as time goes on, where is the market for that technology they're seeking to protect.

The purpose of the increased resources to bear, is obviously with the junior examiners, the work is signed off on by an SPE. So for junior examiners this will have no bearing. For primary examiners, I respect the ability, the authority of the primary examiner, who has been delegated from the director, the ultimate authority to grant patents.

I mean that, I was a primary examiner, but at the same time, nobody has a monopoly on good ideas, and I have found over the years from a young examiner to the Board, where I was working on three-person panels, and now when I get ready to file a response, it's not me writing it by myself,

I've gotten substantial input from the client, obviously.

And I just think that over the years now in interviewing primary examiners, and I've asked them, would it be helpful to have your SPE or clause fit in. I've been pleasantly surprised that most of them say yes. Because they want to have that type of feedback that the present system does not readily supply.

So in terms -- to answer your question I don't know that cases would ultimately be pending any longer than they are now. I would hope, and I firmly expect that we would find they would be pending for a shorter period of time, measured not only in years, but also in the number of office actions, and the resources that the office has to spend in order to get that case finally concluded.

MR. FAILE: Thank you.

(Recess)

CHAIRMAN FOREMAN: All right. Well, thank you again, for that presentation.

And at this point I'd like to turn the floor over to Drew Hirshfeld, Deputy Commissioner

for Patent Examination Policy and his presentation.

MR. HIRSHFELD: Thank you. Good afternoon, everybody. So I have a number of topics to talk about today related to quality. I have a high level of slides to go -- an overview -- a high-level view of some of the initiatives and recent events regarding quality. And then I have a quick discussion at the end, on the status of the real party and interests. And I'm happy to take any questions as we go, or at the end, however you all see fit. I know I have, as I've said, a variety of topics, so anyway we proceed is absolutely fine with me.

So I'm going to start with the software partnership roundtables, on this slide you'll see that there's four roundtables listed, the first two of those already took place back in February. I spoke about those at the last PPAC meeting. Those were the initial kickoff meetings of our new software partnership, and the third one is the Berkeley, which was recently. I'll get into more of that in a minute on the next slide, that's one I had not spoken about previously at PPAC,

obviously it just took place in October.

And you'll see the last bullet is the next Software Partnership Meeting which is scheduled for December 5th, which will be here in Alexandria, and I'll get into more of that as well. What's not on the slide is the planning that we still have moving forward for yet, still, another roundtable in this ongoing series, and we are looking at -- it's not finalized yet, but we are looking at the idea of having a roundtable on Crowdsourcing which is a topic that has routinely come up that people would get more input on, and be able to give more input as well.

So stay tuned. I'm hoping people will attend the December 5th roundtable here, and stay tuned for the next series which, I think, again, will most likely start with Crowdsourcing.

So moving to the Berkeley Roundtable which was just recently held in October, basically at that roundtable we went into a review and a recap of the first two roundtables, and then had -- the first two were more of listening sessions, this third roundtable in Berkeley we had a session that was more focused on an

interactive discussion, particularly with the use of glossaries.

One of -- as you all know, one of the White House initiatives, regarding the patent troll issue, is for the PTO to explore areas of quality, particularly, the White House mentioned exploring the use of glossaries. There was, I thought, a wonderful discussion at the Berkeley Roundtable, about the use of glossaries. Certainly anybody who listened in would recognize there were very strong feelings on both sides. There were people very, very supportive of the use of glossaries, and there were people very skeptical. Certainly we had views widely ranging.

So Berkeley was used to get input on the glossaries, and we do plan on -- and I'll get into it more later, but we are looking at the possibility of having a Glossary Pilot Program.

So I mentioned the December 5th Roundtable, which is upcoming, that will, again, be here in this room even, and what we will discuss there is something we heard at the first two roundtables. One of the themes that was

prevalent, was people wanted to be able to learn more and provide input to the USPTO on our searching. Particularly how we search, and also what resources and databases are available to us.

So that roundtable will be a compilation of PTO reporting out about our search capabilities, what resources we have, and what resources and tools are available to examiners. And then we'll have some presentation from members of the public on other resources or tools that they have, suggestions for improvement from them as well. And there will be, like Berkeley, well hopefully we'll have an interactive session as well to discuss these issues.

MR. THURLOW: We discussed this point yesterday. I guess this is more of a request from both of us. Send people on webcast, to listening in, and to the extent the PPAC members go back to their companies, or firms, or universities, and so on, that they work at, to the extent we can help the PTO, I guess spread the word on this meeting, Partnership Meeting on December 5th. One of the things we've learned over the years as we focus a lot on the examiners, and the interviews, and

the view and so on, but I think one of the basic things we learn, is so much depends on just the quality of the search.

So this is an important area, it may not have received enough attention, so to the extent we can help the PTO. That's what I'm going to try to do, and weigh in with the AIPLA, and Marylee with the ABA and others. So we can try to do that.

MR. HIRSHFELD: Thank you. We certainly appreciate that. Again, we use the themes from the first roundtables to plan the next roundtables, and one of the themes that kept on coming up in the responses and comments was, more information on searching and availability. So, thank you for spreading the word.

I'm going to move now to some of the training. This slide I actually had the last PPAC, so I won't go into it too much, right, but at a high level, we've recently trained on Compact Prosecution which of course is an ongoing theme. And there were recently two different training modules on 112(f), particularly identifying limitations and making the record clear. Again, I won't get into details too much on this, but

these were responsive, again, to not only the White House Task Force feedback we received also at the roundtables, but it is all geared towards tightening the scrutiny of functional language.

I make no hesitation to say that, that second bullet, in making the record clear, is a primary focus of ours that's something that we at PTO feel is very important for us to have an eye towards in everything we do moving forward. In all of the training and all the initiatives, is how can we look for ways for the record to be clarified during prosecution, so that a third party, whether it be a court or a person who is potentially sued, or just anybody from the public, can look at a record and have a good understanding of the scope of the claims and what took place during prosecution.

My real selfish reason for wanting to have this slide in there, is for what's stated at the bottom, that our training materials, and I'm specifically referring now to the 112(f), there's two modules that are referred to there, are available right on the website. There's a long link there, however, right on the www.USPTO.gov

main landing page, we've put an icon to get to all of the training materials.

And the importance here is when looking -- we made all of our training, legal training into CBTs, computer-based training modules. We are doing that for multiple reasons. One of which is, we feel it's important for consistency of examiners so that they can always go back, use that as a library. But we also feel it's very important for the public to be able to see exactly what we are training on.

And so I have had people from the public review those modules and want to talk to me about them. I hope that other people are looking at that as well, but as we move forward all of our training will be available right on our website.

So, sticking with the theme of training, we do plan on, as I've mentioned in previous PPAC meetings to have additional training modules particularly related to clarity. And the next modules are in the works, we are looking at getting a little broader than just the 112(f) looking at claim construction, in general, although I do think the next immediate

module will be very related to 112(f). We are looking at claim construction, including their broadest reasonable interpretation.

We get into things like equivalence, and we are looking at making sure that the claims are definite, and when you have the proper structure disclosed. So those are two in the legal area, two of the immediate trainings that we are hoping we'll roll out shortly. They're not entirely finalized yet, we are going through internal reviews, but we are getting closer to that.

I do see this legal training on some of these, I call them review topics, I don't know if they necessarily are review, but all of the 112, the clarity, I see these as being ongoing training that will continue. And we are trying to get -- find the right cadence of training, so that we are not overburdening the examiners with endless training, but we are making sure that people are consistent in our current -- with all the recent laws.

I would be remiss if I didn't mention Mayo and Myriad, we are getting much closer, and

probably you've heard me say that exact thing here, I think three months ago. But we are definitely getting much closer to having more guidance and training for Mayo and Myriad out. I think last time I spoke, again, I said something similar, as we'll started to roll out the training that we had planned in test groups, we saw that we really needed to do more.

And basically at the high level, we are very focused on the Myriad case, and found that as we were rolling this out in our test groups, like I just mentioned, we were getting questions that were really related to Mayo and Myriad, the interface between the two, and we just thought we needed to step back and train together on those. So that's what we've done and we are getting closer to coming out, and I really hope that I'm not saying that at the next PPAC meeting. I don't expect to be. I expect to be saying, we have trained on that. So, stay tuned.

So, as I mentioned, clarity of the record is a focus that we have. I wanted to highlight, in October we had, in addition to all of the software roundtables and the discussions

we've been having there, we've had our -- I believe it's Annual USPTO, AIPLA Partnering and Patents Meeting, here at PTO. And we particular had a focus session with examiners and practitioners directed to clarity of the record; and we had the group break down into smaller groups and discuss what can be done, where improvements can be made.

I highlight that because I've received really good feedback from the team that put that on, and members of the public, and we are using that information to help inform us as we move forward with additional training and additional steps. But again, if -- for those of you that have not attended that partnering event, I think that's a really wonderful one for people to go to. I think all the partnerships are great, but that was a particularly helpful session on the clarity of the record.

So I mentioned glossaries, which was a topic at Berkeley. We've also been looking internally, to have internal focus sessions with examiners to see how glossaries are helpful. We've gone back and we've looked at cases that

have been prosecuted to try to get some input on how glossaries would be helpful. And the conclusion that I've reached is, it's very hard to draw any conclusion. And it's just there's differing opinions, there's different uses of glossaries, so we are looking at the potential of a pilot program. Again, I think there's people supportive of this idea.

We don't have the details yet, we are working with Robert of course, I do think, at a high level, should we go forward with pilot, it will be something that's very broad. It will be first limited in scope, so we are not, you know, I get this question all the time, is everybody going to be required to have a glossary, certainly not. Those that don't want to participate will not be told they need to have a glossary.

If we go ahead with a pilot it will be voluntary, only for you to try the glossary. We also, will almost likely, given the varied feedback that we've received, have a very broad program where people will be free to, essentially, have the glossary in the format that they want. We will look at a separate section for

a glossary, but it will be broad enough that people can choose the terms they want to define, choose how they want to define them, and we are looking at keeping it broad, for the simple reason, we want to see how it's used, and use this as an evaluation tool to see what works and what hasn't worked.

So, again, we'll have to stay tuned for that, as we are working through some of the final details.

MR. THURLOW: So can we just talk about that, before you go on with --

MR. HIRSHFELD: Absolutely.

MR. THURLOW: My two cents I guess, from a practitioner's standpoint, as we discussed yesterday in our Subcommittee Meeting, of all the issues that the nice woman over there, brought up about challenges in the patent system and so on. I'm not sure if I see the need for glossaries as one of the major focuses. I think what I mentioned yesterday was, applicants' basic point that we all -- that do this work -- is that applicants can be their own lexicographers.

So to the extent that they go in and

provide a definition of something in the claim that's recommended or not, the option is there for them to do it now. How much people do it. To the extent they do it, maybe a court decision should be held against them, as if they're drafting a contract. I don't know how the courts -- there's so many different ways courts always decide these claims, interpretation cases, it gets to be difficult to understand. But I guess I -- just from a practitioner's standpoint, I'm a little befuddled I guess. I don't see the real need for that, but it all comes back to claim interpretation and claims scope, trying to have the meat and bones of the words.

As I said yesterday, there's some cases where they argued if you have -- the claimant has a coffee cup, does (a) mean more -- one or more than one. So even if you give glossaries, definition, they're going to be interpreting what that word and the definition means. So there's always -- the English, is going to be subject to interpretation.

MR. HIRSHFELD: So what I've learned is if you have, you know, 10 people, you'll get 15

or 20 different opinions on whether glossaries are helpful. I can give you my two cents. Right. Because I think a lot of the feedback we received was, glossaries will be very helpful to be able to make sure that people are having definitions, right. All your claim terms need to be defined in scope in some form, right.

They're either defined explicitly, or they're given their plain ordinary meaning and they are -- but there -- but every claim term in every patent should have a defined scope. And so you can make the argument that without any glossaries that should be the case.

However, with the use of glossaries the hope is that you're making -- you're putting this at the forefront so that people are cognizant of making sure that all their terms do have defined scope. And in that, so people can more easily tell what the meanings of terms are. That's one side of the argument.

You know, the other flip side, and you've identified, and these are the arguments back and forth. I do think all of the claim terms needed to be defined anyway, regardless of

whether there's a glossary, this is just simply a way we are hoping to put it together in easier, accessible format. But again, I know 10 or 15 people and you'll get all these different opinions. I'm curious, anybody else have -- anyone shares Peter's views, or --

MR. HALLMAN: Yes. I think this is one issue that highlights the fact that practitioners, I believe, are all over the spectrum, on both sides of a pointed stick that is a patent. And for -- you know, I think even within the same organization when it comes to inside and looking out you want perfect clarity, but maybe from the opposite way you don't want -- you actually don't want perfect clarity, because that's -- you know, it gives you some wiggle room.

And the one thing I would say about this, is that I wouldn't want to have a glossary be something that was required, but I do think a healthy effort of figure out a way for a person to include a glossary. You know, to the extent that we need to have process around that, but a way to figure out for a person to provide a

glossary if they wanted to, I think is a very useful thing.

But I think you have to acknowledge that, to a certain extent, practitioners and patent owners, and Wayne probably won't like it when I say this, you know, want to have their cake and eat it too. But I don't know, I think that's just the -- again, reality of the pointed stick that is a patent.

CHAIRMAN FOREMAN: I think we've to a question from the public.

SPEAKER: Oh, thank you. Addressing glossary, in my experience when I worked in Europe and when I built the Crime Analysis Lab at UCLA PD, a handbook is far more beneficial. For every other officer that came in with a broken car door, each one had their own language for describing it. So a handbook, and very simplified is important, and within that, getting a consensus as to how people have used different terms and finding one that -- sort would like would, say, not quite one-size-fits-all.

In terms of the judges, and speaking to judges, the expectation is that judges have all

been trained in IPR in law school, and a judge I know that sat on a high profile case with a Dot-Com company, took one course in law school. So, I think it's very important to understand that my push personally is for the IPR course as oversees, but the average judge really doesn't know much more than we do, walking in.

MR. HIRSHFELD: Thank you. And when I speak of varied opinions, the idea of handbooks or dictionaries are certainly one that has been discussed and was also brought up. I look at these steps as the initial steps to explore further, what is the best thing to do, and what is the best path forward.

So moving on to -- does anybody have anything else, glossaries? I'm sorry.

MR. SOBON: Yeah. Obviously this varies by art unit, right, and some disciplines have much more defined terms of art than others, and I think that's why it came up in the software round table. Part of the answer may lie with the actually software industry, that itself has not been more art than science or engineering, in terms of allowing people to create their own terms

as the industry has developed. But I think that's increasingly becoming more routinized, and more structured as that industry has developed.

And at the bottom, I think I think Peter was mentioning as well, and Clinton, that at bottom this is a linguistic exercise, putting language on to objects in the physical world, and processes. And at bottom it is inherently a human, and not completely a perfect transformation between -- referent in the real world, and language.

That's the nature of language, and so, you know, it becomes Alice in Wonderland, how many -- you have to have a glossary of a glossary of a glossary, and at what point do you reach bottom to make it into a completely deterministic exercise, versus what it actually is, which is a very human exercise. And that's entirely why it is so complex.

MR. HIRSHFELD: Thank you. So I'm going to move on to the quality review process. I just wanted to mention that one of the steps we are taking at PTO is to be able to, more

effectively, review training and initiatives that we have, and so what we've done with the Office of Patent Quality Review, and for those of you that don't know. They're the folks that are outside of the technology centers that review cases to be able to provide feedback to the examiners and to patent operations about what was done correctly, what might not have been done correctly, et cetera.

And so when the office of patent quality review, or patent quality assurance, goes through a case, they are tracking errors, right, and they're tracking everything about the case. Was there a proper rejection here made, under this statute, and they look at all the statutes. What we've done is we've increased the granularity of the data capture that we have with regard to functional language. That being an issue we are really trying to focus on.

So now we are capturing, is there the presence of functional language, and if so, was it handled correctly? Was 112(f) invoked, if that was appropriate? And with that additional granularity, and also we are also -- we are also

are tracking was the record, you know, clarified with the examiners' interpretation of that functional language? And this is a way to -- for us to go back and look and say, okay, we trained on all of these topics, and what effect did that have, and how can we better judge that?

And we are at the initial stages of this change. It was newly changed at the start of the fiscal year, but I think towards the end of the fiscal year when we've done more reviews we'll be able to go back and better judge the impacts of the training and what effect they had. So I think that's a really good change.

I also wanted to highlight we are increasing that review sample for fiscal year '14, from '13. Where we reviewed over 5,000 cases in fiscal year '13, and we'll add over 2,000 more cases in this current review for '14, to be able to get a better representative read of cases. So those are two changes that we've made to that --

MR. THURLOW: Just a quick question. The selection of the cases that you review, is that completely random, or can applicants ever request at the Office of Patent and Quality

Assurance Review? Or how does that work?

MR. HIRSHFELD: It is completely random, and it's random at a variety of stages, so we have in-process reviews, and then we have -- we review after final disposition and allowances. Esther?

MS. KEPPLINGER: Do you -- Have you increased the number of cases that are searched again? Or is this just a review of what's in the file, as opposed to doing an independent search to see if there's an Art of Record that was missed; because of course when I Deputy Commissioner, at least 50 percent of the errors that were identified in quality review were prior-art record, and 50 percent were newly-discovered prior-art, or issue.

MR. HIRSHFELD: So, I'm not sure I understood the start of your question. You said something about, that were searched again?

MS. KEPPLINER: How many cases do you do an independent search. How often is an independent search --

MR. HIRSHFELD: Oh, I see.

MS. KEPPLINER: I know that had been

reduced, and if it's at a certain number, have you considered expanding it?

MR. HIRSHFELD: Right. So, in this expansion it will be -- it's an across-the-board expansion so -- and I have to confess that I would need my OPQA folks here that tell me exactly what the numbers are, but we -- when they do a review the reviewer is always entitled to look back and will always -- Is that not your question? You're shaking your head. I want to make sure I don't -- that I understand --

MS. KEPPLINER: Entitled is different than required.

MR. HIRSHFELD: Yes. Yes. So it's -- I think what they look for, they're required in some, they're looking for flags in others, and I think -- I don't know the numbers but I believe that it will increase the number that we are looking at the search, but I would have to get back to you with specific numbers.

So I'll just end the slide portion with the real-party-in-interest, and just really wanted to give an update on the real-party-in-interest. Thanks, Rob.

As you all know, the White House Executive Action items included an ask of the USPTO to promulgate rules to increase transparency of those who own a patent, and so we've been working a Notice of Proposed Rulemaking to address this issue. We are hoping that December, January timeframe would be when that Notice of Proposed Rule would be published. It looks like it will more likely be the January, although December is still a possibility, but more likely it will be January.

And we are still in the review and finalizing of our Notice of Proposed Rule, but the issues that we are focused on, and are discussing, is the balance between putting too many burdens on the applicants, which is certainly feedback that we've received and making sure that we are seeking additional transparency.

So the issues that we are looking at are the number of touch points that we might be asking for disclosures of Real-Party-in-Interest, how often we ask for that, again, recognizing that each ask is a potential additional expense to the applicants. We are also of course looking at the

definition of the real-party-in-interest, and how detailed that is, of course how detailed it is depends on -- will also have a large impact on what people are disclosing.

And we are also looking at what is the penalty, if anything, if somebody does not provide the real-party-in-interest, and specifically if, you know, what occurs when somebody does not supply it, and what we can do to cure any deficiencies that people have. So I leave that as wanting you to know what some of the issues that we are considering and discussing, and I do expect towards the end of December into January, we will have a Notice of Proposed Rulemaking out, with a comment we'll have 60-day -- the public will have 60 days to comment on those notices -- on the notice.

MS. KEPPLINGER: This is an area of concern I think, for patent owners. The objective, and certainly it seems like the administration's concern, is at the litigation stage, and the potential of the trolls, not knowing -- people not knowing who the real party of interest is in those litigation. Given the fact

that so few patents ever get into litigation, it just seems like an overkill. I recognize you have an administrative action on this, but it is an imposition of tremendous consequences to every patent applicant. For patents that may never of any value, or ever be asserted against someone, to have to do this.

And I know from our practice we do start-up companies, and so the real-party-of-interest, can be a complicated matter for everyone, but particularly for some individuals. And so it seems that this is placing the burden at the wrong end. Not only for patent owners, but also for the PTO with limited resources, having to create databases, or whatever you have to do in order to gather this information it is -- it seems to me to be of limited value, at least until they get into the litigation phase.

MS. JENKINS: I do have to counter that, sorry Esther, just a little bit. That when you are doing deals, and you are trying to make sure that your client who is buying the assets has the correct assets. It's important to know who

is owning what, particularly with startup companies who tend not to be as fastidious in their ownership issues, and who actually has done what with the IP. So, I would -- if you had to weight, I would of course like more attention put on this than on glossaries.

CHAIRMAN FOREMAN: Thank you, Drew. We appreciate that update, and I'd like to turn the floor over now to Rob Clarke for and MPEP update.

MR. CLARKE: Okay. Well, I appreciate being able to come to this Committee, and just give you a quick update on the current status, as well as well as upcoming revisions that are in the planning phase. I'm also going to give just a brief snippet on a change in format for the upcoming release, as well as some of the outreach efforts that we are thinking about.

Okay. So at a very high level, there are three major updates to the MPEP that are either currently underway or are in the planning stages. And I've listened to them by kind of triggering events. Obviously we've been working very hard to update the manual, to provide

guidance on the AIA rollout. I'll be giving a pretty complete snapshot of where each of those chapters are. The next triggering event will be a Patent Law Treaty update, which we are hoping to have in spring of 2014. And then the third triggering event is The Hague Treaty implementation, and that date is a little more fluid.

For the AIA update, there are 17 chapters that are undergoing review, and one new chapter. So there are 18 total chapters being reviewed. I had the list of them there. The revision is large and it necessarily provided guidance on the various effective and applicability dates in the AIA rollout. So typically, where guidance in the section that the manual provides -- differing guidance based on which side of an effective date, or applicability date the issue resides on.

The current law is going to be provided first. There will be a note saying that this guidance applies for these cases. Cases filed after this date, for example. And then there will be a parallel section providing the former

guidance with a note indicating which cases are subject to that guidance. It's a fairly detailed guidance that we are planning on including.

Okay. A snapshot of where we are, I recognize there are two dates on the slide. In my haste to give the most up-to-date snapshot, I did not change the top of the slide, but these are -- this is the status on November 1st. On November 1st, we had 17 of the 18 chapters drafted. We are now done, the 18 chapters are drafted for internal review. The internal review has been completed on 11 of the 18 chapters, and we finalized for -- how should I say this -- finalized five, I know it indicates three, but we've done two additional chapters in the interim.

Five chapters have been finalized and put into our publication system. So those could be sent to OMB for their review. So we've made pretty good headway, but we certainly have a number that are ongoing internal review still, and a larger number that we have to finalize. So that's the current snapshot.

Many people have asked that I give a

slide about what goes into the updating process. And this is at a very, very high level. MPEP staff, and the subject matter experts provide draft updates to the MPEP by section. So we all know that in the manual, it's section after section after section, each chapter. Then the MPEP staff routes those draft updates for internal review and we make revisions necessary for internal clearance. After internal clearance, and this is the trick, usually review of the entire updated manual by OMB is sought.

After the review from OMB there may or may not be revisions necessary to obtain their clearance and then the publication process is initiated. I'll tell you, I've had the opportunity once to hit the print button, and it's pretty anti-climactic. You go through tremendous effort to clear and update, and then I hit a button and the machine churns, and churns, and churns, and about four hours later we have a large number of documents in various formats. But it was a lot of fun to do it last time. Here is --

MR. THURLLOW: Rob?

MR. CLARKE: Sure.

MR. THURLOW: Maybe just a silly question. I don't understand why OMB -- this is Washington, how things work I guess, but I don't understand why OMB is reviewing updates of the MPEP. I just -- and I say that with respect. I mean, I just, I have no idea. Isn't it Office of Management and Budget?

MR. HALLMAN: Yeah. And then actually in that regard, are they looking at form, i.e., how you arranged the paragraphs? Are they giving you substance back? I'm just kind of curious about that as well.

MR. CLARKE: Okay. OMB review can be at various levels actually. I mean we've had feedback that has been very detailed and as a result of feedback provided to OMB from patent practitioners. So we've had draft revisions to chapters that have had to have had significant substantive changes as part of the OMB process. And in other changes, we've walked them through the changes that we've made. Explained where the changes could be found in previous documents that they've already seen, such as the AIA Rulemaking

which is where a lot of the material for this update comes from, as well as the First Inventor to File Guidelines. And that is more in the education process.

SPEAKER: Sure.

MR. HIRSHFIELD: I also am -- I'm going to let Rob tell me if I'm not correct here, but I believe this is correct. That what OMB will do, is they will evaluate what we give them, and all of our rules actually get reviewed by OMB or proposed rules. And when they go through the review process they will determine if there's anybody else in government, any other agencies or departments that should be looking at these rules as well. So they might actually seek a comment from others as well.

MR. CLARKE: Sure. And certainly OMB has asked for the view of the Small Business Administration, as well as, you know, areas of the government that apply for patents. You know, not necessarily on MPEP updates, but other activities at the office. Yeah.

I actually have the great fortune of coming towards the end of the process where a lot

of the materials already have been reviewed.

This is just a graphic. We had heard through the AIA rollout that a lot of folks preferred to see the graphic of our efforts, and it just shows them a pictorial view of the various steps that we go through in terms of drafting subject matter, or editing the material, before internal review occurs. Having internal review and revision in light of that internal review, and then followed up by that Office of Management and Budget Review. And, you know, that in parenthetical, right, generally 1 to 90 days, sometimes it goes very, very quickly, but there's a kind of internal expectation of 90 days.

And what I've done is, I've provided the dates -- in the past, that I can provide with some kind of certainty, you know, when did internal review get finally launched, so when did the last chapter get sent out for internal review. And then the rest of it is based on my expectation, how long should it take to complete each step.

There are a few other items that I wanted to raise, that the new MPEP publication process is based on using an XML editing tool, and

we edit once and publish in many formats, and the same tool that we are using to publish, is also used on the trademark side of the house. For the Trademark Manual, for the Trademark Board's Manual, as well as for the CPC definitions, so we are using the same tool for many, many areas. And because of that you'll see kind of a coming together in terms of the format, and how the various manuals are produced.

So this is kind of a list of changes in the publication process that are being adopted. The first one, the entire MPEP will be electronically published with each update. It could be scary, but what we are trying to do is, to make it clear, section-by-section, which ones are being updated and when. So we date each section the day of the last update. So the various sections that will be updated in this revision will be dated 11-2013.

And then moving forward, you will be able to go back in time and determine when each section was most recently updated. The text is provided in clean text, without the revision marks; none of the asterisks or carats, you know,

in it.

We have been drafting, very plain language, summaries of the changes that will be provided when the chapters go out. And I would love to provide a CBT to step through the changes and additions that are being provided. And that of course will be available. And probably the most critical for me, all of the revised chapters are planned to be posted in the MPEP community in IdeaScale, so that the public can comment on the changes, and comment frankly on the existing material. And that feedback and suggestion can be fed back into the revision cycle.

But that's it for my update, and I'd love to answer any questions that you may have. I see Robert with one.

MR. BUDENS: Yeah, a quick one, Rob. When you do these updates what provisions are we doing -- are making to keep the previous revisions or having them available so somebody can go back and see, you know, what was the guidance? Or what was the MPEP at this point in time? Because that's going to be especially important for some of the things we do.

MR. CLARKE: Right, absolutely. We currently have an MPEP archive which is in PDF, that goes all the way back to the 48 MPEP, and that will certainly be -- I plan on that being maintained into the future. In the eMPEP, you can actually drill down to the revisions that have been published in the new XML format, so you can drop down between the various revisions.

The old revisions are watermarked archive, so that it will be very clear that there are former versions when you're looking at it, and you just use the dropdown key to go into that menu. In fact, you can set it in your preferences that you will always search against one of the manuals. The default is, of course, current manual, but if you're doing a lot of work on an old case, you could set the default to it the older manual.

MR. BUDENS: So I could set mine to decided which version is the most -- is best for the examiner in going (inaudible)--

MR. CLARKE: Like I said, the older versions would be watermarked archive.

MR. HIRSHFELD: I would just add that I think it's safe to say that the MPEP fell out

of date for being updated, and we certainly, for IT issues and a variety of issues, recognize that it needed a lot of revision and updating. And we've been trying to get new IT to be able to update it. We've been trying to get new procedures, and I am very confident that right now we are really turning that corner.

And I feel that we are -- we've put extra resources to it, Rob and his team have done a great job to move all this forward, and instead of fielding questions, why is this section of the MPEP out of date? I feel very confident that very soon I'll be told, hey, this is great, we are all up to date, and we are getting there. And there's ways to go, but this is really one of the first times that I feel we have turned that corner, and we'll be able to get significant updates, and be able to do this in more real as we move forward, so that we won't fall behind again.

So I feel, I personally feel really good about what Rob and his folks have done, and I think the public will see the benefits of the revised and updated process very soon.

CHAIRMAN FOREMAN: Thank you, Drew.

And thank you, Rob for that presentation.

Fortunately we don't need OMB approval to take a break. So with that said, we are going to go ahead and take a short break. We will resume again at 2:30, so stretch your legs and we'll get back in 12 minutes.

(Recess)

CHAIRMAN FOREMAN: I'd like to welcome everyone back from that short recess. And now I'd like to turn the floor to Jackie Stone, Assistant Deputy Commissioner for Patent Operations, in a Patent Operations Update. Jackie?

MS. STONE: Thank you. Good afternoon. Okay, we'll get started, over the next 15 or 20 minutes talking about some operations. First we have the Serialized and RCE Filings. This is through November 5, 2013, and the fiscal year 2013 filings ended up at 6.2 percent over FY '12.

The RCE filings were 3.2 percent above FY '12, and they represented 28.8 percent of the total UPR, utility, plant and reissue filings, compared with 29.6 percent in FY '12. So we are trending down, which is a good thing.

Our projection for 2014 is 6.5 percent over '13. Our backlog fiscal year target was 566,800, we ended fiscal year '13 at 584,988; and as of November 6th, our backlog is 584,648.

MR. THURLOW: Hey, Jackie?

MS. STONE: Yes.

MR. THURLOW: Can we just go back one slide for a second?

MS. STONE: Sure. I think.

MR. THURLOW: Just focusing on the 53,000 -- the RCE that was zero filings. What was the total -- where are at again on the RCEs?

MS. STONE: It was 3.2 percent higher than the year before, or 53,026 as of November 5th. Yeah.

MR. THURLOW: Okay. I guess my general question is, the RCE number is -- the backlog has really come down. I was wondering if the PTO has done a review of exactly why. I know we have a lot of initiatives, I know Remy was directly involved, and a lot of people. But I mean, they've come down pretty significantly, so I'm just curious. Did we hit the nail on the head. Was there a lot of multiple factors, or --

MS. STONE: Right. I mean, we've had quite a few initiatives, we've had the restructuring of the accounts. The account credit and in-the-work credit, and we are continuing to have new initiatives that started October 1st, that are going to continue to drive this backlog down.

Okay, this is a function of our capacity. The red section in the excess inventory, tipped up just a little bit because of our lack of hiring in FY '13, we weren't able to hire quite as many as what we'd hoped. And the blue line declined because our staffing decreased a bit. Of course the November -- We hired in November a class -- and we expect the blue will lift up by about, almost 200. So we are going to continue a hiring approach, that will help recovering that blue section.

When the red and the blue come together, that's when we basically have an even in and out. We have no more excess capacity, or excess backlog overcapacity. The RCE backlog, so in the end of 2012, we go back that far, it was 95,200, end of '13 was 78,272. And you can see that there's a

little seasonal effect at the ends of fiscal years, a dip and a rise. You can see we did that again. We do expect the backlog to decline in view of the RCE incentives that we have in place for this year.

MR THURLOW: So I don't know if you were here earlier today, one of the goals is that, to do maybe -- we spoke to Chief Judge Smith, mentioned it to Andy, is to maybe look at the other prong of the leg of the pre-appeal and the appeal, and see if there's anything we can do to prevent the cases from actually going up to the Board, so that as the Board shifts the resources, all that fun stuff, we can maybe consider ways to -- to the extent PPAC could help on that, is something I think is a worthy goal.

MS. STONE: Okay.

MR THURLOW: At least from my vantage point.

MS. STONE: Yeah. Okay. First action pendency, total pendency; continuing to trend down, 28.9 months, and for first action pendency of 17.8 months. This is the forward-looking first action pendency, it says on the bottom of

the slide, it's an estimate of the average number of months it would take to complete a First Office Action under our current and projective workload and resource levels, for an application that was filed on that date.

That little increase that you see there in October, is due to the readjustment of the model, for the FY '15, President's budget. That reflects the changes to the account system. With respect to RCE's also the effects of CPC and the reduced hiring.

Our attrition rate is staying fairly low. This is a -- before the green dotted line, vertical line, those are annual attrition rates and then we do a rolling average monthly, you know, herein out throughout the year. So this is something that we keep monitoring. The 12-month rolling average rate, less transfers and retirees, is 4.19.

Interviews continue to be popular, in time continues to increase, 12,050 hours through October, FY 2014 -- fiscal year 2014, compared with 10,567 hours in October of 2013. 28 percent of serial disposals completed in October 2013,

had at least one interview. So then we looked at how did those interviews compare in the quality of the actions?

So if we look at our traditional in-process and allowance compliance rates, with and without interviews, we sampled 28,000 allowances, and final rejections. And in those with interviews there's a higher likelihood that we'll get a compliant quality action. And these are actually based on statistically probability, the odds of a case being compliant when there are no interviews, is about 26 to 1, versus about 37 to 1, if there is an interview.

Track One. Highlights there, in October we had a robust Track One filings, 712, which is our highest month since the bubble of March 2013; 48.2 percent were from small entities. Our total for fiscal year '13, was 6,894. And our first actions completed, 10,259.

MR. THURLOW: One quick comment. One of the things we put in a report on Track One is that, it seems like it allows you to jump to the front of the line, obviously. But what we found, is when you file a response, and you submit the

response to the patent office that the examiner is allowed to, I guess, take up to four months to respond.

And I guess general feeling was that if it's expedited review, initially to pick up the application then maybe the office could consider not just a normal four months that you'd get for regular prosecution, maybe it should be one month, or two months, a shorter time period. I think, from what I understand there maybe benefits for the examiner, for Track One to do it sooner rather than later from a document perspective. If that's the case I don't know if that information is published enough, but the feedback we received is that they have 12 months to dispose of the case, and they'll reach that date, but that doesn't necessarily mean that after you file a response they'll get to it right away.

MS. STONE: Okay. So in the effects of Track One, we show a decline in -- a dramatic shortening of our times compared to our total pendency. And these are both rolling -- 12-month rolling averages, so you'll see the numbers and

the cases that are regular -- not Track One, are going to show slightly different from our traditionally reported pendency numbers, because they are rolling averages rather than snapshots.

But you can -- this is a one-to-one, you know, comparison here. So time relating to first action, the prosecution time, and prosecution time at the office, are all shortened.

Quality composite; so quality data is compiled on a quarterly basis from the Office of Patent Quality Review, and then the two surveys are conducted twice a year, both the external survey and the internal survey. So these are things that in the quality composite, as you can see, our 100 percent number there on the far right, fiscal year '15, that's 100 percent of the targets that we set, not 100 percent of the -- 100 percent perfect quality.

But we have continued to improve in our quality, and we are taking a good look at this, this year, as we reformulate to see how we should set our targets for meeting our '15 expectations. So this is something -- area of ongoing discussion and to revise that to our for our new strategic

plan. Yes?

MS. KEPPLINGER: Is it possible for us sometime to get a better understanding of exactly how you score these things? You know, what standards you're using when you determine if something is compliant, and in an in-process review, for example, I mean -- obviously this is something that, you know, people have struggled with for a long time. They are an opportunity for tremendous number of errors to be made in any one case, but how do you judge which is a little error, and which is a more significant error, that might come to the forefront as non-compliant in some of these cases?

Or, for example, the Search Review, First Action Search Review, to what extent are you actually researching that, how are you determining whether or not, oh, well, that looks like a great search? Or is there some more extensive metric analysis that's done? And I think these are things -- you know, I've talked about this before; I think the public has some skepticism about the quality numbers, but part of it rooted in the fact that there isn't a good

understanding of exactly how you're doing the analysis.

And I think increased transparency on that would go a long way towards giving the public more confidence about what is -- how it's being reviewed.

MR. HIRSHFELD: Yeah. I think -- we'd be happy to do that. I have heard feedback similar to what you've just mentioned, and we'll make sure that moving forward, at the next PPAC, we will address this exact issued so we can hopefully shed some more on it, and see where we can make improvements as well.

MS. STONE: Okay. It's all I had. Any other questions, comments? Yes?

MR. JACOBS: Yeah. Just to take up again my mathematical question about the composite, just to clarify. I think I understand this, I'm not sure that everyone does. So 100 percent is 100 percent of the target, right so --

MS. STONE: Right.

MR. JACOBS: -- and that's the FY '15 target, right?

MS. STONE: The stretch goal, yes.

MR. JACOBS: The goal. So that means for the quality surveys, we are -- as of right now, we are above the stretch goal, right. So further progress in those areas, ironically, doesn't get us any closer to our target. Correct?

Right, so -- but on the other hand, when the internal survey went down earlier in the year, that hurt us, because it happened to drop below the goal, right. And then, 100 percent is the maximum, but that reflects, for example, for the Search Review with the target -- the stretch goal is 97, so if that were 100 percent that also wouldn't contribute any further at this point, right -- Isn't that correct?

MR. HIRSHFELD: That's correct. Yes --

MR JACOBS: Yeah. So as we get closer and closer to our goal, the only way we can make the goal is to make up the difference in the areas where we are deficient, right. So we are getting from a mathematical point of view, we are getting much less information as we get closer to that goal than we were before; because all the information is coming from a tiny fraction of the composite, right. It's not a composite anymore

at that point in terms of measuring progress, because we are only really measuring the progress in one tiny piece.

MR. HIRSHFELD: So, I agreed with everything you said till the last part, right? So I was nodding, nodding, nodding. The over-100 issue is something we've been discussing because it does seem, now in hindsight, right, when you have a composite, it's going to be an average of all of the elements and it seems to make sense, so that if you're over 100 percent of your goal you should get more than 100 percent of the credit. Because likewise, if you're under it, it won't hurt you for whatever you're under, but if you're above it, you're not getting help for the amount you're above.

And we get that, and we've been talking about that internally whether we should change, and we hate always to change mid-stream on anything for fear people will look at it and say, you're just playing games to make your goals, so we are just trying to be open and transparent with what we have. But maybe we present it both ways, who knows.

But that point is well taken, the reason why I apologize, why I shook at the end was, I do think you're always getting a measure at -- for anytime we do the score you're always getting a measure of how you are in each of the composite. So what I mean by that is, it's a snapshot in time, and so we could be doing 100 percent in all of them, and then in fiscal year '15, at the end of our goal, we decrease in everything, and if we are at 80 percent in everything we end up 80 percent overall.

So it is a snapshot, so I think they all weigh in. The interim goals we made were just something to help us internally gear towards hitting the target.

MR. JACOBS: Yeah. I'm not saying it's not a helpful measure, what I'm saying, is that it tends to become less helpful as we get close to the goal because all of our information is just coming from a small area. So what I was going to suggest is that then, you know, as we think ahead to FY 2015, which is coming up pretty soon now, that will be a really good time to start developing some other metrics that are going to

take us onto the next year, right?

MR. HIRSHFELD: Right.

MR. JACOBS: Because by that point, if we are good, and we got really close to our goal, I mean, all of our progress may just come from one of these eight columns at that point, and it will be great to have a new goal set, that we can let -- Yeah.

MR. HIRSHFELD: Oh, yeah. So we agree entirely and those are the exact discussions that we've been having internally. I think taking what we've learned from this first composite, and seeing how we can improve, moving forward, is paramount in our discussions.

We are talking not only about changing how we calculate whether we've met our goal, but also what other measures we should be having as well, getting back to the clarity theme, which is one of my favorite topics, we are looking at breaking out more of the clarity issues, as a potential, right. No decisions have been made, but these are issues we are talking about, so I -- yeah, we agree entirely with what you're saying.

CHAIRMAN FOREMAN: Great. Well thank you, Jackie. That's a lot of information, and certainly it appears to be trending in the right direction. So I encourage members of the public to download this report and review all the information. I know we didn't give you very much time to share all the information, but very good stuff.

I would like to turn the floor over now to Remy Yucel, Director of the Central Re-Exam Unit.

MS. YUCEL: Good afternoon. I'm very pleased to have this opportunity to give to you a report out and update from the CRU, Central Re-Exam Unit, which is really my day job. I dabble in the RCE thing as a side gig.

But just by way of reminder. The CRU is a small but mighty organization within PTO, and the technology center scheme. There's about 95 re-exam specialists, they are GS15, and they like to say that they are the cream of the crop, of what the TCs have to offer. Supporting them are 10 very excellent supervisors. We have one quality assurance specialist, and 14 technical support

staff including 11 paralegal. So we are 1 shy of 120 people, but I think we've been very stable.

For the past two to three years we've experienced a lot of the growth within our ranks, and that involves a lot of training of the examiners, because reexamination is distinctly different from patent application examination. As your reexamination of existing patents, and it's a very serious job to carry, and they carry it out day in and day out, and it's a very good organization. I'm very proud to be associated with them.

So your second slide. You know, I'm conflicted about this slide, you know, should we glossary, should we not glossary, anyway this is a list of our frequently-used acronyms just so that, you know, if you need to kind of quickly flip back, that the slides are rather dense in the data, so we use our shortened versions of what we -- our lingo, so to speak. So this is kind of a list of terms, should you need them, to further your understanding of what we are going to be talking about.

Okay. To the slides we go. We picked

the interval of the last two fiscal years simply because we had grown to our current size, during those two years, and while we've remained rather stable, the environment in which we operate has not. You can immediately recognize from the dates that we've picked that it's intimately tied with the AIA.

We had the first year where we had the transition for the inter parte re-exams, we are in the standard for requesting a re-exam, change from substantial new questions, S&Q, to RLP, which is reasonable likelihood of prevailing on at least one claim. So that first year we had a series of inter parte reexaminations that were filed under the new standard - excuse me.

And clearly that second year, 2012, September 16th was the absolute last day that IP re-exams were available, and you can kind of see this from our filing profile. We are clicking at rather stable levels, and then in those few weeks leading up to September 16th, we experienced incredibly large AIA filing bubble.

So you might ask, well, we understand why the IPs spike, but why do the EP spike? Well,

that was a function of a change in fees, right. So previous to that day, the fee for EP, or ex parte re-exam was around \$2,500. And on that date, the fee went to \$17,000-something-something. So everybody was trying to beat the fee increase, so we had a large number of EP filings as well as a huge influx of IP filings.

So this is a -- we thought that that it would be interesting to just take a look at this bubble, this is our AIA filing bubble, so the next slide -- got too many buttons to press here. The next slide shows pie charts of these two populations of cases. The pie chart on the left is EP and the pie chart on the right is IP.

Taking the EPs first, this is the snapshot at the one-year anniversary of the filing bubble. You can see that at the one-year mark, 42 percent of those cases filed exactly a year ago were NIRC'ed which is the end of the re-exam. Another short -- another pie slice, if you will, about 8 percent or so, had proceeded to the Board. The vast majority of them, had a First Action mailed in them. And also what was -- you

know, or maybe even was awaiting a response to their First Action, or had a final. And then another section of them, had at least their First Action rejection mailed if there was going to be one.

So we believe that this represents a fairly robust progress on cases that, not only were high in number, but were actually synchronized. So one thing to realize here is 90 days after September 16th, all these cases had to have an order mailed out in them, by statutory timeframe. And that goal was met and actually exceeded. We finished a few days earlier than the drop-dead date, a few days is a few days, but when you're dealing with over 650 cases, that was a tremendous accomplishment by the group.

Turning over to the IP pie chart, you can see again at the one-year anniversary a snapshot, and clearly we have made even more progress since then. Some of them have been NIRC'ed, a very small number have been NIRC'ed. Many of them were at the appeal stage, so many of them had a response to the action-closing prosecution, or had their right of appeal notice

mailed. So again, this represents -- this part of the pie chart represents the vast majority of prosecution being completed in these cases.

Again, a huge number of them had a response to a non-final, or the action closing prosecution was mailed. And this amount of progress which is, again, remarkable; was due in part by the fact that over 85 percent of the IP proceedings went out. The ordering re-exam went out with the very first office actions, so the examiners did a lot of extra work to make sure that we dealt with all these cases in as timely fashion as we possibly can.

So this, pretty much, is the disposition of that list of cases, now we are going to switch over and kind of look at the two-year statistics for just all the cases combined. The top chart -- top table represents the EP filings, and the bottom table represents IP filings. And what we've tried to do is do a statistical analysis of all the Notices of Intent to Issue a Reexamination Certification; I'm just going to say NIRC from now on, because that's just too long to say.

So the NIRC, which is the end point of re-exam, the way you would read this chart is 25, percent of the applications in this time period were finished in seven months from filing of the re-exam request. Likewise, 50 percent were completed within 10 months, so on and so forth. So if you take the entire average, you've got a 12-month average from the day of filing to when we sent the NIRC for ex parte reexaminations.

I you look at the inter partes, again, you can kind of see that 25 were NIRC'ed within 12 months, these are much complicated in nature because there's more than one party involved, and sometimes it's more than two parties involved. And you can see that our average is 21 months. Now the management team is taking a lot of this data, and they live with it day in and day out, and we are trying our best to shift the curve as much to the left as possible. We have done a lot in terms of looking internal processes and trying to cut out inefficiencies, and trying to make our internal process as smooth and as swift as we possibly can.

So one thing to note here, this is total

time, this also includes the time that the application or the proceeding is with applicant as well. For example, you will recognize for ex parte re-exams, we have a statutory two-month period to wait after the order is sent out, unless the patent owner waives that two-month period in which to make a statement.

So these numbers are fairly robust and really represent a progress towards special dispatch because it's the total time from the door to when the NIRC is issued. These other panels denote the times that it takes if a case is appealed. This first column are not appealed cases, if they re appealed to the PTAB, or subsequently to the CAFC, you can see that, of course, they're going to -- those proceedings are going to take longer.

So I guess we've done a lot in terms of looking at our internal processes to cut out as much waste of time as possible, and to be as efficient as we possibly can, and we've done numerous different things, and I want to just highlight a couple of those in the next few slides.

The first one is that dead time between when we send out the NIRC, and when the actual reexamination certificate is published. Back in 2010 that was about 129 days, so over -- so we are not talking -- we are talking significant number of months after we've made our final determination.

And you can see from this slide here, we have done quite a bit working with our colleagues in the publications branch as well as doing refresher training on how to close out a case, how to prepare proceeding for NIRC, and all of these things have culminated, in our ability to drop this time down to about 20 days, over time. And last fiscal year was 89 days, and fiscal year '12 -- I'm sorry -- in '11 it was 89, and fiscal year '12 it was 53, and now we are down to 20. And we just did a last month, just for one month, a snapshot and that's been driven down to 15 days, with 84 certificates being published, just for the month of October.

So you know, we feel that we've done a lot in terms of partnering with the folks in POBs, but also making sure that our people, our

specialists and our managers are dotting every "I" and crossing every "T" when we send these cases over to POB, so that the certificates can go out as quickly as possible.

Another area where we've made a lot of -- made up a lot of ground has been in the area of petitions. As many of you are very familiar, these are heavily-petitioned cases. Not only on the EP side, but especially on the IP side, and on top of that, especially since these are the last IPs available for folks. We've had a massive influx of petitions, and we are trying to balance the petitions, we are trying to make the statutory deadlines for the huge filing bubble, was a challenge this past fiscal year. But over the course of the year, the management team, working with OPLA, has done a tremendous in reducing the -- not only the number of petitions, but their actual age.

So here, we had -- at a high we peaked out somewhere in fiscal year 2012, I want to say around March, April timeframe, we were at 205 petitions. And they were ranging anywhere from one month to 10, 12, 14 months old. We've been

able to compress that time and, in fact, since then this was as of the last fiscal date, and since -- in this last month we've made even more progress. So we have fewer total number and, and they're much, much younger in age waiting for disposition.

Okay. So moving on to the appeals. This is kind of a snapshot of the volume of appeals. There is not really a good number -- a good way to come up with a solid, solid number because there are many different activities, and not all those activities, necessarily, happen within a fiscal year, right. The proceeding is filed -- could be filed in one year, it goes to appeal in the next year, or the examiner's answers may or may not be written in that same fiscal year.

So what we try to do is take an aggregated approach, and look at number of notices of appeal filed, and this is certainly is not reflective, one-for-one, for the number of appeals that are actually -- that actually mature from those, but that was one thing. So we looked at the notices of appeal. Of course in IP you can have appeal and cross-appeal, in those cases,

those proceedings were only counted once. So we don't want to double-count and overestimate.

Another measure, and probably a more accurate measure, of what the number of appeal cases is, would be the of examiner's answers that we prepared. And so that -- you can see in the second row, here, then you can find out how -- during this entire -- in these two fiscal years, we have the decisions by the PTAB and by CAFC, as well as the number pending at PTAB, and the number pending at CAFC. So the left-hand column is the EP and the right-hand column is the IP.

So if you look at the ones that are awaiting decision, we've got, you know, these numbers waiting at the PTAB. Some of these are awaiting a rehearing, so they've had a decision by PTAB, but applicants, or at that point appellants can ask for a rehearing. Then we have some that are these 41.77 rejections, which they're not applicable to EPs, but in IPs as you know, if a rejection is not -- a rejected forwarded by the requestor, is not adopted by the examiner, the appeal right is still attached with

that rejection, so it can come back in at the point of appeal. So those are those cases. And finally, the number of appeal to the CAFC and then you can have -- you can see the totals.

So what's our affirmatory? So how are we doing at the Board? Well, on the left-hand side you've got the EP, on the right-hand side you've got the IP, these numbers are a little bit small, but if you add up the affirmances and affirmances-in-part, you get about 80 percent and is about similar for the IPs as well. And there's going to be people say, wait a minute, how can you possibly account -- affirmance-in-part as an affirmance.

So we thought of that and one way to look at it would be to look at it would be to look at all of the rejections in those affirmances-in-part and do a rejection -- a claim-by-claim analysis of those claims and see what -- what's their fate after the decision. So when you do that, you find that in the affirmances-in-part, 79 percent of the claims that were rejected, remain rejected.

In IP it's slightly different, you can

see that these numbers vary by the same amounts, and it shifts between these two columns. Here, we have 53 percent of the claims that are rejected remain rejected, and the big difference between EP and IP, that we configure, is with IP we are forced to take up the rejections that third party puts forth. We don't have a culling mechanism for that, as we would for EPs.

So lastly, we looked at, and this is, I think, some of the most exciting data, because I think we've never really looked this before, we haven't had the opportunity. Not had the time, not had the time to really think about things logically, and many of you who are experienced with the re-exam status that we have currently, we present a lot of historical data on there, and it's raw data, right? So you have two datasets, the EP dataset and the IP dataset.

And the EP dataset goes back to 1981, and it's vastly larger than the IP dataset which started in 1999. And so when you try to draw conclusions about, what's the right proceeding for you, those numbers can be a little deceiving unless you do some more in-depth, statistical

analysis. In here what we've done is we've -- in the last two years we've taken all of the EP and the IP, and we've normalized it.

We've worked with our in-house statistician Marty Rater, I'm sure you're familiar with his work, and we've come up with this chart. And basically when you look at the number of claims, and the EPs and the IPs that have been either cancelled or amended, which means there is, you know, scope given up, and therefore, you know, infringement to charges fall. If you look at those two metrics, you can see that with the margin of error at the 95 percent confidence rate, that there is an overlap between EPs and IPs. So there isn't a huge statistical difference in the "effectiveness" of these two types of proceedings.

So with that, I'll close and take your questions. Thanks.

MR. THURLOW: Just a couple of quick comments. Thank you very much. Going back slide three that showed the chart, I don't know if you need to put it up, but just kind of give you some quick thoughts from the field, or my perspective.

The bubble in 2012, a lot of that -- it was the fees exactly as you said, but it's also the estoppel provisions. Estoppel as you know --

MS. YUCEL: Yeah.

MR. THURLOW: -- is different than the ex parte, different in the inter partes, different in IPO and CBMs, and the Post-Grant Review, the economists discussion about changing all that. So outside where, in my opinion, your area the sensory -- the PTO's sensory examination unit is as critical as the AIA new proceedings, because of the effects on the parallel litigation, the stays, et cetera, et cetera, et cetera. So I'm not telling you anything new, I'm making my speech.

The thing about what's important, your numbers, I think they're still going to remain at a consistent pace on the ex parte area, because you told me you read the case. The Baxter decision, just highlights the importance of these parallel proceedings, and with the ex parte, you get away from all the estoppels issues that you have and the AIA stuff. So CRU is going to be functioning for many, many years to come, in my

opinion.

Questions for you, I guess. Just out of curiosity, two questions. Anyone from the CRU that was an attorney that went over to the Board?

MS. YUCEL: As what?

MR. THURLOW: As -- I'm sorry as a ALJ, because some --

MS. YUCEL: Not to my knowledge.

MR. THURLOW: Okay. And then just -- this is a great presentation, but the only thing I'd add to it, is a supplemental examination, the certain -- if that's granted then it becomes ex parte in a sense, right?

MS. YUCEL: Correct.

MR. THURLOW: So, I don't know -- you know, I know the information is available on the PTO's website, and so on.

MS. YUCEL: Yes. We do have statistics on the supplemental examination, and this is just a small subset of data that we do make available but, you know, like I said we were just trying to --

MR. THURLOW: Yeah, yeah.

MS. YUCEL: -- take a look at the AIA,

and frankly, you know, the supplemental examinations, this was also instituted by AIA where, up to about 40 of them. We got eight just last month alone. So I think that the public's attention has really been focused on, like you mentioned, all these other things, and I think people are slowly beginning to understand the uses of supplemental exam.

And I think, again, most of you sitting around this table recognize that it goes far beyond inoculating against inequitable conduct. And I think, slowly, people are beginning to realize the power of that proceedings, so we do hope that that upward trend in filings does continue.

MR. THURLOW: Okay. And in just a last question, where petitions, they are handled differently. Some petitions are dealt with, with the OPLA, and other petitions or that, so --

MS. YUCEL: That is correct. It depends on, under what rule the petition is filed under. If it's a Rule 1.181 Petition it comes directly to the CRU, if that petition is filed under Rules 1.182, or 1.183 that will be going to

OPLA. And so to clarify, this particular chart only reflects the 1.181 petitions that are handled within CRU solely.

MS. KEPPLINGER: Thank you. This is excellent Remy. And I congratulate you and the office on remarkable progress, given the numbers, and some of the backlogs and challenges. So I think this shows a tremendous improvement. Now having said that, actually the petitions, that's one of the areas, it's interesting to know this just represents the 181s.

So, particularly in re-exams, time is of the essence, so while you've made remarkable progress, still, even two months can be a killer for someone that's in the re-exam situation because if they don't get a decision on that petition very, very quickly, they've got to just continue and file their response. So anything that you can do to improve that would be helpful.

And I guess the question would be, what are the statistics for the 182s and 183s that go to OPLA, that touch on re-exams? Although more importantly, I know there's -- I know that you've made progress in petitions, in general, but

that's an area that's probably still ripe for more improvement.

And I think we might like to see something more in-depth about the petitions. At least, I would. I think, you know, what's handled where, and what your backlogs, and your goals for the timeframes to get through those are.

MR. THURLOW: Just on that point, there is a fellow registered on this a couple of years ago that -- I don't think it was finalized as a ruling through it, but there was guidance on acceptable petitions to use during reexamination and those that were not acceptable. I gave a list of like, 12. That was widely disseminated, and widely used and was helpful because the petition process, as Esther correctly said, there was confusion between who handles it, is it OPLA, is the Director, and so on. So I think it will be helpful as well.

MS. YUCEL: Thank you. We'll get with Brian and work that.

MR. HIRSHFELD: Yeah. We can certainly provide more information on this. There's petitions that are handled in the office

of petitions of course. There's petitions in CRU, there's petitions in OPLA, and there's petitions in the NTCs, and we can certainly get something to pull that altogether to give more information about exactly what Esther is asking about. Yes.

MS. KEPPLINGER: You know, and I think this is along the same lines as the RCEs, the education of people. For them to understand where the petitions go, and also I think you would help yourselves and the public, if you put a little bit more education out, about the ePetition. The kinds of things -- I mean, I think people know, generally, that it's available, but I have a feeling they don't really know. And that can reduce your backlog, and it helps the applicants to recognize the places where they can use that and take a lot of time off your hands.

MR. HIRSHFELD: Great. Thank you.

CHAIRMAN FOREMAN: All right. Well, thank you, Remy, again, for that presentation. And I'd like to now invite Dana Colarulli, to join us. Dana is the Director of the Office of Governmental Affairs, and will provide us with

the legislative update.

We are also passing out, for everyone who is here, an updated handout, which will also be on line for those people who are online.

MR. COLARULLI: Thank you, Louis. There were some questions, you said, passing out. I know everyone is excited about my presentation, I hope that no one will pass out here.

It is, however, quite exciting and there's been lots of activity. I'll start with -- where actually, Remy started. You know, I run a small but mighty office here at PTO, and they've been working very long hours. A joke that I gave Jim Moore on my staff, I'm going give him hardship pay for having to sit through nine hours of a markup yesterday. He said, no, no, that's not hardship, I love this stuff. So that's my team, mighty, mighty and strong.

So on that note let me start. I've put these slides together to focus on the issue I think folks are most interested on, and that's the activity going on right now in front of the House and the Senate, on abusive litigation. I'll touch on some of the copyright activity as well,

just to give a fuller a picture, and then some of the other things my office has been engaged in.

But let me start right there. There's been incredible activity, as you all know, looking at abusive patent litigation, and a number of proposals to try to address various different aspects of this, right on the tails of the AIA. Many had thought that the AIA was the one shot on patent issues, and here we are again, in Patent Reform II, but certainly there's a number of issues here that the President has taken note of, Members of Congress have taken note of, and the current discussion is focused on those things.

Focused on the cost of litigation, how to make -- resolving disputes over patent rights more efficient, reducing the transaction costs, as I like to say.

So with that, there have been hearings both in the House and the Senate, they've jumped back and forth between committees of jurisdiction on some issues. The Judiciary Committee is in the House and the Senate, and now t least one hearing in each of the commerce committees, the

Energy Commerce Committee in the House. The Senate Commerce Committee, looking at -- exclusively at the issue of demand letters and abusive practices, in that context.

In that context, because I won't talk about that again, not clear whether we'll see legislation, although there's been discussion of creating a registry at FTC. What's FTC's current authority to regulate or investigate, and the FTC has a current investigation into the use of demand letters. So we are seeing some attention there.

I said I'd mention copyright as well. In addition to the considerable activity, on the patent side, considerable activity on the copyright side as well. And I think we are only seeing the beginning of a -- what the House Judiciary Committee, at least, has thought of as a series of hearings on copyright issues. This is a much longer-term review of the copyright system. The most recent was earlier this week.

This slide I put up to show you that the staff on the Hill are working on our issues, are working on a lot of issues, particularly in the IP space, and then the Committee of Jurisdiction

is judiciary. There's other small things like immigration, and other issues that they're working on. So on the copyright side, I think, kind of -- continuing looking - a continuing look at commerce of copyrighted materials in the digital economy, and I think we'll have more as we continue into next year.

So, by and large the issue, I'm assuming it's of most interest, as I said, patent litigation abuse, legislative proposals to address those things. I mentioned the White House had -- and you've all seen this slide before; the White House had jumped in earlier this year, on June 4th, to announce both executive actions and legislator priorities.

We spent a lot of time implementing the executive actions, I think we made some good progress on those. And I have them up here. Now is when the legislative recommendations have really taken the attention. Folks are going back and looking at the old fact sheets, in light of the hearing that happened in front of the House Judiciary, or the markup that happened in front of House Judiciary Committee yesterday.

This is an updated version of a slide that I brought to this body before. This represents 10 bills, 6 in the house, 4 in the Senate. There's also other proposals that have been out there were in draft form. One a few weeks ago from Representative Polis on demand letters not represented in this list. But again, lots of -- if legislative activity is measured in the number of bills introduced, lots of activity here on this issue.

And I think it's fair to say that, as you look at the right-hand column, it gives you a quick, at-a-glance, of a lot of the issues that these bills have tried to address. The House activity yesterday, I think reflected most of these issues, in some way or another. And I think you'll see in the Senate process, likewise, they'll address a lot of these issues as well.

So the House -- as Chairman Goodlatte introduced the bill earlier this year, he held the subsequent appearing on the bill, moved directly to markup. He announced the Markup Senate, I think, had sought to meet the goal of introducing the bill at least before that markup, so we had

both the Senate and the House Bill. It's helpful to folks like me, trying to make recommendations to the administration on views among others to have the landscape clear, both House and the Senate Bill.

You know, what we saw was that the Senate Bill really was a bit more modest than the House Bill. It didn't include, I noted on the bottom, an expansion of CBM, although there's a separate bill that was proposing that. It didn't propose fee-shifting, although that, certainly, there's also a separate bill on that.

In Senator Cornyn's -- introduced by Senator Cornyn, both of those issues we expect to be part of the Senate discussions, but at least in the Bill it wasn't included. All the other issues, except for -- I just removed one that went towards bad faith demand letters, subject to the FTC Act. This is an issue that was in the Senate Bill, not in the House Bill.

Some of the activity in Vermont, and a few other states, where the AGs have been more active on this issue, I think this was an attempt to reflect to that activity, and introduce

federal legislation that could support other AGs to pursue those similar actions. You take that out, the rest of these issues are all addressed in the House Bill.

And, in fact, a lot of the language is a duplicate of what was in the House's introduced bill. We'll talk about, in a second, the changes that were made yesterday to the Goodlatte Bill. I think you can safely assume that many of those changes will be reflected in the Senate Bill as well, as they move further along in the process.

There also were some variations in the language, for example, real-party-in-interest, Disclosure to Senate Staff, drafted a different version that they preferred, so you see that as well. Again, as we move through the process I think you'll see the Bill starting to look very, very similar.

So, yesterday the House Judiciary Committee called a markup. So let me start with a little bit of the one-on-one. So I mentioned House Judiciary Committee Chairman introduced the bill and moved it through a substantive hearing and then moved to mark up, opening up with the

markup which, as I mentioned, lasted nine hours. The Chairman introduces his Manager Amendment, and then all the rest of the activity throughout the day, essentially were amendments to that Manager's Amendment.

Some of those amendments were a substitute in whole, and the Ranking Member of the Committee, a representative of Conyers', the Ranking Member of the IP Subcommittee, Representative Watt from North Carolina, introduced an amendment that would substitute the entire bill. That substitute essentially mirrored what we saw in the Senate Bill, which is why I wanted to show that slide previously, minus the demand-letter language.

And plus, a significant addition, the old proposal to convert USPTO into a revolving fund. So this is the funding, a provision that we saw hold, and it became a quite dominant theme during the hearing. There's still a lot of interest. There has been, traditionally, in the House Judiciary Committee, to ensure that PTO keeps all of its fees.

I think it's fair to say, in other parts

of Congress, particularly the appropriators, there's a difference of opinion on how that should be affected, and that certainly played its way out in the AIA.

I look at Robert because he's laughing. He knows I'm very modest in some of my descriptions. So there was a difference of opinion, I think that's fair to say. But I think, as a result, the USPTO received a number of very favorable comments, both towards the work that we are doing and, again, reiterating the importance of this agency to have some consistency in its funding, so it was a very positive discussion in that respect.

It was -- roundly it failed. It did not get the support it needed. It was as we saw in some of the other amendments, unfortunately, a very partisan vote, Republican voting for the Republicans -- the Democrats voting with the Democrats.

The Chairman of the Committee voiced his support, in general, for PTO keeping its fees, but that inclusion of this provision was a poison pill in the legislature process. And certainly

they wanted to focus on what they could focus on and be production, including that in the Bill would certainly raise a budget point of order when it got out of the Committee, and halt any progress. So that resulted in the vote that we saw.

I'll hit the things that were included, but to highlight a couple of other issues that were discussed but either failed or were withdrawn. An addition to funding, there were a series of proposals to either strike or limit various provisions of the Bill, particularly on Sections 3, and Section 6, on pleading requirements, and then on discovery and direction to the Judicial Conference.

There was a least one proposal that was offered and then withdrawn on the ability of the PTO to -- in the post-grant position proceedings, used the broadest reasonable interpretation. That still might be ripe for discussion as the Bill moves towards the floor. Likewise, there was a bill offered by the same Member, Ms. Lofgren from California, to clarify prior art and the grace period. Now this is an issue that came up,

certainly during the AIA, and in wake of the AIA, was the source of some consternation, particularly on the issue of secret prior art.

The member would like to work with the Chairman to try to address that issue. It's unclear whether that will result in language, or if it's just simply furthering the discussion. So those are the things that weren't adopted.

The things that were adopted, two measures, Chaffetz, and Mr. Marino, the Vice Chairman of the Committee on demand letters, one, simply a study. And there's a typo there, actually the study -- I'm sorry, that study is USPTO Study, on abusive demand letters, and the impact on the U.S. Economy. Mr. Chaffetz also introduced provision on demand letters.

That was a provision in two parts, one was a sense of Congress that this is a bad practice. The abusive use of demand letters, and trying to identify, or least prevent the sense of the Congress that, this is something that should be addressed. There's some language in there that actually tracks some of the FTC's statute language; so I'll be curious to see the impact of

that, or if that will be changed.

There was a second provision that, in effect, would simply limit, or provide the opportunity to limit treble damages, or willful damages, in cases where a demand letter, and the demand letter is defined, I believe, in that provision. Specificity, either identified in the patent, or why the Senator believes that it's a -- the recipient is infringing.

So, lacking the earlier provision that we saw in the Goodlatte introduced Bill, that would have created a demand letter database, caused USPTO to actually host a database, that was struck by the Manager's Amendment. These two provisions, I think, were introduced to try to fill that gap, to address that issue, still.

An additional study by Mr. Issa, that's where the typo is here in my slide. It's actually a GAO Study, although I assume that they've worked closely with us, to look at the area of business methods.

Two more amendments, one by Cedric Richmond from Louisiana, generally talking to outreach; it mentioned the Ombudsman Program. I

think it actually tries to extend our current Ombudsman Program to something that it isn't currently doing. We are certainly doing a lot of outreach as perceived in that amendment, so there may be some ability to revisit the language there, but certainly directing USPTO to enhance its outreach to veterans, minorities and women.

Last, and actually a more significant amendment, at the end of the day, was an amendment offered by Mr. Jeffries from New York, on fee shifting. Now this was one where a minority member working with the Republican side, trying to add a little bit more consistency and certainty in the language around fee shifting.

If you're enhancing the authority of the courts to be able to shift fees, you're changing what currently is 285. They wanted to have a little bit more certainty in that provision. It ended up getting the support of a number of Democrats, both for the amendment and for the eventual passage of the Bill.

That did not include significantly, the Chairman - I'm sorry -- the Ranking Member of the Full Committee, and the Ranking Member of the

Subcommittee, but a number of other Democrats ended up supporting the full Bill, and supporting this compromise to the fee-shifting provisions, that otherwise caused, consistently, a number in the minority, a concern, particularly -- concerned about enhancing this ability of the courts in this particular area of litigation, in the patent area, versus other areas of litigation.

So that, in a nutshell, is what happened yesterday. Apologize for the late update of the slides, but we were in the room until 8:15 last night, tracking the activity. There's been considerable press which I'm sure some of you followed today on this Bill.

Next steps, I think -- the Chairman of the Committee has indicated they'd like to move this to the floor soon, and probably in December. There's a couple of weeks of legislative activity to be had in the House in December, the week of the third, and the following week. I think as soon as the week of the third, you could see this scheduled for House floor consideration.

Meanwhile, I think the Senate is going

to go forward with substantive hearing. But the time is not really dependent on the House activity, but I would think that's going to happen sometime soon as well.

So, knowing that I've probably, you know, gone over my time. All right, let me hit one more slide unrelated to litigation, and then we'll get to questions.

Clearly, the other big news this week was our announcement that we are moving forward in San Jose. There's already been reference to that today during the meeting. I'll mention from my perspective and my team's perspective, who was very involved in the rollout of this. A lot of local and state officials very excited about this, in addition to our federal champions, in Lofgren, Honda and Eshoo.

We are very, very happy with the enthusiastic support that we got when we made this announcement, and it provides a further opportunity for us to kind of build those relationships, and really highlight the good work that PTO can do. Silicon Valley is a good testing place for that, given the tremendous support from

the local officials. But Denver and Dallas present similar opportunities for us.

I mentioned we were continuing to outreach on the Executive Actions. Green Paper, we have a conference coming up in December, with the Department of Commerce, on the copyright issues. And then there's continuing work on -- actually implementing legislation for three major treaties that we were able to be involved with and push forward. That activity, along with the regular work at my office to try to provide more awareness around the IP, has kept us very, very busy.

So with that I'll end. And I know Peter has a question for me, so I'll open the floor to questions. Christal does as well, probably.

MS. SHEPPARD: We are fighting because Wayne actually isn't here. He would have been the first person.

First of all thank you, and your group for all the work you're doing. I don't know if people truly understand the astounding amount of work that you're doing, tracking bills through multiple committees. And they're all moving.

So I just want to thank you for that, and for this presentation which was exhaustive on your part, and very detailed.

The question that I think Wayne wanted me to ask was what PTO tasks are out there? And are other things that need to be fixed that aren't in the Bill, that PTO would like to see put into the Bill?

MR. COLARULLI: So, I think that's something we are continuing to look at as we are looking at the legislation, we are working very closely with the White House staff, and taking our marching orders from the -- certainly the June 4th announcement that listed it.

As I said, a number of the things I think, most of which, short of the ITC provisions that were included in the seven legislature priorities, are included in the House Legislation. So we are very happy to see that. There are some things, I mentioned one. First I'd like to try to work with the Committee on, on the ombudsman, on our outreach. Those are things around the edges, certainly not, kind of, the main thrust of this legislation.

But, you know, I think there will be a few. I think we'll be look for, and my staff right is thinking about what we might put in the Views Letter, which would include some of those asks. So I'm not prepared to kind of do a full list, but I think there's a few things, I think, that we'll want to work with.

I will mention, actually one, that the PTO has mentioned in the past, and that is the language that removes PTO's ability to use the glossaries in all interpretation. The Former Director and the Former Deputy Director have both spoken on this. You know, I think the current language does cause us some concern. We would like to work with the Committee on addressing those concerns.

MS. SHEPPARD: I'll open that --

MR. COLARULLI: Sure.

MS. SHEPPARD: Because Marylee mentioned earlier --

MR. COLARULLI: The field is thickening, look at that, that's --

MS. SHEPPARD: On the same subject so -- and then I'll pass it off.

MR. COLARULLI: Sure.

MS. SHEPPARD: It's on declarations, and it's -- do you want to take over from there?

MS. JENKINS: Yeah. Great tag-team. So, we have a little problem with declarations, in that when we have to do a continuation or divisional application, we cannot use the older declaration, which we always have, and it's not been a problem. We actually have either have to get a new declaration, which is very cumbersome, because of the language that we have to add.

The above-identified application was made or authorized to be -- I'm sorry -- The above-identified application was made or authorized to be made by me. That language we have to have in the new declarations.

MR. COLARULLI: Yeah.

MS. JENKINS: Very cumbersome, very expensive. There's a substitute process, it is also cumbersome, it is also expensive. Clients are not too happy about this. Could you just like -- if the horse hasn't gone too far, can you just throw small blanket on it, and fix this?

MR. COLARULLI: So, a great question.

MS. JENKINS: Thank you.

MR. COLARULLI: And I'll have Drew scale me back if I get back if I get this wrong. Actually I think that the -- it's an issue that both stakeholders have come to us with, and the congressional staff, particular senate staff have come, asking us about. And I think the language in the Senate Bill, as introduced, is slightly modified from what came out of the House, and may address some of the concerns, right.

I encourage you to take a look at that, but that certainly wasn't the intent, to the extent that we can help the staff make it a little less burdensome we'd like to, so we'll follow up.

MS. JENKINS: I'll be in touch.

MR. COLARULLI: Sure.

MS. JENKINS: Thank you.

MR. THURLOW: A quick perspective before a question. So you mentioned all the bills are up there, it's just like so many things going on, my head is spinning, you guys. Mr. Moore's head must be spinning. And thank you, again, for your hard work. I mean, I always tell you that we are living in interesting times.

So I know you mentioned a lot of bills, it seems to me from outside D.C., that Goodlatte Bill, is clearly the main Bill in the House. The fact that sooner or later, you introduce a bill on the Senate side, and has overlapping provisions, and I'm saying this to all the Nostradamus, trying to see what the future is going to bring, was more interested in the fact that (inaudible) even introduced the bill with overlapping provisions, meaning they're trying to bring a bill close together with that.

So it's not just the House doing everything, so that's just from an interesting perspective. And then the fact that you have the White House, and as you've mentioned, actively involved. There's a sense in the patent community, that's something is going to happen, end of this year, and likely the beginning of next year, where we go with litigation abuses, and so on.

The feeling again, you can't confirm or deny any of this, CBM is likely going to be out. Very controversial, many people applaud that (inaudible) including. If you can -- finally to

my question. Two hot issues that remain, Discovery, I see some of the PTAB judges here, Discovery, as you know, in the PTAB proceedings is extremely limited -- Discovery, and district court proceedings is, many people would say, out of control, and so wants to scale back.

So if you could discuss where we are at. I know there's certain limitation around Discovery and the Goodlatte Bill up to the Markman Hearing. Maybe you could just discuss that more generally.

And then my second question is, since the CBM is out, assuming it's out, what is the next thing that's going to -- Is it these demand letters that we are hearing a lot about, or heightened standard? That's going to be the next issue that's really wrangling people, I guess.

MR. COLARULLI: Yeah. A lot of good issues, Peter, and I think -- the first thing I would say is, you know, the legislative process is just that, it's a process. I think you're right, the House and the Senate, from the very beginning, attempted to coordinate.

We had actually initially anticipated

the bills to be introduced simultaneously, even if different. But mirroring some provisions, it was clear that the Senate was taking the lead, at least, in drafting a consumer -- customer stay provision, and the House adopted that into their Manager's Amendment, the latest and greatest from the Senate. The Senate adopted some other provisions in the House, which is what led me to say it.

I think, given the markup, you'll see some change in the Senate provisions as well, but they have a starting point there. That said, that relates to the CBM. CMB expansion was taken out of the House Bill. I think that makes it more likely that the Bill moves forward. It moves forward, I think, by the end of this year.

That doesn't preclude the discussion on the Senate side, and the Senator sees himself as the father of this provision. Senator (Inaudible) is quite persuasive, I'm sure he'll make a great pitch for it, and it will certainly be part of the Senate Judiciary Committee discussion.

So I don't think it -- it's certainly

not off the table, but at least in the house vehicle it's gone, gone for now. At least in the House discussion, as you move through the floor, it certainly does shift the discussion to other issues. I think probably next on the priority list, are those limitations on discover, and that direction to the Judicial Conference, which was raised multiple times yesterday by the minority, the concerns continue. And I think that they'll continue as they as they move through the floor.

The compromise on the fee shifting takes some focus off of that provisions, that otherwise, I think, would have been the next provision. So I think that's certainly the next in order. The demand letter, likewise, with the two amendments that were adopted with some parallel discussion on the commerce side of the table. I think that says, well, there's some things that we can do there; maybe not in the context of the Judiciary Bill.

So, I think that's where the shift, at least in the House, goes. I wouldn't preclude a very active discussion on CBM and Discovery in the Senate.

MR. THURLOW: In your years of experience working on these issues, have you seen a bill where they actually refer to this Judicial Panel Conference to determine certain issues? It just seems like they're passing responsibility for handling certain issues to another body that it's not their responsibility to do it, but --

MR. COLARULLI: Yeah. I mean, from what I understand there has been -- there is some precedence. They've also been, with initial language, at least within the Senate draft, had been working with the Judicial Conference and saying, you know, what would be appropriate? I think the congressional staff probably adopted probably some more aggressive language to direct to the Judiciary Conference.

Some of that was softened, and proposed to be softened yesterday in amendments as well. I think, in the interim we've seen the Judicial Conference come out with a letter opposing many of these things. So I think there's still some discussion to have with the Judiciary Conference about how you should phrase that language to maintain the separation of powers. But there is

some precedent to Congress directing the judiciary to at least study or start process that might result in rules.

MS. KEPPLINGER: Recently, OED put into place some time limits in dealing with matters which was seen as a very positive step by practitioners. So it was a little surprising to see, in this legislation, an expansion from one year to two years for the time for OED to decide these matters.

And that clearly has a negative impact on practitioners, and leaves -- them hanging out there for longer period of time, creates more uncertainty and potentially higher malpractice insurance. And I guess, you know, can you comment at all on the PTO's position, or if you're going to push back on that. Certainly, AIA cases can be decided in one year. It seems like LED cases could be done in a year as well.

MR. COLARULLI: Yeah. This is an issue, as I remember, was debated and discussed even during the AIA. The provision that's in the House Bill, and was wholesale adopted, actually, by the Senate as well, because they had adopted

some other provisions. So you've seen it both -- not from the PTO, and in fact, I just personally delivered the report required under the AIA, on the OED, actions to the Hill.

We've been making the one-year deadline where we couldn't have ventured into some polling agreements, so the current one-year deadline, at least from what I understand from talking to our staff, has not been a problem.

You know, that said, there may be some value in looking to see whether the timeline should be extended, or not, and that's something, certainly, we are going to talk about internally here, as we consider views. As I said, I think some of those, the different timeline limits, I know, personally, were discussed earlier on in AIA, a lot of the staff drafting those provisions, are the exact same staff. So it certainly seems complimentary to allow the office to do its work, but certainly didn't come outside.

CHAIRMAN FORMAN: Well Dana, we clearly did not allocate enough time for this topic today, but we have two questions from the public. And so let's go ahead and address those.

We'll start to my right.

SPEAKER: My statement, and I was actually told to save what I had earlier, for now. And I want to address 516 Hearing, which is a mischaracterization. Quickly, number one, the issue of patent trolls. IP is one-size-fits-all, so if you've got copyright domain, trade mark, and all the others.

When someone says, hey, do not use, technically we are all trolling. So as you're address patent trolling, understand that it's a sexy, fun term that everybody likes a camera moment from at the judiciary hearings, but you're actually setting a precedence for all intellectual property that someone will defer to in some legal matter, or not.

Most importantly, IP belongs to the owner. It's up to the owner to decide when and how to use something, not up to someone to say, use it. Or, I want to use now, you have to let me use it, or I can use it without your permission.

Drew was talking about, earlier, the average person. I read these papers, I happen to like legal stuff, but the average person can't.

Recall that The New York Time is written for an eighth grader. For the average person, you really need to write in the format of See Spot Run, and Green Eggs, and Ham.

The other thing he was talking about the goal. I actually had to turn a seat mate and ask a question, it needed interpretation. So I understand now, that your goal is how to serve the public best. The average person thinks goal, we think quota. So, again, in terms of talking to the public, we are just party to listening to this, I'm going to attack the mischaracterization of the 516 Hearing. I was there.

It addressed orphan works, and it was the Copyright Principles project had been an initiative of Pam Samuelson from Berkeley. It's been ongoing, the conversation, since 2006, we are in 2013 and this was still going on. One of the witnesses was a from U.S. PTO, I think Commissioner. Dana would know better, he was absolutely against the idea of the initiative of patent trolling to become another cash cow for the entities that are the tech companies, who are actively scraping Meta data out of images, with

the new technology and are creating orphan works.

So at that hearing Judy Chu was one of, I think, three legislators who's said, where are the artists? Because I'm a voice for the 2D arts, which is the artwork and photography; and she said, where are the artists; and the answer back from the witness? And it's important to understand the witness tables are stacked. Pam Samuelson said, I couldn't find any. And Judy Chu repeated, where are they? She said I'd have to find 50 to bring in one.

So as you are making your recommendations here, understand that you're not hearing the whole story. So I apologize for challenging you on that, Dana, but it was important to understand that it wasn't all as rosy as it was coming across. And that there is a major issue in terms of how technology has been stacking a lot of the initiatives, and I think that should be fair.

MR. COLARULLI: I don't think it was a question for me to answer. I don't feel challenged, I don't believe I characterized the hearing, but thank you for your comment.

CHAIRMAN FOREMAN: One more question from the public.

SPEAKER: Thank you (off mic)

MR. COLARULLI: The patent term adjustment -- provisions that are in the Bill, as I understand it, do track current PTO practice. I know there's been a lot of uncertainty, clearly it is being litigated in the courts, but I think would say it is very favorable towards PTO practice, to the extent it's providing certainly we'd likely support it. We have not taken an official position on what's in the Bill.

SPEAKER: Okay. Thank you.

CHAIRMAN FOREMAN: Thank you, Dana. We appreciate the updates.

And we are going to move forward. Bruce had mentioned that this individual is the busiest person at the USPTO, and he may give us a drive-by, so we are honored to have his presence. John Owens is the Chief Information Officer, and will be giving us an update on OCIO, followed by a quick update from David Landrith, Portfolio Manager on PE2E.

MR. OWENS: I'd be happy to yield the

time if you need it.

CHAIRMAN FOREMAN: We'll skip our break and we'll just power through it.

MR. OWENS: I'm good. Thank you, all, for having us this afternoon. So, does someone have the clicker? Does someone have the device to -- Okay. If I could ask someone to change the slides for me then, since I don't seem to have the remote? Dana stole the remote. Okay.

That's why we lock all the computers down in Dana's office. Okay. You know, October is a very interesting time. In the federal government a lot of things, and many, many, many things begin. And as you know coming off of last year's slowdown, due to the reduction in funds available, we did what my grandfather, who is truck driver, like to call, putting the hammer down.

So we start off in earnest. We expected a six-month calendar delay to the suspension of projects, restarting, procurements in 60 to 90 days. We completed that in almost a month. So that part is complete. Of the original teams that we had when this all came to a very abrupt

halt, we are now in the midst of hiring five teams, that's approximately 50 out of the 100 people, and approximately 12 of them had prior experience on the project.

Now, that's not an unsurprising number. When you stop work for six months good people find other work. These folks were happy to come back, or were reassigned by their companies from other work to back to work with us. Unfortunately that means we have a lot of new faces, and what happens is, as we put those new faces to work, and as they work out, we keep them, and if they don't, we have to turn them back. And it's kind of wash-rinse-repeat methodology until we get a top-notch staff team again, because everyone knows that you're only as good as the people doing the work.

One additional point to note, other than to say that we are moving very quickly so this does not take 18 months, we would like to see it much quicker than that, as we've demonstrated here. We need additional resources, or we are also acquiring additional resources for the Legacy tools. We now have to live with those

Legacy tools a lot longer. CPC, for example, is going to make large revisions to the current search system.

Just as an example, instead of us being well on our way to replacing the search system with a newer search system, and therefore we are investing even heavier in the Legacy products. That may cause some disruption because some of them are a little fragile, but it's necessity for the business. And I know work very closely with Peggy and Bruce and their team, to set the priorities on what is being developed for the best efforts that can be put forward by the Examination Corps to serve the public.

OCIO does not build IT for IT sake, we build it for customers, and those customers are patents, trademarks and, of course, the appropriate unions representing the examiners, as well as the public.

So I'm going to hand it over for a moment to Mr. Landrith, and he's going to take you through a little bit of the patents, and then we are --

MR. LANDRITH: So we've restarted five

major efforts this year, that includes the Office Action project, the Exploring Search Technologies project, the effort to retire the IFW and Legacy Image Services. The conversion of existing office actions to XML, and then the Applicant to Office Interface is Text2PTO.

The accomplishments and the key releases, this includes a little bit of roadmap here in terms of next steps. With the patent examination tools and infrastructure, we are resuming the quarterly releases, and incremental functionality to our pilot audience starting the second quarter of this fiscal year with the January release. We will be increasing the size of that pilot audience, and then we have slated for the first quarter of next fiscal year, a release to the corps.

With Patent Application Text Initiative we've converted approximately 91 million pages from image to XML for IP, that was our claim, spec and abstract. The goal over the coming year is to add additional document types and to improve the quality of the conversion.

With the Cooperative Patent

Classification, we just completed a release to part one of the Miscellaneous Classification Changes and Classification Allocation Tool. In the first -- in the second quarter, and following -- January and February of 2015, we'll be deploying the second part of the Classification Allocation Tool as well as the combination of datasets.

With the Global Patent Search Network, this is a public site, in September we did our final release that included all the published patents 1985, through 2012, that will be updated on a quarterly basis, as we continue to get new data from China on their published patents.

MR. OWENS: Just a couple of quick highlights, under Patent Application Text Initiative, it now takes only between one and four hours before the application is turned into XML so we are almost real time. That's a huge improvement, even during the downturn. And if you look here, the Global Patent Search Network, I would to remind everyone, that that is our prototype for the internal search system of the future.

Your participation in using that system externally, and the feedback you give us, of course, will help grow our understanding of that system, based on a much more modern search system that's widely used in the Internet. And of course directly impact the effect that we on providing a better search system to the examiner. So please use that tool, and provide us feedback.

So, I know what everyone wants to talk about, and that's USPTO.Gov website outage. I know I've heard from many members of this team. I don't really -- I'm not going to provide you a list of excuses. The outage was a surprise to all of us. The website is made up of a cluster of computers, it's more than one. All of them failed all at the same time. I'm not going to go into the forensic details of that, but I will tell you that just because the website was down, that products like EFS Web, Public PAIR, TARR, et cetera, were all available. They are on separate clusters.

They also use separate technologies, they are not hosted off of the same website infrastructure. The problem was, as many who

don't have those products bookmarked, could get to them. Unfortunately, at the same time we did not have a contingency plan to list a simple page with links to all of those products, which we have since rectified, once it's gone through review.

I would like to remind everyone, as the slide says, that this system since I -- at first inception was in 2009, ran for almost four years with minimal disruptions, unlike prior in 2006, '07 and '08, prior to my tenure here, where the website had massive issues. This infrastructure has been relatively stable.

We also have restarted, now, our two initiatives that were cancelled last year. One was Website Redesign which would move us move us onto a modern platform. We are using a defunct platform that's no longer supported by the vendor that sold it. In fact the product is dead. We are moving to a much more scalable open source, widely-used platform.

We also have an alternate hosting site which we acquired last year. And that project, unfortunately, was stopped. Both of those projects were stopped, but we have resumed them.

We hope that continued efforts on improving those -- the environment, those two projects, in particular, and a all -- fail-safe contingency plan will help those that those don't have the bookmarks, continue through and apply, or research their data as necessary, even if there were to be another failure.

I don't want to jinx myself, but we are pretty confident that we have the right plans in place that when these are done, it won't - should not happen again. So, I will not take questions.

MR. JACOBS: Thanks. Thanks a lot John. I know you have told us this before, where many of these initiatives you described they were delayed and are now restarting. These are aimed at improving patent quality and supporting the examiner corps in their productivity. For example, you've told us about XML, in terms of its importance, in terms of modernizing the IT infrastructure to support the user base, and also in terms of PE2E, and the search engine, in terms of enhancing patent quality.

So is it fair to say that now, in spite of all the good news in resuming these, that

really they won't have an impact on quality and productivity until FY 2015, even with the accelerated schedule at this point?

MR. OWENS: That is unfortunately true. We can't make up the loss of 100-person-team and six months worth of effort overnight. It's unfortunate, but that's not the reality. So patents end to end, the very first instance to the corps, we are doing a few things early this year, which we are expanding from the 40 -- approximately 42 people to over 100.

I know we are working very closely with POPA on selecting those individuals, so we are trying to get it out there, get it more used. We're following; our user-centered design methodologies, and working closely with the unions and people to give the appropriate feedback, so we have a good understanding of how the product works once it is fielded, and people are satisfied with it.

And one of the things you didn't see up here was, even during the downturn there was a release to produce a better quality product that we really didn't highlight, because we kept one

out of the 10 teams working during that time.

I would also point out that on this that on this slide here, and we didn't make a huge deal of it, we actually brought a product that wasn't supposed to start until '15, back to '14. And it only -- it got shifted because of -- everything got shifted out, but that is Text2PTO.

Now that was supposed to start in '14, but with the delay it got moved into '15, and now we've pulled it back in, because the quicker we can get straight XML from the user, of course, the XML from the user, the text from the user is always 100 percent accurate. And we like that 100 percent number, I know POPA does as well, the better off this agency will be, and the better we will be able to manipulate the text, to offer more complex tools to the examiner.

Now this one will have an impact as we work it, again, not to release till '15 timeframe, late '15 actually. But that will have an impact outside of the examination corps and in the examination corps. So this is the one thing that we brought in that you will all see and get to try, and give us feedback on in the near future.

MS. JENKINS: John, I think we need to be happy and thankful that we have an earlier conversation we did with Tony, with respect to financing. That, you were a little happier this time when we met with you than, say, six months ago, so. And that makes us all happy too.

But one thing that I would like to do is, when we find that there are outages or things with respect to the website, with respect to the user community, because everyone knows I wear that hat, at times. That we help you, and give you some insight and suggestions on, you know, how to get the communication out, and get it out to the public about what's going on. So people know the office is fine, everything is working, we just are having a little hiccup, so. And we'll look for ways to figure out how to help you in that area, so.

MR. OWENS: I do appreciate that, and all feedback is welcome. I think it was pretty obvious, and I don't -- I'm the type of person, and I tell my team, it's okay to make a mistake as long as you don't do it again.

The infrastructure that we had we felt

it was pretty robust, the system was working for four years, and I will be honest with you, we were caught by surprise. The sudden failure of an entire cluster is something one must scratch their head over, and it did take us a while. But because of that we were not prepared.

Now we had started projects that were suspended that would have put us in a better position, but things like getting approved communications in case of an emergency, and approved website with direct links, we had not done that. That, unfortunately, due to the federal bureaucracy in getting approvals and legal reviews and everything, takes time.

At the same time we were doing that, we were fixing the site. What I can commit to you today is, we are much better prepared for the future. So if this were to happen again, which we are going to do our best to make sure it does not, obviously we are prepared for much quicker communication outward to let you all know. And a posting of a basic, generic website to allow business to continue, because getting that information out of there would have certainly

calmed a lot of people, and a lot of nerves. And would have let people know it was just one part of our environment, and not the whole environment, which was certainly a failing on our part.

So I admit to you that that mistake happened. It's kind of obvious, but I'm also committed to making sure it doesn't happen again.

CHAIRMAN FOREMAN: Thank you, John. Any other questions, for John or David? Well, thank you.

MR. OWENS: Thank you, all. Have a good afternoon.

CHAIRMAN FOREMAN: And so, I'd like to welcome Mark Powell to deliver his presentation. He's been waiting patiently. And Mark will give us an update on the progress of the Patent Prosecution Highway.

MR. POWELL: Thank you very much. And good afternoon, everyone. In my several presentations to PPAC I'm always the cleanup man, so. I've been allotted 30 minutes but I think I can be, you know, quite concise and give you an update.

The last time we gave you an update on PPH was probably a-year-and-a-half ago. And I think at that time we were happily expressing how we've expanded the program, we added offices, and so on. But over this past several months we've had some extras -- some really good progress reports and that's why I'm here today.

Let's see. Okay. Current state of play, my slide starts with the recap of the past. We have the experience with PPH now for some seven years beginning with our initial pilot with the JPO in 2006. Since then, we've expanded to some 27 offices on the basis of 41 agreements. PPH is still working well, the grant rates are still very high. The quality is very high. Prosecution cost for the users of PPH are very significant.

In terms of substantive responses, or substantive actions requiring substantive responses, we find that, on average, PPH cases have less than 1.75 per case, whereas, substantive response in all cases is a little more than one-and-a-half.

So on the substantive stuff -- I don't know what happened to my slides -- you know, some

of the big prosecution items are cut in half in terms of cost.

I know I didn't do that. But if you have the slides I'll just continue.

CHAIRMAN FOREMAN: We can blame John for that, I'm sure.

MR. POWELL: Yeah, failure. Okay, I do have a -- I'll continue. If you have the slides in front of you I'll continue. Oh, here we are. Okay.

Bullet number four, this should actually read 2013, and please forgive me this all has been happening in very recent months. The EPO in our IP5 environment propose a PPH pilot. It essentially really only means that the EPO is now establishing EPO agreements with the Chinese and Korean offices, for our users of the PPH, we've already had these agreements with all five offices anyway, so there's really no difference.

It does indicate EPO's willingness to move from the Trilateral, i.e., USPTO and JPO agreements into a larger context, but not yet beyond that. Also -- and pardon me, that was agreed to in May of this year.

In June of this year, again, let's just say, 2013, pardon me, we at our annual meeting of all PPH offices, it's known as the "Plurilateral" Meeting, a number of officers agreed to finally begin to harmonize the PPH system.

With reference to some of this 41 agreements that we have, some were one way, some are Paris route only, some are PCT route only, and for the users of the system, it's really not a good situation, and our user community has been really clamoring, rightfully so for, you know, some normalization of the system.

At this meeting in June of '13, the USPTO introduced a very simple one-page document entitled, Global PPH Principles. Where we thought the offices, really are already in agreement, and very simple and straightforward, and I'll describe those in my next slide. And we have a -- we have an agreement regime which is not really an agreement regime.

And let me explain. One of the big problems with our PPH management is trying to keep up with those 41 agreements, which all expire at different times, and it really is very

cumbersome. And it's not only for our office but for all of them.

What we decided to do here was, try to establish these very basic principles, and then see if offices would simply comply with them, right. Rather than trying to set up a multilateral agreement, which is very difficult, as many of us know. And as offices wish to join this compliance network, they could simply make a statement of intent to do so without another agreement having to be re- signed over and over and over again, which really would not help us in our maintenance of agreements, which we are trying to avoid. So, that's significant.

Over the past couple of years we've had our "Mottainai" pilot. "Mottainai" again, meaning a Japanese word expressing a sense of regret for not using something that is useful, ALA Recycling. And the original PPH, it was always office of first filing work to be reused in the office of second filing.

And of course, with "Mottainai" is, if there's a second office's second filing, and they do the work earlier than the first office, why

can't we use that work. And that's essentially what we've done. That has been a pilot with, I think, nine offices, including us, for some time. No problems there, all good.

The USPTO, a couple of years ago, introduced the PPH2.0 pilot which was essentially just reducing the paperwork requirements for the filers. That's run well, and these two concepts are very basic concepts which have been piloted, they have been proven, and will be part of these in Global Principles.

But, one of the real beauties of this, is that there is no longer a distinction between Paris route work products and PCT work products, or -- in fact, if there -- in the unusual case where there were simultaneous filings in multiple offices, which is possible, and there's no priority claim, it even accounts for that.

It's simply that, for earlier work done in any participating office, is available for use in PPH by another participating office. And this pretty much sums up the last bullet.

This is a list of the countries that have agreed, initially, to participate. The top

three in blue are three of the five IP5 offices. The second three in green are the Vancouver Group offices, including the U.K., Australia and Canada. Those three offices, in particular, have been -- you know, shown great leadership in helping us get the "Plurilateral" -- or rather Global Program through.

And the other offices listed, many of them in Europe, have also agreed to sign on. To date, that represents about 90 percent of all PPH entries to date. Okay. The Chinese office has neither said yes or no, and we are hoping that at some point in the future they will participate.

They have agreed to participate in the IP5 pilot which, as it so happens, has the same parameters. We were not about to start two pilots with different parameters, the requirements will be the same. So, hopefully China will come along at some point in the future. And perhaps even APEA.

We plan to start this on January 6th. Again, we are starting the IP5 pilot on the same day. That should be completely transparent to the users.

Messaging to the stakeholder community, we are working furiously on that right now to try to get the right messages out. We don't -- we can't have a situation where a user is wondering, well, am I using the bilateral regime? Or is this IP5 one? Or is this the new Global one?

It should be completely transparent and will be. The user will click the flag on the site, get the right form for the particular country and go forward there.

I'll leave it at that. Again, I promised to brief and get us back on schedule. And so I will be happy to take any questions. This is all very good news though.

MR. THURLOW: Just a quick comment. The PPH is something I think it's like Track One, where we need to continue to promote it because I think the more people -- the more people become familiar with it, the more comfortable with it, the more companies have global patent portfolios. And realize the benefits of this. I still don't think as much as, I think, the PTO does a great job of spreading the word, because people don't

appreciate it, and there's a lot of benefits to it.

So, I've used it a few times and it's beneficial. Years ago the examiners would say, I don't care what happens, you know, in Japan and so on, but now it's more important. So I think it's a really good thing.

MR. POWELL: That's a very good comment. And we do, you know, all of our outreach we possibly can, and I know some of our colleagues on the outside, in APLA and others, still go to conferences and talk about PPH, and half the audience doesn't appear to have heard of it, even.

So you're absolutely correct. Outreach is very important. The benefits to the user are enormous, particularly in terms of cost savings. So any help that PPAC can be in outreach, we are certainly ready to collaborate.

MR. THURLOW: Just one -- completely a separate issue, but it was related directly to the officer I want give credit. Two or three years ago, people came to Director Kappos, and then Deputy Director Wray at the time, Acting Director, and they worked with the Chinese

Government for a couple years, and Mark Cohen, on Article 26.3, which was a huge issue.

And just recently the SIPO Issue to Internal Guidance, basically giving us what we requested two or three years ago. And it was just a really, really, really, really, positive development, and it's like, huge. So credit to the PTO, you know, Director Kappos and Terry for the work they did, and the whole office. Because all this international work, it wouldn't have gotten done without the efforts of everybody, but including, especially, the office.

So that was -- that just came out, I think a week ago, and that was -- did I say really big?

MR. POWELL: If even that, yeah. I mean, I think we were getting breaking news on that earlier this week, and yes, we made tremendous progress. I believe you mentioned Mark Cohen, incredible --

SPEAKER: (Inaudible) named the both of them.

MR. POWELL: Yes. And hitting design protection for Graphical User Interfaces they

moved forward on, and a number of areas. So this has been very successful, and very recent. And so, thank you. I'll pass those compliments on to those that actually have done most of this work.

MR. THURLOW: The budget issues affect you guys too, pretty much the most, right. The IT and the TAPPI, the budget's good and you can do your travelling.

Marylee, I apologize if I cut you off. But the issues -- helps you guys where, initially we heard you were going to be restricted from traveling, which is face-to-face, important and that's, hopefully, not an issue now?

MR. POWELL: Well, the -- for the very technical meetings that we were required to go to, we were able to reduce our staff to the bare minimum. A lot of the outreach stuff we were not able to do, but much of the stuff that I work on, is very IT-dependent, okay. PPH, not that, per se, but you know almost all of the work-sharing things we were trying to exchange out of between the examiners, among officers, and all those things, are all things that need to be keyed into John and David Landrith, and the end system.

And so those are delaying, you know, the delivery of these service both to our examiners, and the users. So I think the IT, in greater ways, has been (inaudible)--

MR. THURLOW: Oh, so not to travel really. Travel you're able to do it, yeah?

MR. POWELL: Yes. Yes.

MR. THURLOW: Thank you.

MR. POWELL: You're welcome. Thank you.

MS. JENKINS: Actually, Peter, you picked up on what was going to say. Somewhat, is that, we have to commend the international group in the office about how well they've been able to continue to represent us, on these important issues that move full speed ahead. Even when we have our own internal issues, I really have to applaud the office on how well we've managed all of that, and to keep us on track, in difficult times.

And so, hopefully, we will be able to send you out a little bit more and work on outreach. And one of the things, actually, Christal suggested which, hopefully, we might be

able to do, is having another luncheon speaker and talk about PPH, and get more of the message out. A practitioner that is well known to the office I think, so we'll have to figure out if we can do that, but --

And also to -- just however else we can -- I guess is my theme today, however else we can help through PPAC to get the message out, so.

MR. THURLOW: Oh, I'm sorry.

CHAIRMAN FOREMAN: Oh. Okay. I believe we've got a question from the public.

SPEAKER: Very, quickly. At KIPO's Madrid Protocol presentation, there had been a discussion about ePayments, and going paperless. And I raised the security concern for fraud, and the gentleman who did the presentation said very (inaudible), there's a lot of fraud going on. So I think it's important to make the public aware, and the people involved in policy.

I have the man's name, I can e-mail it to you, but with ePayment, obviously we have people from different cultures that are now masquerading as Departments of the Patent Office, et cetera. And the other thing is, with all the

questions that are going on in terms of patent trolling, with all the technologies you're interfacing, is the public protected from one day getting a letter saying, you have infringed this technology?

CHAIRMAN FOREMAN: Great. Well, thank you, again, Mark, for that discussion. And at this point we are at the end of our meeting.

I want to thank everyone from the USPTO, who spent the time to put together these presentations, and provided an update to PPAC and the public. Of course, thank you, to my colleagues on PPAC who travelled, some at very great distance to be here today.

I thought it was a very collaborative discussion, and very productive, and I look forward to seeing everyone in the New Year, when we get together again.

So Happy Holidays to everyone, and we'll see you in 2014.

(Whereupon, at 4:25 p.m., the PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

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

(Signature and Seal on File)

**Notary Public, in and for the Commonwealth of
Virginia**

My Commission Expires: November 30, 2016

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