

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Thursday, November 20, 2014

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PPAC Members:

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P R O C E E D I N G S

(9:00 a.m.)

CHAIRMAN FOREMAN: All right, moving on. Morning everyone. I'd like to welcome everyone this morning to the quarterly meeting of the Public Patent Advisory Committee. This is our last meeting for 2014, and we should all be thankful that on this cold November morning, everyone was able to make it. I was reminded by Commissioner Focarino that we're fortunate we're not living in Buffalo right now. We may not be having the meeting after all.

The PPAC gets together on a quarterly basis to engage in a discussion related to patent operations. It's an opportunity for the public to learn more about what's happening at the US Patent Office, as well as for the office and the office staff to share with PPAC and the public, issues related to patents and patent operations.

I'd like to call this meeting to order and begin by introducing each person at the table. We're very fortunate to have our commissioner for patents Peggy Focarino here this morning, as well as our acting director and hopefully permanent

director of the US Patent Office, Michelle Lee.

MS. LEE: Thank you Louis and good morning everyone. It's always a real pleasure to be here. Before I begin, I want to take a moment to thank and acknowledge three PPAC members for their great work this past term. As you all know, this is Louis Foreman's last meeting as chairperson. And it's also the last meeting for Clinton Hallman and Valerie McDevitt.

It's been a genuine pleasure to work with you as a co-PPAC committee member, all of you. And also working with you as deputy director of the USPTO. And Louis, I especially valued your leadership this past term. So a special thank you to you for serving as chair of PPAC.

It's been an eventful term, and the service that each of you has given to PPAC during the term has been extremely valuable to our agency. So on behalf of everyone at the USPTO, I want to offer each of you our sincere gratitude in the form of framed certificates, which I don't believe I ever got, but that's okay. So if we could take a pause for a moment and have the three

committee members step up here and we can give you your certificate of gratitude. Well actually, yeah, first let's do Louis. Louis, on behalf of the USPTO, thank you for your service. Is there going to be a picture? Oops, I think he wants to get a picture. (applause) Thank you to the three of them.

And now I'd like to welcome all the other committee members. It's great to have you here for the of course last PPAC meeting of the year, as Louis mentioned. As usual, we have a full agenda today to update you on the important key events and initiatives that are going on at the agency.

As we near Thanksgiving holiday, it's a good time to reflect on and be grateful for the continuing excellence, progress and accomplishment we see every day at the USPTO. It's been a remarkable year of important growth for the agency, and the driving force behind that is the hard work of our thousands of dedicated employees. And I am humbled and honored to be working with them.

Louis, again we appreciate your

continued leadership as chairman of PPAC, and we're grateful for the hard work and dedication that all of the committee members, as you continue to guide and advise us on the progress of the agency. PPAC's recommendations are always valued by our senior leadership team and by myself. And we very much appreciate every opportunity we get to interact with all of you. So thank you.

I want to start by extending my thanks to the entire committee for the hard work and countless hours that you put into preparing the Patent Public Advisory Annual Report for fiscal year 2014. We are currently reviewing all of the report's recommendations. For any member of the public wishing to read the annual report, it will be published in the official gazette on Tuesday, November 25th and will be available on the USPTO website shortly thereafter.

I was pleased to see some of you last month at the annual American Intellectual Property Law Association event in Washington DC, where I had the privilege of delivering some opening remarks. I'd like to reiterate today

what I outlined in those remarks, namely, how the USPTO is performing its role as one of the stewards of our nation's intellectual property system.

First, we are focused on quality now more than ever before. Why? Because we know that quality yields certainty in the marketplace, reduces needless litigation and fuels innovation. Second, the increasingly online commerce driven world that we live in, we must advance cost effective and strong intellectual property protections around the world. And third, we must maintain our status as a leader in operational excellence. We owe our customers and the American public no less.

And finally, we need to do all these things transparently, while maintaining an open and constructive dialogue with our stakeholders, the members of public and of course we look forward to PPAC's involvement in that. Our top priority is quality. As you all know, a high quality patent clearly sets out the boundaries of a claimed invention, and encourages others to come up with something new and transformative to

improve that which has been done before.

For too long, due to uncertain budgetary conditions, we've had more limited resources. And we've had to make do with less. But thanks in part to support from PPAC amongst others, who helped take our case to Congress back in 2011, we now have a sustainable source of funding that ensures that we can continue to reduce our patent pendency and application backlog. It also allows us to focus on building the long-term infrastructure of increasingly skilled employees and research tools we need to support a world class patent quality system.

As Peggy mentioned at the PPAC meeting in August, our quality initiative is built around three core elements. Excellence in prosecution services, excellence in customer service and excellence in how we measure patent quality. To help shape and define our strategy for the quality initiative, I have asked members of the PTO team to assemble employees from across the agency to brainstorm over new ideas on what we can do to enhance patent quality.

We plan to begin rolling out the initial

ideas stemming from these internal focus sessions next year in a series of public roundtables. We're considering all options on the patent examination process, including before, during and after examination. This will include upgrading IT tools for our examiners, increasing resources to protect patent examination quality and continuing to collaborate with our foreign counterpart offices to compare best practices and advance work sharing efforts.

We'll also use big data techniques to measure and improve every stage of the examination process. Something that we haven't been able to do up until this point. As we measure our results, we need to understand what quality means to our customers. We'll do that next year on a road show where we explain our current patent quality metrics, the seven factors that you all are familiar with. And we'll seek the public's input on those seven factors and how we can do better.

Of course we already have a number of quality initiatives in place, many of them part of the White House series of executive actions

launched in 2013 and earlier this year. Those include increased technical training for our examiners, more legal training, including on Section 112F, means plus function claims. First action interview pilot program, a glossary pilot program that we have and a third party submission of prior art to encourage crowd sourcing of prior art so that the most relevant prior art ends up before our examiners during examination.

I've asked our colleagues at AIPLA to work with to create a world class patent quality system. And I look forward to working with members on PPAC to obtain your valuable insights, talents and thoughts on what further we can do. And I want to iterate something else I said to IAPLA, the agency's needs with a dispersed 21st century workforce, has been and will continue to be a key component in our agency's success.

As Commissioner Focarino described during her hearing on the Hill just a couple of days ago, it provides significant benefits to recruiting and retaining highly skilled employees, while saving the agency money without increasing our real estate costs. But we

recognize that no program is perfect, including the USPTO's telework program. And we've already moved forward with a number of very concrete steps to bolster the management of the telework program, to make sure that it continues to provide enormous value to the agency, to our stakeholders and to the American public.

So again, I want to thank all of you for your hard work throughout the year. You have a busy agenda before you today, and I'm sure that you will find it informative and valuable. Thank you.

CHAIRMAN FOREMAN: Thank you. And with that, I'd like to also welcome everyone else who is here. If we could just maybe start to the right with you.

MR. FAILE: Good morning. Andrew Faile, USPTO.

MS. JENKINS: Mary Lee Jenkins PPAC.

MR. SOBON: Wayne Sobon, PPAC.

MS. MCDEVITT: Valerie McDevitt, PPAC.

MR. KISLIUK: Bruce Kisliuk, USPTO.

MR. HIRSHFELD: Drew Hirschfeld,
USPTO.

MS. FAINT: Catherine Faint, PTO.

MR. BUDENS: Robert Budens, PPAC.

MR. JACOBS: Paul Jacobs, PPAC.

MR. HALLMAN: Clinton Hallman, PPAC.

MR. THURLOW: Peter Thurlow, PPAC.

MS. SHEPPARD: Christal Sheppard,
PPAC.

MS. KEPPLINGER: Esther Kepplinger,
PPAC.

CHAIRMAN FOREMAN: And welcome
Commissioner for Patents, Peggy Focarino.

MS. FOCARINO: Right, thank you and
good morning everyone. So Michelle touched on
her -- in her opening remarks, our focus on
building a quality system, and I gave a
presentation at the last PPAC meeting that
introduced the initiative at a very high level.
And again, just to refresh everyone's memory,
we're focused on three thematic areas. But if
you really drill down into these areas, there's
a lot, a lot of things we could do.

But we believe that these are really
important things and particularly wanted to weave
in the customer experience piece because I think

we have a lot that we can do in that area to really improve our quality efforts.

So what we did was we had a -- looked at the formulating a project. We have a project plan and a timeline and an involved outreach to stakeholders, as well as getting employee input. And then going out on a series of road shows, as Michelle mentioned. And that's basically where we were at the last meeting when I rolled this out to you, is that we were going to be gathering input at these stakeholder roundtables on these three thematic areas.

And since the last PPAC meeting, what we did was we really took a step back because we thought that going out on the road shows to ask for ideas on these three thematic areas was very beneficial. But what would be really probably most beneficial would be if we had some concrete initiatives to be able to tee up for our public, if you will, as well as getting input during those road shows.

So what we did was we decided to reach out internally first, and we had a series of brainstorming sessions. So we had nine sessions

since the last PPAC meeting. We have over 200 employees from throughout the entire agency, not just the patents organization. And we asked them to brainstorm ideas on those three thematic areas. And they generated literally hundreds of ideas, and some of them are represented by that word cloud up there. But we got a lot, a lot of ideas.

So then we had to figure out, so what do we do next? We have all these ideas, and some were very, very detailed, and some were very high level. But we boiled those down really into six, what we thought were key areas. Areas that people really spoke about the most in these brainstorming sessions. And I should mention that under these six areas, there is literally dozens, dozens of specific suggestions. But if you just look at some of these, of course incorporating more public feedback into the patent process.

So this could involve interview practice. It could many other things. Looking at our ombudsman program and perhaps revamping that a bit. But these kind of areas really rose

to the top in terms of things that we need to now drill down even further as a team and look at perhaps specific initiatives that we would like to have discussions on at these road shows and get more feedback on those.

So second one obviously, problem resolution during prosecution. Every time we go out and speak, any of us, we hear that this is a big issue, and people would really like to be able to come in and talk to us about that problem and get it resolved, rather than exercising their right to perhaps go to appeal or something -- some other avenue.

The third one is just notifying applicants of where their application is in the process, right. So rather than pulling that information from PAR or something else, you can actually get notification pushed to you, and you would know where your application is. Sort of a -- that would be more of an IT lift.

Fourth, both internal and external training. We've had a big focus on training, but we'd like to do even more, and we would like to do more external training because the more people

are familiar with how to use the system and manoeuvre in it, the better quality applications we will get.

The fifth one is something that we've been challenged with, with the high level of growth. The number of examiners has doubled since 2005. The technology is evolving and we have consistent -- we have to really focus on consistency in the different technology centers. And of course that's challenging also because of the evolving legal landscape. But it's something that we need to have a huge focus on.

And then the sixth one is extremely important. We have many call centers. I think we got a briefing on that in one of our last two PPAC meetings. And just having the ability to route questions to the right person, or even having a person that sticks with an applicant throughout the problem, so that they can hand hold that applicant from start to finish when there's a problem.

So that gives you an idea of the kind of things that we are going to really drill down a little more on. And then the idea would be to

tee up some specific initiatives and then go out on the road shows, probably the first one would start in February. And of course we'll keep you updated on these and get your input. We'll have Federal Register notices that we go out with to give people time to think about initiatives that we're proposing, as well as offering up new initiatives to us. So this will be an ongoing process with a lot of input.

But we -- as I said, February is probably when the first road show will start. We'll probably have a half a dozen or so and then regroup and see where we are, what kind of additional input we may have gotten. And many of these obviously involve our examiners. So we'll be working closely with our union partner in POPA to make sure that these initiatives are things that we can implement and should implement.

So that's pretty much where we are right now. As I said, after the last PPAC we decided to take a step back. We really wanted to have some specific ideas to have a discussion on at these road shows and not just have it very broad, because we find that people have a lot of

different ideas, but they're not necessarily condensed into specific things. So we hope to have some initiatives that are very intriguing to people, and will compel them to want to come to these road shows and have a discussion.

So could I answer any questions on that?

MS. KEPPLINGER: I don't really have a question, but I would say that that list represents -- it's very fascinating, but it came from employees because it aligns to a large extent with I think the things that the outside would say. They may have a few more ideas, but those are really a fantastic start that I think will be embraced by the users.

MS. JENKINS: I know you're going to do this anyway, but when you do the road shows, are you going to send questions out ahead of time to the user community? So -- 'cause I worry that quality to people comes in different forms. And so when you're dealing with clients, I find some clients focus in one area with respect to prosecution and others -- so how are you going to keep the road shows targeted and actually hopefully useful?

MS. FOCARINO: That's a great question Marylee, and Drew Hirshfeld can chime in here. But the discussion that we've been having is when we go out with our Federal Register notices to have a specific initiative that would be teed up in the Federal Register notice in plenty of time ahead of the road show for people to be able to think about that in a thoughtful manner and to be able to come to a road show ready to discuss. Not only that, but perhaps some other areas. And we may focus a particular road show on a particular initiative or theme and not just have it open to all of those three broad thematic areas. So Drew, if you want to give a little more.

MR. HIRSHFELD: Sure Peggy. The only thing I would add is, what we are looking at doing is having a number of straw man proposals created from these ideas. And the idea of a straw man is to get enough detail so that people know what you're talking about and can comment on it. But not getting too much detail that you have a fully baked idea. So we'd like to put something out there in pretty broad format so that the public can really weigh in, and there's a lot of

different ways to go with those potential ideas. So the plan would be, as Peggy said, to get all of these ideas. Get the straw man proposals and then decide what's the best way to break these up over the roundtables and maybe have a roundtable on a specific topic. Maybe have multiple straw men discussed at a roundtable, et cetera.

MS. SHEPPARD: This is something that Marylee brought up yesterday, and I think this is a good time to air it here. Is that some of the road shows aren't that well attended. And one of the things that we were talking about is a way to get more people involved. And if you could run it more like a conference, where it's not just about quality or it's not just about AIA or not just about the guidance after Myriad and others. But maybe a whole day with break out sessions, and that way people would come knowing they're going to spend half a day or a whole day. You would get a lot of information. You'd get more people there to get ideas from.

And also I think it would help a bit more community, as opposed to isolated one-offs. And sometimes it's really hard to even know what's

going on. I hear road show here or something else there, and there is, as Marylee pointed out yesterday, there is no overall calendar on the PTO website to say, this is what's happening, where it's happening on different days. So this is a great plan, but putting it all together in a way that's packaged so that it's useful to the public, is your next challenge.

MS. FOCARINO: That's a great comment, definitely.

MR. THURLOW: So as I think also, I echo everyone else's comments about the plan and I think especially the feedback, as Esther said, from the employees was very helpful. The thing that I'd recommend quite frankly is, don't be afraid I guess, not that you are, but engage the stakeholder community and say, these are our expectations for what we want in an application. Say, if you want a quality examination of a patent application, as basic as it sounds, this is what we expect. As you know, with 600,000 applications coming in each year, I think Andy said it yesterday during some of the subcommittee meetings, you have some applications that are

very good. You have other applications that may be not as strong as a wide variety.

And I think most of us know, I think the number is around 50 percent of the applications come in from -- based on foreign priority cases. So some of those cases, to be frank, are just filed to get the date and for budgetary reasons and very real practical real reasons in the field, they're not studied. Claims aren't reviewed and refined and revised and so on.

So don't be -- say, this is what we expect in an application and lay it out. As basic as it sounds, quality in is quality out. So it's a two-way street, and the burden is kind of on both sides.

MR. SOBON: Agree with everything folks have said. I -- my one reaction looking at the list, both the high level three-part focus and in the ideas generated so far, I think they're great. They seem to be heavily tilted toward one important part, which is the interaction process between applicant and the office and improving that as a quality initiative. But of course a lot of the focus and the external criticism of the

entire partial property system is just the basic quality of the patents that are produced.

And so I think it would be useful A, to spend even more time focusing on how that -- it is very difficult -- the issue is a very difficult issue. I think we wrestle with it, going through most everything we talk about. And it's certainly a key component of the criticisms that have been levelled against the patent system and the recent judicial decisions and the issues in Congress.

And I would encourage you also to really do a lot of outreach in setting up these road shows, to invite some of those key critics into that -- and the people that are most concerned about patent support quality being issued. To invite them to come to those sessions as well to contribute. So that we can really have a robust discussion about where the problems are. So it's not just applicants and users. It's those who may be affected by patents that may have issued that shouldn't have issued or that were too vague. And have that process and engage them in collaborative discussion. How would they

recommend. Rather than just complaining, how would they recommend concrete changes to achieve a better result?

MS. FOCARINO: That's a great idea Wayne.

MS. KEPPLINGER: Just to further what Wayne is saying, it's absolutely true. Those are much more customer service focused, and I think unless you go out including a straw man that deals with what you plan to do, like, a complete first office action or something about the quality of the work that's being generated, it might look incomplete.

MS. FOCARINO: I should add, there are, as I said, many ideas under those six kind of areas that we teed up, and some of them do touch exactly on what you're saying. So we will make sure that we incorporate your feedback. I think it was really great.

CHAIRMAN FOREMAN: So very good suggestions, good feedback. The only thing that I would add is that going out to the stakeholder community and getting feedback is very important. Gathering those ideas is critical. But doing

something with the ideas is what reinforces the value of the road shows and the roundtable discussions.

And so to the extent that the office can report back to the stakeholder community what they've heard and what they're doing about it, would actually I think overall lead to more participation at future road shows, because then they feel like there's a reason to show up because their voice is being heard.

MS. FOCARINO: Um hum.

CHAIRMAN FOREMAN: Any other comments or questions for Commissioner Focarino? Well, thank you. And so at this point I'd like to turn the floor over to Drew Hirshfeld, Deputy Commissioner for Patent Examination Policy, to give us an overview on 101 update.

MR. HIRSHFELD: Thank you Louis. So what I'd like to do today is give you all an update about the timing of where we are with the next iteration of subject matter eligibility guidance. To back up a little bit, at the previous PPAC, our last PPAC, was shortly after the comment period had closed in both Mayo Myriad

space and the Alice space, we had one comment period to get feedback. I think we were a few weeks after that comment period. And what I had done at the last PPAC meeting was give an update about the comments that we received. So I won't go through those again. Suffice it to say that I think we all recognized that in the Mayo Myriad space there was a fair amount of criticism about the guidance. In the Alice space there was more positive feedback. I think in the Alice space there were some mixed bag about whether PTO should fill in some of the gaps that people felt the courts left us with by having hypotheticals. Other -- some people felt PTO should fill those gaps in. Others felt PTO should wait and let the case law play out.

So what I'd like to do is just bring everybody up to date about what has occurred since that last meeting up to now and discuss some of the next steps. What we have been working on is a Federal Register notice, which takes into account the entire body of case law for subject matter eligibility. So this Federal Register notice would outline our approach to subject

matter eligibility that we want examiners to take when looking at cases. And it would also have a significant amount of the relevant case law on the topic.

That notice has been prepared. As we all know, it's a moving target, right. So we had -- Friday we had the Ultramercial decision. So we have gone back and worked on adding that into the Federal Register. So right now we have this draft notice, which again, is an outline of the process for examination, as well as case law. And it's our hope that that will come out as soon as we can. We're still in the review process, but we are trying to move forward, recognizing the importance.

One of the key points I want to point out is, in the Federal Register notice, we will announce a 90 day comment period for people to provide comments to the USPTO. And we'll also announce that we're having an additional forum, like we did last time, so we can get both verbal testimony in addition to everyone's written testimony. And I hope it's very clear to everybody that we're recognizing this is an

iterative process, a process that will evolve and hopefully improve as we get additional feedback from the public. As we get feedback from the examiners and as the case law develops. So that is where we are with the Federal Register notice itself. Again, I wish I can give people a specific date. We recognize people would like that to be out. We are moving as fast as we can, and the review process is an important one. And we want to make sure we get it right and have the right people looking at it.

We've also created, in addition to the Federal Register notice, a set of examples for the biotech space. And those examples are hypothetical examples that we felt would be important for the examiners and the public, to be able to see where -- how we're applying what's in the Federal Register notice, how we're applying the cases, et cetera. It is our hope that that set of examples will be put on our website, just around about the same time as the Federal Register notice, okay. And together we would turn those documents into training materials for examiners in the biotech space.

In the Alice space, we are working on examiner training with some hypotheticals, as I mentioned just a few minutes ago. The public was very split on whether we should be creating hypotheticals. We would like to create a small subset of hypotheticals that we feel is important to have our examiners properly apply the case, Alice, and the other similar cases. And we feel that's important, and we're working on that for our training materials. And it is our hope that that will publish either concurrently with the Federal Register notice, or shortly thereafter, as training materials for examiners.

So again, if I step back and look at the big picture, we have a Federal Register notice. We'll have training for examiners, which will include hypotheticals. All of this information will be made public. And a key point I wanted to point out was, again, we'll have a comment period. We'll get the feedback. And if we recognize that additional changes and modifications need to be made as we go forward, whether it's from -- feedback from the comments or case law, we will of course address that.

So that is where we are from a procedural standpoint. I'm happy to take any questions, if there are any.

MS. SHEPPARD: To Louis' point earlier, can you explain how you used the comments from the previous roundtable to help develop this iterative process, the newer comments?

MR. HIRSHFELD: So the comments that we received both at the previous roundtable or forum, right, and we had -- I think there was approximately 500 people who participated in that forum. And then we also had the written comment period where we had -- it was just over 80 comments in biotech space and about 40 comments based on the Alice instructions. So we have taken all of that information, and we've looked for common themes that were throughout. And I think it's safe to say that there were a number of common themes, especially in the biotech space.

And we've taken those themes and where we have felt that it is reasonable and appropriate to make changes responsive to those themes, we have made changes to the Federal Register. And I feel extremely confident, and I know members of

PPAC have seen a draft. I feel very confident that the public and everyone will recognize that we have taken the feedback very seriously. I believe we've been able to address, while probably not all, certainly most of the comments that we received where there was common themes and addressed in a way that I believe people will be very happy with.

MS. SHEPPARD: Not to put you on the spot, but what were the themes? (laughter)

MR. HIRSHFELD: So themes that we heard, there were themes of -- and I'm going to stick to the Mayo Myriad space or the biotech space, so themes that we heard involved how we evaluated markedly different, and that our guidelines were very weighted towards a structural difference, not a functional difference.

The way we have drafted the Federal Register notice certainly will address that, taking into account functional differences and markedly different characteristics, as opposed to markedly different structure. We also got feedback about the -- sort of the funnel of cases

or the way we funnelled cases into the 101 analysis. And that was based on recites or involves. If it recites or involves a judicial exception then you should do the analysis. I think we saw certainly in Alice that they looked at the word "directed to." So that is another change that we are planning. And we also are hoping to put some meaning behind directed to, so examiners know what that means.

So I think that funnel has changed. We also got some feedback about the -- let's see, you put me on the spot here. I'm trying to remember what I went through. Let's see, more examples was another one. Oh, yeah, and significantly different. So more examples, and that's one I've addressed already. And we also had what I have called an examiner training tool, which we were trying to address markedly different and significantly more in the same way, and use the term "significantly different." And we received a number of comments back, that that is not a -- questioning whether we were creating law and saying that was not supported by the cases. So that certainly has been removed as well.

So those represent the bigger themes.

MR. THURLOW: So you're aware of this because you do all the roundtables and you get plenty of feedback. Most of it probably a little bit hostile. But the general feedback we hear all the time is just basically, the courts are destroying the 101 area. The patents -- no longer going to get patents on 101 issues, and we're becoming more and more like Europe where software isn't patentable. So to the extent you could do anything to provide the examples and the additional guidance in the Federal Register notice, that would be extremely appreciated. Because there is a perception out there, whether true or not, that it just -- it's just -- each week we see more and more patents being shot down by the courts.

And so although -- I guess my question, to the extent I can make a question out of this is, for the review process, that's mostly internal I guess, and I think it's internal, just confirm that. But to the extent you can get any information out to the public, especially helpful examples of where you could see the patentable

area, I'd recommend it 'cause those -- that information is helpful. And if we stop for each case, the most recent case being Ultramercial, then it's going to be difficult to get 'cause there's so many cases coming out -- the guidance out to the public.

MR. HIRSHFELD: So let me address a few of those points. If miss something, let me -- ask again and I will answer it. I did want to address the feedback that we've received, and in your words, right, potentially hostile at times. So I do -- certainly do a lot of roundtables and talk to a lot of people, and I would characterize it as passionate not hostile. But I also feel that people, at least it's my sense, and you all can correct me if this is not true, but it's my sense that people are getting the feeling and the understanding that we at PTO are working with them, right, and recognize that this is an iterative process.

So while I certainly do recognize that there are strong feelings in this area, I also am getting the sense that people are feeling more comfortable as they're recognizing that we are

going to be -- you taking this as an iterative process, we are going to continue to accept feedback from people. And I do believe that's been very helpful.

As far as the review process, it is mostly internal. As with all our Federal Register notices, they also include DOC review and OMB review as well. And I think your last question was about Ultramercial and not waiting for additional cases. As we all know, there is a line of successive cases coming out, and you can always look what's around the next corner and wait and we recognize that. We also recognize that a lot of the feedback that I've received and many others have received, is that people need the guidance soon. So we certainly are not trying to wait for any case to come out, and we'll try to move as fast as we can.

MR. SOBON: I applaud all the work you guys do on this and the seriousness you're taking. Even its location in our agenda this morning, this is -- this couldn't be more critical for the patent system as a whole. And I think some of the anguish and maybe anger sometimes is a reflection

of how critical this is for people's views of world and in particular American innovation, given that the issues that are being addressed here are some of the most crucial and the most innovative parts of American economy. And so people are very concerned about that deeper effect.

And I was listening to your discussions about how you are crafting the register notice and the examples, I think those things are all very, very helpful. I think one thing that rung in my ear when you were talking is, and again, this is probably contentious a bit, but people can read too much into decisions by the Supreme Court or the Federal Circuit as if they are legislative events. And that every word matters and that significantly versus markedly and no other substantial use, those kinds of words take on much broader meaning than the fact that the court is just providing reasons for how it reached a specific decision, faced with a specific set of facts.

And I think that that really needs to be focused on, is that to take, for instance, just

with Myriad, the difference in chemical compound of what was found allowable versus what was not found allowable, eye of the beholder, but could be seen as it's not -- it was not that significantly different. But it was just different. And that the words -- you can take too much from the words used to describe that difference and then generate a huge series of things that are no longer patentable. And that I think animates the concerns of the public.

I think focusing especially on what exactly was found not to be patentable, can be very helpful in fashioning the dividing lines of examples. And not going -- overshooting a process that is actually very -- intentionally very incremental at the judicial level. Recognizing you have a very, very difficult task, as the ship is still at sea and you're having to examine cases while you're fashioning this new advice.

Our system, at least the system I understood it to be, was incremental, careful and step by step, rather than large leaps. So not sure that helps, but that I think is part -- main

part of the concern that animates people's concerns about what you're doing.

MR. HIRSHFELD: Sure. So I think the only way to address that is to state, together we need to work through this. And that's what we're going to do with the comment period and I absolutely tell you I'm 100 percent when people look at this Federal Register notice, they will recognize that we have heard the public. We have listened to the feedback and have not hesitated or been afraid to make any changes where that's reasonable to do so.

And so as we come out again, if there's more areas that are pointed out or any areas that additional changes are warranted, then of course we will make them. So I think together, right, and I say PTO and the public together, need to work through these difficult issues and be able to get to the right place.

And I'll also say, the Federal Register notice and the examples, we specifically went this approach for a reason, right. So the Federal Register will have, in addition to the approach that we want the examiners to take for

subject matter eligibility, it will have the case law examples. And we specifically cordoned off hypotheticals into what we'll have as training or examples that we would put on our website. Because we recognize that the hypotheticals are -- the cases are the law, right, and the hypotheticals are just that. They're just ways to fill in spaces in between. And we thought having that as separate documents helped create with the back and forth, where you're not trying to come out with a changed Federal Register all the time. And you can have a good discussion about those examples. Not to say you can't discuss what's in the Federal Register. Of course you can. But I mean, having separate examples lends itself to a discussion and a back and forth. And that was our intent.

CHAIRMAN FOREMAN: Great. Thank you Drew. We appreciate the update and appreciate you listening to our feedback and keeping us briefed on further actions. At this point I'd like to turn the floor over to Andrew Faile, Deputy Commissioner for Patent Operations for an update. Andrew?

MR. FAILE: Thank you Louis. Good morning. So I'm going to also have joining me Assistant Deputy Commissioner Rick Seidel to go through some data. We haven't had a patent operations kind of statistical update data on a couple of meetings now. We've had a lot of activity focusing on the RCE kind of subset of this data. So we thought we would jump back in this meeting to the high level. We've had an end of a fiscal year occur, and kind of talk through some data.

A lot of the data you'll see here is current as of a few days ago and some of it through October. So it'll incorporate our end of the fiscal year activities. So we'll walk through the data and then have a discussion period at the end.

MR. SEIDEL: Good morning. I guess I'll do the --

MR. JACOBS: Wayne likes your data.
(laughter)

MR. SEIDEL: Shocking.

CHAIRMAN FOREMAN: That was your entrance, by the way.

MR. SEIDEL: Right. So the first slide I think shows our growth rate in filings. As you can see, last year our EPR was 2.8 and this year we project for a 3 percent growth rate over filings from last year. To date, 65,000. So again, looking at the pace, that's where we currently plan to end up at the end of the year.

The next one shows our backlog continues to go down. The blip that you see during FY14 I think in large part was some of the efforts under CPC. We had a little spike back-up in terms of our inventory. So right now 609,000 unexamined applications in the backlog.

Next slide shows our fire power in our inventory. Where the two lines meet is optimal inventory. So right now you can see the excess is a little under 300,000 cases. So the idea is we want to have the right level of staffing to maintain an average pendency. Right now I think it's set at ten months is the blue -- where the blue and the red line meet.

Next slide is our RCE backlog. Continues to trend downward. Fifty thousand as of a week or so ago, is where we currently stand

in our RCE backlog. Next slide just is, again, trending data of our first action and total pendency since 2009. The target back in 2012 was 34.7, and we're -- I'm sorry, was -- right, was 34.7 and we're currently at 27.4, is our total pendency and then first action pendency is currently at 18. And again, the little blips there are due to some of the CPC, some of the training time that we've encountered.

Next slide is a relatively new metric, is a forward looking, first action pendency. Right now it's at -- I'm sorry, I'm having trouble -- 15.1. I'm sorry, 15.1 months. So that's the average time if a case was filed today, the average time it would take to get to it. Next slide shows our attrition rate. The blue line is total attritions, and then the red line backs out transfers and promotions and so on.

So right now we're a little over four for total attrition rate in patents and right at about three point five when you factor out transfers and promotions. Interview time, it's kind of hard to see here, but the blue line is actually FY14. We have one data point in 2015.

So it's at the far right. It's a little bit less than where we were last year during the month of October, and you can see the bottom of the slide. Almost 20,000 hours in FY15 compared to where we were last year. A little over 21,000. So again, seems like we're on pace to probably stay the same trend line over the course of the year.

The next slide shows the efforts towards -- and maybe the impact of interviews on disposal. The trend line continues to grow at 30 percent as of 2014. So what that says is, continuing to increase steadily our efforts with promoting interview, resolution of issues. So that's where we are on that, having at least one interview during prosecution of the case.

Next slide is a track one statistics. As you can see, during FY14 we were just under 10,000. So far in 15 we've received a little over 1000. To me, one of the notable statistics here is somewhere in the middle, a percent of small and micro entity applications being just over 50 percent. Continues to be very popular with that segment of our user community filers.

Next one shows a little data on

pendency, wait time, response time, office time. So you can see some of the impacts of the program on the left with no RCEs, you can see the difference to the wait time, first of all. The large red on the one side versus a much smaller -- shows that we're getting to it much sooner. Not as drastic, but it takes longer to actually prosecute the blue time. And then the shaded red seems to be pretty consistent, the time it takes us once we actually get it.

So the big takeaways here are, I think, responses are coming sooner and the office is picking it up much sooner as well. So that shows with no RCEs and as you would expect, it takes a little bit longer when you factor in the RCEs. But the time allocated to these bars is roughly very similar. So again, it just shows the impact of the track one on total pendency.

The last slide is the quality composite. Not sure exactly how much detail or where to go into that. But I will say when we started four or five years ago, I think the plan was to pace ourselves to get 100 percent of these various metrics. And the big Q composite, if you

will, was meted out over a five year period. In some of these areas of the seven little Q metrics, we've done very well. We've exceeded expectations, particularly with the two on the right, the external quality survey and the internal quality survey.

Some of the other areas seem to have been somewhat stuck in neutral, particularly the complete FAOM review and the search review. I mean, over time we saw a little blip in the search review, but not so much in the FAOM review. That's remained pretty constant over the several years that we've had this in place. But again, at the end of last year, our overall composite score was 75 percent. And in the context of things, going to the next slide, again, as I said, the quality composite was set up with achieving 100 percent of the metrics by FY15. Our target that we had envisioned to hit in FY14 was a little bit higher than what we actually ended up at. So our target was 75 percent. I'm sorry, our actual was 75 percent. Our target was closer to the mid 80s, 83 to 91 percent.

MR. FAILE: Okay, so if I could just

highlight a few areas in the data. Let's go back to slide one. I'd really like to get some input from you guys on things that you're seeing or hearing or trends. Obviously we use a lot of this data and even more in our modelling for hiring, putting hires in certain areas, looking after our 10 and 20 pendency targets and in looking in our backlogs and looking in RCEs, et, cetera.

So the assumptions that we make when doing that modelling are really key, and the closer we can get the assumptions to the actuals, obviously we're going to make better choices in allocating resources.

So the first one, if I could -- if anyone would jump in and give us some input, is on our filing trends. Normally, just talking very broadly, we see about a five percent increase historically over the previous year trend. In '13 we were somewhere in the 6 percent range. Bruce will correct me if I hit this number wrong. Last year we saw 2.8 So we saw a kind of a muted trend in filings. So one of the questions I had for you guys, if you could help us, is trying to get a handle on that trend. That's a pretty

significant input difference for us in the amount of work coming in.

A couple of questions, things that feed into that trend that would be helpful for us to know would be great. Is this a -- do we think this is more of an anomaly or a one time instance? Are we going to see a trend that is a little bit lower than our historic five percent?

So if we could get some input on that level, I think that'd be very helpful.

MR. SOBON: Yeah, one thing struck me actually when looking at this afresh is, it'd be helpful obviously -- it's hard for us to figure out what the current stub is for the current year. And maybe if you could break, you know, in future reports or information you provide, what that represents in terms of last year's -- maybe just a bar. Like, this is five percent under or over filing for the year, that would give us a context to even evaluate what the acceleration rate is for that incomplete -- obviously incompletely yearly information.

And I think what would be fascinating to me, I don't know if you can comment even right

now on is, is there anything by TC level of increases or decreases, and is there instantaneous market reaction to, for instance, Supreme Court decisions in filing rates in the individual TCs. And maybe -- it doesn't have to be exhaustive, but maybe if there are some key outliers that you could bring to our attention if that's true. Or else you could just comment. They all seem to be pretty much trending -- they're all the same rough area or are there other market differences by TC, that would be actually very fascinating, which we could provide some more comment.

MR. FAILE: Yeah, so I don't have that with me, but that is something we could get to you guys. On the overall comment is we don't see any drastic change in the different areas, at least the last data that I saw. We certainly would want to look at that and see -- I mean, that -- there's a big of a lag time for that data anyway. So there may be something now that we haven't seen simply because it hasn't reached its maturity yet. But so far, the last data I saw, we did not see giant changes with TC allocations.

MR. THURLOW: Just -- Andy, just to echo Wayne's point. So what we're getting in the 101 area in particular is -- does it even make sense to file a patent application stating 2100 part that we discussed yesterday? So I do agree it's something to track. And then the questioning becomes -- or comes to us is, should we file an application in that area? If so, what's the scope of the claims? Even if it's patentable, is it going to be enforceable or held later to be invalid?

So that would be interesting to see, especially in certain areas where the 101 cases are being submitted, what that data suggests.

MS. KEPPLINGER: Along with that, yes. I mean, if it's in particular technologies that might align with the Supreme Court. But I think you're saying you haven't really seen that. But the other thing to consider would be whether it's new cases that are declining or is your level of continuation and divisionals the same? Or are you seeing it -- is it in that area? Because it's possible that because of the Supreme Court or some other things, they're not filing continuations

and divisionals as much. So that might give you -- if you look at that, that might help also.

MR. FAILE: That's a good point.

MR. HIRSHFELD: We also think maintenance fees is important to look at as well.

MR. FAILE: So another kind of -- if I can jump in with one other -- that's very helpful, thank you, another question would be on a track one -- let me pull a track one slide up. So as you can see, as Rick went through, the track one filings continue to increase, and it looks like we've got a pretty robust start this year already. So anything in what you see in trending in track one type filings would be helpful as well.

MS. KEPPLINGER: Along that line, I believe you had statistics up on the dashboard with respect to track one, the outcomes. I mean, these slides show the numbers that you're receiving. But from our perspective, what's important in advising clients is, what does this mean for your application? If you pay the money for a track one or you utilize PPH, for example, am I going -- what's the time frame that I can expect to get an action? Will it reduce the

number of actions? Will I get -- do I have a greater chance of patentability? Because those are the kinds of things that we're faced with trying to tell the client.

So any of that outcome data that you can post is extremely helpful. And also with respect to interviews, because I believe you had internally reviewed the impacts of an interview in the subsequent allowability of a case. And that's also important because interviews cost a fair amount of money for the client. And so if we can advise them, look, here's the percentage. You face a greater -- we'll tell them that, but if we actually have the statistics, that's a valuable data point.

MR. FAILE: Good feedback.

MS. JENKINS: And also picking up on Esther's interview point, what I am seeing is more interviewing. But it's funny, it's not just necessarily an interview. It's really an exchange between us and the examiners to try to get the case allowed. So I don't know how it's signified on here of, like, if you call once, is that an interview? But if you have three phone

calls, because you're trying to move something forward and -- do they each get a point for that?

So internally, I don't know how you record that. But for us, it's all good.

(laughter) And I think the other thing too is, I think it's really important not only to show us how interviewing is so important and how it makes a difference and how you see the movement in the numbers. But you really need to go back and reinforce it again and again with the examiners. And just pick up the phone, call us. However, please try not to call us at the very end of your cycle period where you want us to get an answer to you that day or the next day. It's just -- sometimes clients are great, and sometimes they're not.

MR. THURLOW: Just in general, track one is terrific. I think it's the best thing that PTO has done in the last -- you know, since I've been a patent attorney. What we tell the applicants is that you submit it and normally, initially, it would take two months to get the acceptance pack if you're in the track one program. I think that's been coming, like, a

month. And then we've had a few cases where we get an off section within two months from that. And we've had even a few more cases where within six or seven months we actually have a patent. And clients think it's the greatest thing and it makes us look really good. So thank you for that.
(laughter)

MR. SOBON: You know, I'm a fan of interviews, and I (inaudible) chart, it's not normalized by the number of examiners you have in your core. And so if there's a way to show by year how well -- percentage by examiners, I think that would be very helpful for us to examine that. And I know it's always an issue making it sort of a hard number, but I don't know to the extent that you actually have supervisors encouraged to go over the average -- you know, look at the average interview time in their particular TCs or in their units and then work with their own examiners to say, are you above or below the average?

Not necessarily a hard number of, like, some review, but at least to share, this is -- seems to be a best practice. Are you under interviewing your cases as a way of -- getting to

this overall issue of quality initiatives, I think the outside public in the user community view those things as very valuable to get to appropriate conclusions about cases and not waste lots of effort just on paper that takes years and get to swifter and hopefully more accurate conclusions. So I think to any extent you can actually incentivize, encourage, use, cajole the overall core to interact, we can do our part on the external side to encourage that, would be very helpful.

MS. JENKINS: After final pilot program, whatever, AF -- whatever (inaudible) thank you, it also -- that's been I think working well. It may not get the outcome as quickly as you want before your deadline, but it makes the examiner, whether the examiner wants to or not, makes the examiner call you within a set period of time.

So maybe the examiner will get on the phone and grumble at you because you filed this. But then at least you're creating a dialogue with the examiner, 'cause they have grumbled at me, I will tell you that. And it creates a dialogue

with the examiner of, like, well, there's a reason why we did this, and let's talk about it. And so that I would encourage keeping in place.

MR. FAILE: So thanks for that and to the comments both you guys are making about interviews, and specifically Wayne to the normalizing of the data, we do realize that this is obviously not normalized per examiner. What we were attempting to do with this graph is do a version of that. So if we haven't quite hit that, we're open to other ideas.

So for this one, we're looking at a case when it reaches its final conclusion, i.e. a serial disposal, abandonment or allowance, then we're looking back in the history of that case and if there's at least one interview data point made. So we're looking at that throughout the years, and we've seen close to a doubling of the cases when they are finally disposed as abandonment or an allowance, at least having one interview could be more, at least one in that case, that number's gone up. So that was an attempt to try to get some normalizing into that.

MR. THURLOW: Andy, just a quick follow

up on track one. I think there's a fair argument to be made that if you have the data up there, the reason why the allowances for those cases are higher, is because going back to my earlier point to Peggy, is that I think the quality of those examinations -- the quality of those applications are much better because they've been deemed important. People are focused on their claims. So I think that could be a good -- as you're looking at the quality issues, that's a good reason maybe why the allowances are higher.

MR. FAILE: Yeah, so that's an interesting comment. If we were to somehow be able to do a study on those incoming applications and see what kind of baseline is developed there, that might -- that would inform maybe some of the ideas going forward, particularly in the quality initiative realm. It's a good point.

MR. THURLOW: I just thought of that.
(laughter)

MR. FAILE: Even a quickly good point.

MS. KEPPLINGER: I'm sorry, go ahead.

MR. HALLMAN: I was just struck by something. I've been coming to these meetings

now for three years, and it's just dawned on me. It would be great if the office could come up with a substitute word for the word "disposal." Because I think it's not exactly transparent, and I don't think it really tells you what really happened. And as I sit here today, again, it just struck me too, I'm not sure it's very helpful. Because in the nearly 20 years or about 20 years I've been doing this, I've never sat in an office with other patent attorneys and talked about disposals.

We've talked about what happened in the case. So if there's any way -- and this is not an easy thing to do I'm sure, but it would be nice if we could come up with something other than the word "disposal" because it's not really, transparent is about the only word I can come up with. Not really informative I guess is what I would say, yeah.

MR. FAILE: Okay, a good feedback and again, this is -- maybe we need to be a little bit more cautious about importing our internal patent speak into a document such as this. Disposal has a number of different meanings to us internally.

It's helpful for us in using data to manage. But I get the fact that the translation to that, to the broader audience, is maybe not so good, particularly serial disposal. By that we mean the ultimate abandonment or allowance. (laughs) You start compounding these words and you get into even more problems.

So I thank you for that comment Clinton, and any help that you guys have in helping us characterize this better. We're trying to characterize it as accurately as we can, and sometimes that's the greatest enemy of the good.

MS. KEPPLINGER: Just one quick thing too. UPR of course I know, but when you began they asked me, what's UPR? So you might -- a definition on the first slide.

MR. FAILE: Yeah, so what we mean -- again, serialized filings. Those are -- what we mean there, just -- I'll kind of give you a little bit of a table here. So by serialized filings we mean new incoming applications. By UPR, that's Utility Plant and Reissue. It does not include designs. So we can probably figure ways to make that a little more

user friendly. We just -- we don't want to mis-characterize what these things actually are. But at the same time, they need to be understood so they can be valuable and people can give us input on those.

MR. SOBON: Well, serial disposal actually seems like it's in the Criminal Code, not like that -- (laughter) but --

MR. FAILE: We'll definitely change (inaudible).

MR. SOBON: I just had a new idea too. So --

MR. FAILE: A very good discussion.

MR. SOBON: It's a very good discussion. No, but, you know, there's a lot of work now in a lot of other areas that are in all kinds of contexts. Especially also in the patent field. And I wonder if you've given any thought to getting -- I'm not sure which field of research this would fall within. But there are people that do this. To look at sort of linear regress, all the various factors and characteristics, to Peter's point, of taking -- you have datasets. You have very rich datasets of rich text documents

that you could compare and see what characteristics of those documents at the end of the day, have led to better outcomes from a quality standpoint and what have not, and see if any -- throw all the variables in and see what are actually more stronger indicators of success. And see how that comes out, things that could -- that actually are intelligible and could be shared as part of things that then you could explain to the user committee.

On average, the more successful patent applications have these five key characteristics, and this has come out of data, not just our anecdotal thinking. So just a thought, but there is a lot of heavy research on that.

MS. FOCARINO: Probably sounds like an operations research specialist to me. But great point. One thing I wanted to go back to, the comment Esther made about track one and when an applicant could expect a first action and then just what these definitions mean. There's a lot of that information on our dashboard, what is UPR, what's a disposal, what's a serial disposal.

So there's a lot of things on there, and as a matter of fact there's a visual of what we would I guess know as cycle time, right, for a track one application and comparing that to a non-track one. So that you could show someone, a client or others, here's the benefit of this.

And so we are in the process right now of looking at our dashboard and reviewing those metrics and finding better ways to make sure that people look at them on a regular basis, 'cause there's some really helpful information and we're always wanting to know what other things you want to see on that dashboard.

MS. SHEPPARD: Thank you for that. But going back to Wayne's point, you mentioned earlier that you're using big data to figure out some of the trends that you can't see yourselves. Humans have a hard time seeing, but computers can figure out these patterns. Maybe this is a very good use for it, to address that problem 'cause I was thinking about this slide on the serial disposals. And it would be nice to have, along with the serial disposals, about the percentage per -- having one interview, the time to disposal

for each -- for those that have had interview versus those who haven't.

And I think you can get a lot of information like that. What are you using big data for now?

MR. FAILE: So we're just starting, it depends on how one defines big data, we're just starting to wade into the big data pool as of now. But things that we have historically used data for, which I guess you could call big data, are exactly what you said Christal. We'll look at a piece of data and we'll try to correlate it to other trends. Like, for this, we would go back and we would look at that time for each one, and we're correlating multiple looks at things to see if there's strong correlations, weak correlations and what they suggest to us.

But the whole general idea of big data is something that we're looking at and how do we kind of weave that into the fabric of what we're doing every day. Particularly in the management part 'cause we have a -- as everyone's noted, we have a wealth of data, prosecution data, on time frames. We have our QIR data, which is part of

our composite, which is very granular data on prosecution of an individual application even. And using that and leveraging that to find out at what points in prosecution do we see sticking points, and what can we do with those, is very much a big focus of what we're looking into.

MR. JACOBS: Yeah, I'm kind of a data junky on the committee. So just a couple of observations and questions. One is with respect to the CPC training. I mean, this was alluded to a couple of times. I think the explanation is that we have this huge number of hours that went into CPC training, and that presumably reduced the number of examination hours that were available to us. And that in turn led to an increase in backlog. And so I guess the question, first of all, is that correct? That the number of examination hours available during the last fiscal year actually was lower because of that? And then second of all, might that have also led to perceived plateau in patent quality? 'Cause when you have less examiner time, you're going to have fewer interviews, perhaps slower response and that may impact the quality as well.

So that's kind of one set of observations and questions.

The other thing is even more technical. This has to do -- when I look at some of these graphs, actually seasonal factors, it's particularly true in the RCE graph. That, like, every seven has a decrease -- every month that starts with July -- every period that starts with July, you got this decrease. And then in the winter, you get an increase again. And it actually follows through in some of the other graphs as well. I mean, is this because we got -- just is a seasonality of the filings? Or might this also be explained by workforce productivity issues or other issues with the examination?

MR. FAILE: Yeah, so a number -- I'm just looking at the -- are you talking about the RCE backlog graph Paul?

MR. JACOBS: Yeah, all the down blips are next to the seven, July, and then it's always followed by an upturn. And this is true in some of the other periodic graphs as well.

MR. FAILE: Yeah, so this largely

tracks our productivity, and probably those blips you see are mostly centered into the quarter type of -- where we have -- production is a little bit higher at the end of the quarter. So you'll see that increased production being applied to RCEs, new cases, et cetera. That's probably the main trend line you see in those dips, and there could be other factors as well.

MR. JACOBS: Did you want to -- was I correct on the first point in terms of number of examination hours?

MR. FAILE: Yeah, so certainly that had an effect on -- I mean, that had an effect on our firepower, and that firepower as applied to both RCEs and the new cases. The second point about quality, I'm not sure -- I mean, my initial reaction is I don't know that we have a connection there that would be nearly as direct as you would to the firepower that was applied to the backlog in the new cases. And that's why you'll see some blips in that.

So the connection to quality, anybody else that wants to jump in, I don't see a connection there. But it's the first time I've

really thought about that.

MR. HIRSHFELD: I mean, every examiner has a certain amount of time to do a case. So if you take away a number -- for whatever reason, training or otherwise, the amount of hours that they had to work on a case, that hasn't changed, right. So if you -- if there's a decrease in the total pool of hours, the examiner still has the same amount to work on any particular case, which would include interviews, et cetera.

So I personally would think that the quality would not be impacted by an overall decrease of the larger bank of hours, because it doesn't change -- you're not saying, okay, you have less hours to work on any particular case. Did that make sense to you?

MR. JACOBS: Yeah, that makes sense. I mean -- but it is also possible that because the examiner has fewer total hours, that a given case may take longer to get through. And that might somehow impact some of the external measures, the quality, for example. So I mean, I just don't know.

MR. THURLOW: Andy, two just quick

points based on the information you provided. I think the PTO has a major challenge. I mean, we all get so many emails and so much information, some what I call misinformation. We get a lot of emails just saying the number of examiners has doubled and the pendency continues to go up and the backlog continues to go up.

As I look at the shorts I guess on total pendency and first action pendency, at least on slide five, they seem to be going down on slide -- does it have a number, slide three, about the backlog. It's kind of levelled off I guess, that number. So I don't know how you get out what we consider as the correct information. But something I recommend.

And then just so -- you know this already, but the backlog the PTO refers to is 609,000. The stakeholder community, I think for the most part, thinks of it as those pending cases of 500,000 plus the 600. So that's why we always hear that 1.1 million.

And then just a quick separate point, which I don't think had enough play I guess, or I didn't hear about it, but it came up during

meetings yesterday, was with reissue applications. My understanding, and if you can add to it I'd appreciate it, they are now being examined by the Central Re-examination Unit, since their responsibilities have decreased in light of PTO and so on. So to the extent you can go into that. The reason why I say that's important is, anything post-grant related, is quite often related to patents potentially or likely in litigation. So the extent the processes change and the time period and so on, that's important, especially in light of applicants believe you can't get claim amendments in PTO. So we're going to see more reissue applications being filed.

MR. FAILE: Okay, so a number of points there. Just to -- I guess I'll start at the end. The reissue work has been moved to the CRU. If it's helpful, we can start looking at that, get some data on to you guys on that. Process is the same. It's been moved over to the CRU examiners. We have I believe 1500 or so reissues filed a year. Somewhat small workload. Examiners generally don't see them repetitive reissue a lot. So we

moved that work over there.

On the other point Peter, there's a little bit of a -- again, going back to an earlier conversation, a little bit of the confusion in different backlogs. Let me just hit high level. I'm happy to break it down more if you'd like. We have an unexamined backlog, some roughly around 600, 610,000. We have an RCE backlog now roughly around 47 or 49,000. The 1.1 million cases that we -- that you mentioned, those are the cases that are in prosecution. So those would be your new cases and the cases that are in amended status, et cetera.

So that's kind of a different number. And I forgot the very first point. I'm trying to go back in reverse order. It was a good point I'm sure. I just don't remember it. (laughter)

MR. THURLOW: Total pendency issue and then --

MR. FAILE: Oh, total pendency.

MR. THURLOW: And first action pendency. Seems like it's been turned down.

MR. FAILE: Yeah, and that would be something that -- any input from you guys would

be very helpful on this because I think if you do look at the pendency and it is starting to come down, it is accurate that we have a phenomenal growth rate in the number of examiners. We've doubled the workforce since about 2005 or so. And that firepower has been brought to bear on the backlogs, and they are trending down.

So when we hear they're going up, the data doesn't show that. The data does show it going down. So any help in how we can make that a clearer message, certainly would appreciate that.

MR. SOBON: Well, obviously after the break, having an update on the international segment, but I think there's one key point. We talked briefly about this, but I really want to emphasize the really huge opportunity now with the patent office joining the IP5 and others in the Global Dossier project. You were finally going to get an even richer dataset of comparisons roughly -- application by application being examined in different offices.

So not only for work sharing purposes, but also I think part of the problem with the

quality index and the quality initiatives is it has an aspect of just naval gazing and not having an actual control set and just sort of boot strapping its own analysis on itself. You will finally be having much richer data to actually compare how the office is doing here versus other offices on a case by case by case, obviously recognizing some differences.

But I think it'd be interesting if you could come back to think about that and maybe report back just at the right time on your plan as to how you might use that soon to be or if not already have available richer data for quality initiatives. Because I think it really does present an unparalleled opportunity to examine what -- some offices are maybe better or worse in various areas and help improve.

MR. FAILE: That's a good observation. There is a rich set of comparison data internationally that you would want to look at and leverage. That's a good point.

MR. BUDENS: Yeah, I'd like to go back to Paul's question about the blips in the CPC and stuff, just to make it clear. The time that was

used -- that's being used and been used over the course of this year for CPC was above and beyond what an examiner would have to examine with a particular case. In fact the procedures for these cases were the examiner is supposed to go ahead and if they pick up a case, they go ahead and examine it fully as if -- and even in fact using USPC databases and what have you, whatever their normal searching was. And that's within the normal time they would have in their hours per disposal.

The CPC time was then added on above and beyond that for them to then go back and look at the CPC databases and see if their art was in the same - you know, where they expected to find it. Do the CPC sets look close enough or do they know where to go searching in CPC compared to where they were finding art in the USPC. So the time that was spent on CPC was above and beyond what they would normally spend on the case.

So in that sense, there shouldn't be any loss of quality in the examination of cases that were done during this transition period. That said, the thing we'll need to be keeping a look

on is going forward in January when CPC becomes the standard for searching to see, has this transition thoroughly worked? Have examiners figured out where the art is and how to use CPC effectively to do the searching that they previously had done in USC? But that's something we probably won't see until this coming year when we totally transition over.

MS. KEPPLINGER: One comment about the quality composite. And of course you are measuring as a percentage of a goal, and you show your goal for 2015 to be 100 percent. And to me that's a very bad optic because that would imply that you think you're perfect, and any of the data that undercuts that, all it does is make the public believe this less. So for that reason, I mean, I said this before, but I think measuring as a percentage of a target is not a good measure. Nor do I think is combining all of the measures into a single number, because it doesn't resonate or mean anything to the public.

MS. FOCARINO: We do agree with your comments. As a matter of fact that's part of our strategic plan, is to refine the quality

measurement system for that very reason.

CHAIRMAN FOREMAN: Great. Well, thank you Andrew and Rick for that presentation. We are at -- time for a break at this point. It is about ten thirty. We're going to take a 15 minute break and we will resume at ten forty-five. So I would ask the members of the public who are either online or in the audience to bear with us. We just need to stretch, and we will start back up at ten forty-five. Thank you.

(Recess)

CHAIRMAN FOREMAN: I'd like to welcome everyone back. We're going to resume the PPAC meeting. This morning we had Don Levin, Director of International Patent Business Solutions in the Office of International Patent Cooperation. Good morning Don, and welcome. And we welcome your updates on the international discussion.

MR. LEVIN: Thank you Louis. I appreciate the opportunity. There's obviously a lot of things going on in the international arena. In my 15 minutes of fame, I'm going to talk about Global Dossier. I know it's important. Wayne was mentioning it before with respect to quality

and work sharing, and I'm going to talk about how the USPTO is going to be implementing Global Dossier for our examiners very soon and then for the public in '15 particular.

So as a background, and I'm sure everyone here is familiar with this, the Global Dossier is an IP5 project. It has primarily two pieces and Sam Helfgott will also be talking about this at lunch. But the -- we've broken it into passive services and active services, meaning how do the applicants -- are they reading data or -- and the examiners, are they reading data? Or are they actively exchanging data? And that's basically what this slide is saying.

So in the active area, we're looking to have an easy and simultaneous way of submitting documents across participating offices. We've heard from our industry groups, and we recognize that there's an awful lot of duplicative work and repetitive work which goes on between offices. And we are hoping to reduce that burden on our applicants and firms.

We are currently already doing a lot of passive work, and we are -- where we can look into

the dossiers of our IP5 partners. They come and in fact their examiners look into our file wrappers. This is going to be integrated for our examiners into PE2E. We are not deploying this prior to PE2E. We want it to be a seamless interface with PE2E, the Global Dossier piece, and -- but the other offices, the other four IP5 offices are accessing our data successfully and they used it in the last year over one million times. I think it was about a million two.

So other offices recognize the value of being able to look at the work that our examiners have done. And we're confident that our examiners are going to find equal benefit when we deploy it in PE2E.

In particular, I think the third bullet here, we're looking to -- I think Wayne touched on this earlier, increasing the efficiency and predictability of global patent family prosecution, because these applications are being filed around the world. They're being filed. Why not take advantage of work that has already been done to give our examiners, for example, a leg up on what has already been done?

And again, this is a key for work sharing and improving quality. And again, hopefully a significant cost savings for patent applicants.

For the next few slides I'm going to show some screens. These screens are from a test environment, okay. These have not been deployed to our examiners. They've not been deployed to the public. But we are successfully testing these services. The part that is of the user interface, has not been formalized at this point, not been deployed to our examiners or to the public.

So with that, this is the view of -- for a US examiner who's working on a US case. There's going to be a -- this is his US case or her US case. And then there's a button up here that says, "view IPF, International Patent Family." So in selecting that, the examiner's working on case US 12-698-480. In clicking this button they will get a list of all of the related cases anywhere in the world, and in particular the examiner would be able to see where office actions have been issued. And you can see that -- whoops I'm sorry, you can see that from this last column, office

action indicator.

The examiner will be able to see in fact that there's a Chinese document, this third application down, that has an office action. It might be good to go and look in that dossier and recognize that this was the criteria, the citations that that Chinese examiner used in issuing his office action. Similarly there's an EP office action in that EP case at the bottom.

So there are many ways for the examiner to filter this and sort this, and I'm not going to bore you with those details. Let's stay at the high level at this point. The examiner then could -- the examiner opens up that other dossier on the left-hand side. There will be a thumbnail. I've picked a drawing -- drawings from the EP case, and the examiner could bring up any of the documents from any of the cases.

So, again, here is a specific drawing from that EP case that the examiner selected. You could see on the upper tab here it's EP08 et cetera. My vision isn't good enough to read that. But that is the EP case that the examiner, the US examiner looked at.

We are also going to be deploying this to the public, and I'll have a schedule in a few slides for these timelines. But for the public access, we want the public to have the ability to look in the -- at the family data for this -- for these cases. And here is a public pair, I'm sure we're familiar with. We'll be adding a new tab called Global Dossier. Selecting that tab will bring up, again, the related cases for that case that -- now we're looking at a public interface.

So in this first screen, you see five cases, a Chinese, an EP case, an Australian case, et cetera. There are -- the one thing that I would point out, again, a couple of features on this screen is, that we have the ability to view a summary of this document. So a table of contents if you will, of the Chinese document. And there is a little briefcase icon underneath this "view dossier," and it says, "This dossier has an office action." Again, we want our public to, as well as our examiners, to not spend time looking at dossiers where there's been no work done. So this little icon will be an indication that the user, the stakeholder, should go look in

this case.

In addition, we have some features that are familiar to most people who do online shopping and -- you can put things in a shopping cart, even though they're not for sale. But you can collect this information into a shopping cart. Go back and review them later. Again, there is a lot of filtering that can go on. There are additional features which I'll go into if you have questions about these.

Now I show an expanded view of that Chinese document, and there are three office actions or three table of content entries, which have been expanded here. And we can further expand this, and I'll show that in a bit. But in particular, the public or the -- anyone going to this site, would be able to click on one of these hyperlinks. And let's say they pick one. They have the first -- they've picked an office action from the Chinese document, and they've asked for the translated version. This a machine translated, English version of the document that was selected.

Now, is it a great translation? No,

this one's not, okay. And the translations that we get are created at each office. So China has their own translation system. Korea has their translation system, and in fact the Korean machine translation is very good. The Japanese translation is very good. The intent of this translation is to give the examiner the gist of what is entered here, and of course the examiner could go to our STIC to get a better translation if so desired.

If there are native speaking examiners, you could also see the native language translation. I'm sorry, the native language document, and that document could be put into Google Translate, for example. Or again, there's always the option of going to STIC to get a better translation if the machine translation doesn't really help the examiner.

Again, I'm showing this for the public and kind of crossing between public and examiner. The functionality is virtually the same, right. That the examiner can go look at these office actions and get machine translations. The public can also do that.

And then lastly here's an expanded view of the dossier, which would have a complete table of contents. In fact there are only three pieces in here, as well as all the classification and citation data, delivered from the foreign office. In this case it happens to be that SIPO. I'm sorry -- I think we wound up with a duplicate slide in here. I apologize for that.

Okay, here's the schedule for all of the Global Dossier. In April/May of 2015, all of our examiners, with the release of PE2E, and you'll hear more about that from John Owens, will have access to the Global Dossier functionality where our examiners will be able to look in these other dossiers to see the actions. In June of 2015, the USPTO will be providing office to, in particular, the EPO. The EPO has already implemented a public access site. And right now they only have EPO and China as participants. The USPTO will be providing data, our data, to the EPO. So anyone going to the EPO site will be able to see US actions.

And then in December of 2015, we will be hosting our own interface. And again, by that

time we're anticipating that all the offices will be participating and will have the full IP5 collection available for public access. Next steps for Global Dossier, we've already been in extensive discussions with our stakeholders. Sam, I'm sure, will talk about that at lunch. And for defining and refining the active component, how can we help the firms to exchange data, to save costs, improve -- remove duplicative actions and so on. We're doing surveys. We are meeting with our stakeholders, holding focus sessions, et cetera.

We're then -- we have a large matrix of business needs that have been requested. We're going to identify legal business and technical impediments, as well as solutions for those. And we'll be implementing those piecemeal. This is not something which is going to be just deployed en mass. This is going to occur over multiple years as we implement new services. And there are some which have huge legal impediments, some which have security impediments. But maybe, let's say Japan might have a business requirement that they can't get around. But we may be able

to work directly bilaterally with another office.

And then we will work with our user community and our CIO to prioritize suggestions for implementation and lastly, come up with a deployment schedule based on agreement. So with that, I'll take some questions.

MR. THURLOW: Just a very quick question. From a legal standpoint, I wonder if this chain has any requirements for information disclosure statements. A major part of our IDS filings are from foreign corresponding cases. And then secondly, just a quick example, early this morning I sent an email to colleagues in China, Japan and Europe. They asked about the status of corresponding applications. It may get a little tricky 'cause in this case there was a third patent in the family. So as you know, claims are different for each application around the world. But this looks like it will be a very useful device, useful program. So I think it's really great.

MR. LEVIN: Okay, thank you for the comment and the question about the IDS. That is a -- again, there are legal issues that I'm sure

makes people around USPTO think, oh, how are we going to change our rules to accommodate this? But we are thinking -- or one of our goals would be to be able to take the information from the other offices and generate, if you will, a 1449 for the public so that -- relieving the applicant of the burden of having to provide that IDS.

Now that is one of the requests and again, there are legal businesses and technical impediments to that. But that is certainly --

MR. THURLOW: (inaudible) issue, yeah. That's important, yeah.

MR. LEVIN: Right. As Global Dossier evolves, you know, certainly in my dream and in Mark Powell's dream, IDSs may be minimized or done away with. Wouldn't that be -- because we'll have this broad base of knowledge that -- from other examiners. And so certainly relieving the public of that obligation.

MR. HALLMAN: Don, that actually raised a question with me. Do we know yet whether the IDS that's filed here in the United States will be one of the prosecution filed documents that will be available to people outside the US?

Do we know?

MR. LEVIN: Yes, absolutely. We are making our entire fire wrapper available to the other offices, with the exception of NPO of course and some examiner notes. But they will have access to -- now there are two pieces of this of course Clinton. One being if it's publicly -- if it's been published. And the second is, even we're trying to work with exchanging unpublished information for offices where there is a need. So if it's cross filed in the EPO and an examiner needs to see an unpublished and the applicant has given permission, then the European examiner or the EPO examiner would be able to see the IDS.

MS. JENKINS: Don, thank you for the presentation. It's -- we would love I'm sure, I'm going to speak for the committee on this, that we could -- any input that we can provide to the international group, to the patent office on this from a user perspective, I think we offer openly and willingly. Because this is what I see as the future, and we just need to make sure that we do it right so the user community feels empowered by being able to use it.

So I guess I have a couple of questions. Really primarily, what do you see to get this implemented? Because you are saying December of next year. What are you seeing as some of the big problems, takeaways to actually getting this created? And again, as we know, this is not through treaty. So I think that's actually a positive in my viewpoint. And then I don't know, maybe Robert wants to maybe talk about, is there any type of examiner response to this? Is there any -- this is a good thing. Oh, this is just more work for us. So it would be interesting to hear, if you're willing to share.

MR. BUDENS: Obviously I think that -- I think there's going to be concerns of workload. In other words if we're -- you know, we're already seeing that with the CPC, a lull, where we've gotten millions of more documents that we're having to search through. I think it'll be -- it's going to remain to be seen how this works with the examiners. In other words, if it turns out to be able to help us find prior art very quickly, because it's already been searched somewhere else, that might be a boon.

On the other hand, if it just creates more documents that we have to slog through and doesn't necessarily give us the best prior art under our laws, it'll then become somewhat of a time sink. The other thing I'm concerned about is the continuous message of increased efficiency and saved money. Because I think that's what you all are really worried about, is figuring out how to save money. And I think something like the IDS issues, well, that would be probably a good way of saving money. If it comes to the point where the office is going to tell examiners that we have to rely on a search that was done by one of the other offices or something, that may get problematic. Because you won't necessarily comply to our laws, and we're not necessarily going to -- if you're going to put us in a position where we have to give full faith and credit to the rest of the world, that creates some issues for us.

MR. LEVIN: And Marylee, with respect to your first question. Yes, thankfully this was not done by treaty. At the heads of office meeting, all the heads of office of the IP5 have

said that this is the direction that we're going to go collectively as the IP5. We work in developing data exchange standards. And so that when an applicant in Japan looks at the -- or an examiner in Japan looks at the data and a US examiner looks at the data, of course it'll be -- the interface will be in different languages. But the data exchanges will be the same. And the same with the public interface.

So I think that it's been certainly endorsed by our heads of office of each of the IP5. And that's what's driving this, not -- again, thankfully not a treaty.

MS. JENKINS: But do you see any -- are there any issues that we should be aware of up front as a user community that you may be concerned about? Like, are we going to be responsive? Are we not going to be responsive? Is this possibly in a sense taking work away from us because -- I compare it to, on the trademark side, Madrid, now we do Madrid filing. So those are questions I have been getting from colleagues. How does this impact -- it's always about us. How does this impact us? So it's how is it impacting

you? I guess is what I wanted to --

MR. LEVIN: We have in the IP5, and I'm sorry Louis, are we -- in the IP5 we have a Global Dossier Taskforce, which is comprised of the technical groups within the five offices and the industry groups of those offices. And yes, those -- so for the USPTO, AIPLA, IPO, et cetera, they attend the meetings with the groups. And they are also bringing up those same concerns and addressing those. The way we've been led to believe is that there will be cost savings. That the offices will be able to plow back into additional IP -- new applications, if they can save money on -- if I can save some money here, that that additional IP funds will then go to new applications. I would actually probably that Sam might have some comment on that at lunchtime.

MS. SHEPPARD: Just really quickly, I know we don't have much time left. But I don't think I share your enthusiasm for it not being a treaty. Office heads change, as we see right here. They're going to change, and there is -- although you have a commitment I guess from the office heads, you don't have a commitment from

any of the other governments to continue this program.

And the other part I have about it -- concern I have is, reciproc -- you're not asking for any reciprocity. Basically you're opening up all of the United States' files, but I don't know that you're requiring that of any other government. Particularly you mentioned yesterday, you're willing to share search histories from the examiners, but other countries are not willing to share that.

So I just -- I don't have the same enthusiasm for it not being treaty -- through a treaty, especially since you haven't really laid out how much reciprocity will be required to have participation in the organization.

MR. LEVIN: Okay, thank you Christal. In our -- we have a governance document, and in that governance document we talk about strict reciprocity. There are laws in the other -- in many of the other countries that, you know, we've been told prohibit them from releasing certain information. We are actively working on resolving some of those issues. We hope that our

industry groups around the world can put enough pressure on the other offices to -- in fact the one you mentioned, search recordation and search histories, is really the only one I can think of that's still a point of contention. And I know that Mark Powell and -- is working very actively to try to resolve that issue.

MS. KEPPLINGER: Just quickly to follow up on that. The search history though is a very significant portion of the document. And I don't know if that's available to examiners. That's the important part, because examiners are not going to be able to rely on the results from another office if they don't know how it was searched. If they know how it's searched, then that's a great help. If they're rejections, they could rely on that. But if it's allowed and there's no search history, then they don't know if all the places -- the correct places were searched. So that's a real downside, if they don't get access to that.

CHAIRMAN FOREMAN: Well Don, thank you and clearly that was a very interesting discussion that we had. We'll need to allocate

more time at the next PPAC meeting to dive into this deeper. So thank you for that presentation. We now have Valencia Martin-Wallace, Assistant Deputy Commissioner for Patent Operations. Thank you for waiting so patiently to give us an update on the first inventor to file road show.

MS. MARTIN-WALLACE: Okay, thank you, and thank you for inviting me in to update you on this. I'll start by first -- I'll first give you a bit of the background of the team. Janick Angola and I have been leading a team, working on implementation of the first inventor to file for about two years now. And our mission was to not only get our examiners and managers prepared for the enactment of first inventor to file, AIA first inventor to file. But also to reach out to the public as well, to make sure that everyone is consistently interpreting the new statutes.

So this year in April we had our first year anniversary of the enactment of AIA first inventor to file where we had a public forum here on campus. While we had a small group of attendants, afterwards we really received a lot of great feedback from practitioners and a lot of

requests actually that we come out and give some of our first inventor to file materials out and present at some of their functions.

So in receiving that, I passed that on to Peggy and she immediately said, "It's time to go out and start giving this information to as many people as we can." So we decided that we would reach as many stakeholders as possible by going around and preparing these road shows. So here I'm going to show you some of the areas, and I can explain why we picked them in some of the regions, such as Alexandria, Dallas, Denver, Silicon Valley. We've received a lot of interest. So areas that we realize we needed to go to.

But then areas like Concord, New Hampshire and Madison, Wisconsin, we decided maybe it's time to start reaching out to some areas that we don't frequent and finding out what the interest is and making sure that we're reaching our constituents there as well.

Now these are the seven regions as I mentioned, Concord, Alexandria. We went to Madison, Wisconsin, Denver, Dallas, Silicon

Valley, and we finished up in Atlanta. Now at the Alexandria as well as the Denver satellite office, we also webcast to reach as many people as we possibly could.

MS. JENKINS: I'm sorry, can you get just a little closer to your microphone or move your microphone closer to you?

MS. MARTIN-WALLACE: Absolutely. Sorry, I'm actually dialling (inaudible). And this is the AIA first inventor to file implementation team, and I just wanted to share a little bit of how we came about this particular team. We thought it was very vital to have a very diverse group. So we have representation from the Office of Patent Legal Administration, and that's in the light yellow. And in gold we have four representatives from Patent Operations as well as in blue, representatives from the Office of Patent Quality Assurance.

And a little report out of how the road show went. We had four members that attended every road show. Four members of the core team that I showed you, and that was a diverse team as well, to make sure that we could answer any

questions from our audience. We had -- in person attendance ranged from 32 attendants while here on Alexandria campus, which we assumed it would be smaller because that's one of the areas that in Denver where we would be web casting. But we also reached people coming out of -- it says 100, but I believe it was over 100 in some areas and 100 attendees in Atlanta, as well as 400 attendees that we reached through webcast.

Now since we are the patent office and we make the most of our time, we not only had these road shows while we were out, but we also -- we were able to participate in some other events, including holding a first inventor to file workshop for legal students at the University of New Hampshire Franklin Pierce Law School. As well as being invited into the Arthur Gajarsa Inn of Court, and they were gracious enough to give us their entire time. And it was a very robust discussion on first amendment (inaudible) with their practitioners. As well as spending some time with the Wisconsin State Bar, Denver State Bar as well as George Tech students and the Wisconsin Alumni Research Foundation, where we

received a lot of discussion on 101 as it pertains to biotech.

And this is our half day agenda of the road show. So as I mentioned before, we did have a very diverse group of our taskforce that came out to participate and to answer questions. We started on our agenda with just a review of the training that we've been giving our examiners, as well as some statistics on first inventor to file. And then we presented on what's been a very major question for us over the past year and a half which is, exactly when does an application get filed as AIA first inventor to file versus pre AIA first to invent?

And then we next had an overview of the statutory framework and something that I'll be showing you a little bit later, which is to go over a few scenarios and have audience participation with that. Then we went on to give a presentation on evidentiary declarations, which was something that we had not presented to our examiners yet. We were still working on that. So this particular presentation was really geared to practitioners.

And finally, we had first inventor to file website tour, to give more information about how to find all of our materials. So the first presentation was our year in review, and I'll go very quickly. I know you have a lot to discuss. So this was our overview of the types of training we had for our examiners. And the first is March of 2013 when this was enacted. We had a high level overview that we gave to all examiners and managers in patent core. And it went along with a few videos that were -- we gave before the lecture in order to prepare them for what they were going to be hearing.

We also did a comprehensive training in the summer of 2013 to get more in detail as to what examiners would need to know and how to apply these statutes. Since August and running still, we have the first inventor to file hands on workshop for examiners and managers where they take the comprehensive training and we give them a workshop where they're given scenarios and they're given a case to work on. So that they can apply everything that we had trained them in on the lecture.

Okay, and a little bit on the statistics. So between March and September we had a significant increase this year -- a significant increase in the cases that are pending, that are AIA first inventor to file. And while it's still pretty low, it's 14 percent, we see an increase coming. Now applications filed on or after March 16th. As I said previously with those applications filed, we have an increase, but we still have a long way to go. We're at 34 percent of applications filed that are identified as AIA first inventor to file.

And here it gives you a breakdown of where they are. The applications received are, when they first started coming in, majority design and right now we have -- we're gaining on the utility applications at 41 percent. But between design, applications, track one and other made specials by petitions, it's a significant amount at 59 percent. But as I said, we are seeing a significant increase.

And the next presentation was on, as I mentioned before, one of the areas that we've been getting a lot of comments and questions from the

outside is, identifying AIA first inventor to file and filing it correctly. So this is just going over just some of the significant aspects of our presentations. This is what we identified as the simplest, cleanest way that we could really break down what's considered pre-AIA, AIA and what we call transition applications.

So to the left in the white bucket, pre-AIA cases. These are cases that were filed before March 16th, 2013 and can be seen as nothing but pre-AIA cases. On the right is those applications that have been filed on or after March 16th of 2013 with either no domestic benefit or foreign priority claims or domestic benefit or foreign priority claims only to applications filed on or after March 16th, 2013.

So those are pure AIA and can never be examined in any other manner. Then we have the gray area in between where we may have cases that were -- the application is filed on or after March 16th, but has at least one domestic benefit or foreign priority claim with an application filed before March 16th, 2013. And these are considered the transition applications.

So breaking those down to transition application, which only ever contained claims with an effective filing date before March 16th, 2013, will be pre-AIA. And those that are filed on or after -- effective filing date on or after March 16th, would be AIA. In addition, if the application claims benefit to apparent application which is AIA, the child application will be AIA as well.

So this is just a brief look, and we went into a great amount of detail with the practitioners on identifying these and knowing when -- explaining to them how the patent office determines whether a gray area transition case is pre-AIA, versus AIA first inventor to file. And we received a lot of questions during this time. This is a groundbreaking area for all of us inside and outside the office.

So going in, in excruciating detail, we thought would be excruciating detail, was actually very welcomed by our audience. And this shows you right -- I can't -- the little x'd box right there on the ADS, which is the Application Data Sheet, that is what determines whether the

office is going to examine as pre-AIA versus AIA. And I can't tell you how much confusion into the (inaudible) we've had with cases that have been filed that were pre-AIA, but this box inadvertently was checked at filing and came in as an AIA case.

So we went over in detail with practitioners and with our audience on the tips on making that determination. How to fill out the ADS and making sure that we don't reach that confusion. This is a copy of the ADS and provides exactly where you put the information of your foreign filing and your continuations. Because that also has been very confusing, and you can see lots of little, small boxes and it's easy to get confused.

So we went through this and one of the things that we've actually implemented was to -- when we receive a file application that is marked as AIA that really isn't, we've trained our examiners as well as our points of contact within each TC to be able to identify, to conclude on their own pre-AIA versus AIA. And even though the ADS says that it's an AIA it really isn't,

we've identified a form paragraph we've given to the examiner, so that in their first action out, that they make aware to the attorney to the inventor that while the ADS says it, it really isn't. So that we reduce the lag time in pendency and move the cases forward. And it's gone over very well with our -- with the attorneys.

Also we went over, and I'll go a bit quicker, the next presentation was the first inventor to file overview and tips on practitioners responding to prior art rejections. And this -- you have a copy of this with you. It's a laminated card that we've given to all examiners, all managers, as well as through to road shows, in order to allow, as we're going through very lengthy explanations on each of the statutes and what they mean, to refer back with the practitioners as we're going through.

So this is an example. While we had a lecture style form of presentations, what we did was have these scenarios where we walked through particular scenarios on an application with the practitioner. We gave it to them in a timeline file. Gave them a question in an amount of time

to answer it for themselves and then gave the answer during the presentation. And it went over just really very, very well with participation and discussion on each of the examples of how to respond to rejections and determining filing times.

So the last full presentation that we had is on the evidentiary declarations. It was something very new for the office, and the new declarations that are available through AIA first inventor to file. So we went through the same thing with this presentation. So we had the table of the different -- the new declarations. But then we also went through the scenario. We had about six scenarios in this area where we -- it was an interactive with the practitioners. So we got a lot of really great feedback on the manner in which we presented and had the answers and discussed the answers in an interactive format. Here is a table of comparison of pre-AIA versus AIA.

And the last presentation that we had was on our web page. The AIA web page as well as where to find first inventor to file. Where we

have an exhaustive list of all our videos, of our CBTs, all the training that we've given to our examiners, the managers, that's open to the public. So anyone needing advice or help as well as fir FAQs, can find them on our web page at any time.

So that's it quickly. I'd just like to say, one of the things that -- a lot of feedback that we received, was about having an interactive type of training for the practitioners. It's something that they said they don't receive a lot of, and they found it very, very useful. So I think it was a successful road show, and we're still moving on. We still have some training for our examiners that we will also give to the public on first inventor to file. And I know I'm running out of time, but if you have any questions --

MR. THURLOW: This is a quick question. First of all, we all love these kind of treats, so if there's any way to get extra copies of this, we'd love to -- here's the colleagues.

MS. MARTIN-WALLACE: Absolutely. Absolutely. We have copied that just --

MR. THURLOW: It's for my bulletin

board.

MS. MARTIN-WALLACE: Excellent.

MR. THURLOW: The other quick question, and one thing you may want to add to your presentation is, what we're doing and for filings is when applicants come to us, we're getting provisionals on. So I'd be interested in seeing the filings of provisionals since the first inventor to file (inaudible) places compared to prior to that. So we're saying get something on file right away because of the first inventor to file rules. Then we're following up a week or two later in some situations with a more non-provisional filing. Thank you.

MS. MARTIN-WALLACE: Thank you, yes.

CHAIRMAN FOREMAN: Well, thank you again for that presentation. Lots of information, all very useful information. These road shows are a valuable resource for the patent community, and judging by the number of people who did attend, it seems like it was very helpful for the inventors. So thank you.

MS. MARTIN-WALLACE: Thank you very much.

CHAIRMAN FOREMAN: At this --

MS. KEPPLINGER: Just one comment. I don't know that Sam is still in here, but -- oh yeah. Just to -- attribution, Sam Helfgott actually created this. He recognized it. Thank you Sam.

CHAIRMAN FOREMAN: Well, thank you Valencia. At this point we've got our final presentation before lunch, Chief Judge James Smith will be giving us an update on the PTAB.

MR. SMITH: Good morning. Thank you for inviting us to present again to update on the things we're doing. First let me say that while the slide presentation we have for you is some 40 slides, we will not endeavor in the time you've allotted us to get through all 40 slides. But we'll touch on some of the things that we think are more important to address in this context. We invite all of you and the participants who have access to the slides, to take time to review them in more detail than we will do this morning.

First let me address the subject of PTAB leadership. For some time now we have been evolving the organization, the organization

structure of the PTAB to accommodate the several various kinds of changes that have been, for lack of a better word, forced on us by our tremendous workload. Changes to include better supervision of our many more judges, additional staff, management to handle the new and more complex challenges being handled by our support staff.

You know some time ago we mentioned -- reported in this meeting that we had evolved the structure to include a board executive and a more robust non-judge management staff. Rick Seidel, who we borrowed from the Patent Examination Corps, served in that capacity in an interim way as we were evolving the structure. We now have a board executive member of the Senior Executive Service permanently assigned to that position, Mr. Adam Ramsey. I think he may be in the room here with us. For those of you on PPAC who have not had the opportunity to meet him previously, we invite your -- perhaps using a bit of your lunch time to allow him to introduce himself to you in person.

Additionally, on the judge side, some time ago Judge Scott Boalick became -- who was

serving as our acting vice-chief judge, became no longer acting and was appointed to a vice-chief judge role and made a member of the Senior Executive Service. We've now asked him to serve as the acting deputy chief judge of the board.

The current structure is one in which the acting or the deputy chief judge reports to the chief judge and then two vice-chief judges report to the deputy chief judge. That may seem a fair number of positions in a management structure, but as we also will report, we are now up to 224 judges. So the task of making sure that all of our judges are fully supported and that we engage all the tasks of paneling cases to them, overseeing the work they do, managing the teams in the now six offices, including two here in Virginia, that's fairly ample work. And we don't think that a structure involving fewer management team members really would be practical.

We also have two new acting vice-chief judges. As I've already mentioned, Vice-Chief Judge Boalick will be serving as our acting deputy chief. Formerly Judge Linda Horner served as one of our acting vice-chief judges. She did so for

two appointment cycles in the acting role, and we believe that she has done a fabulous job. We are much in debt to her for the tremendous work she has done in helping keep things together.

Going forward, Judge Barbara Benoit will serve as the acting vice-chief judge of Division One, the division primarily responsible for ex-parte appeals, although not strictly that. And Judge Miriam Quinn will serve as the acting vice-chief judge for Division Two, the side of the house that primarily, but not exclusively, deals with ex- parte trial work. They're also both here in the room today and will do their best to make themselves known to you in person at the end of the session, before you begin your lunches.

Are there any questions you have about things we are doing with regard to the organizational structure?

Road shows. You have been hearing about road shows for a little while now from Ms. Martin-Wallace. The PTAB has also been looking to keep our stakeholders informed about the things we have been doing, and we have had a targeted road show. Actually, we are just

concluding it in Milwaukee right about now.

We hit six cities in the upper Midwest. The primary purpose of the road show was to invigorate our efforts in training and interaction with the stakeholders in that region, and also to try to drive, with a bit more intention, the operations of the PTAB in our Detroit location at the Elijah McCoy Branch.

Specifically, when we look at the several offices in which the PTAB now has judges, which includes the two permanent sites in Detroit and Denver, but also the temporary sites in Silicon Valley and in Texas, we think the Detroit location can most benefit from some invigoration in the recruitment.

We had eight judges there this Monday. And a ninth judge just started at the Board. We would like to double the number of APJs in Detroit. So, we used this road show not only for the purpose of further interactive training on AIA trial procedures, but we have also used it to cultivate, we believe, more interest in the Detroit Office so we can see a greater number of high quality applications of individuals to serve

as judges in that office. We will see what that yields.

Quite apart from what it may or may not yield in terms of the recruitment, we think the sessions went particularly well in terms of the interactive instruction on the AIA trial work.

With all these road shows we find, as we quite expect to find, that for the judges that participate there is as much education received from the PTAB as dispensed by it. We are always glad to be involved in these proceedings, even when the day time temperature at the Minnesota road show is 10 degrees with a wind chill in the minus regions. (Laughter) It did not dull our enthusiasm. (Laughter) As you know, back in October we had the deadline for the comment period -- it closed -- for the comments we were inviting in our previous road show, the one we conducted in April and May. We received 37 comments.

For those in the room, or this is perhaps more germane to some of the folks listening who are not quite as aware of these things, the 37 comments do not represent any

shortage of commenting by the public on our rulemaking or possible rulemaking.

As a point of context, when we had the originally proposed rulemaking for the AIA trial rules, we received 250 comments. That sounds like an ample number, but even 250 sort of under indicates the amount of commenting that takes place. Two hundred fifty comments included 1,000 single spaced pages of comments, all of which we responded to by comment number and page in the actual rulemaking activity.

Thirty-seven comments is not quite as robust a response, but the detail and level of engagement in the comments is, again, more substantial than the number 37 might suggest.

The topics for comment, they have been wide ranging. We indicated 17 areas when we made the request for the comments. In addition, we received comments not necessarily in those 17 areas.

As might come as a surprise to no one, the comments on any one of the subjects where comments were sought were wide ranging. Just to take an example, with regard to the claim

construction standard, there were those who advocated very strongly for a change, so that the Board would use the Phillips/District Court standard of construing claims.

Perhaps an equal number advocated very strongly for continuation of the use of the broadest reasonable interpretation standard on claims.

Similarly, with regard to motions to amend, another area where we invited comments, there were many comments in favor of less restrictive requirements for motions to amend and some number of comments suggesting no change in the practice.

I think the one comment that seemed to have some universal agreement behind it was that there might be some relaxation of the page limit for the submissions requesting amendments to claims. Without predicting necessarily what the outcome would be of the rulemaking activity, I for one would wager in favor of some relaxation in the page limit.

Let me add, however, and this is important to all the comments, whatever period of

time it takes for the comments to work their way into some further action by the agency - specifically and most likely some proposed rulemaking - we think there are several things the Board can do in the interim with the information we have received from the comments so that progress can take place even while we are waiting for the cogs of the rulemaking machine to turn in their legally required time frame, which is not always as quickly as we would wish.

In the category of things that might proceed, and in fact, already have been proceeding and perhaps could have been proceeding more robustly already: when it comes to page limits for motions to amend, we would note that the Board in one instance recently actually enlarged the pages allowed to be filed with the motion.

This does not represent really any new practice on the part of the Board. I think contrary to what parties may have believed, the Board always was open to a showing by parties that more pages would be useful, and for reasons specifically shown, the pages allotted were

inadequate.

Motions of that kind, it is possible for them to be filed, and I think the recent Board decision indicates the Board's willingness to consider them and make the grant in appropriate instances.

Another area in which there have been comments include the Garmin Factors for additional discovery. For those of you who are following and not actually looking at your screens, we are on slide 14 of the slide set.

There are comments urging in favor of the Garmin Factors, the specific requirements for additional discovery that have been set out by the Board in the Garmin case and followed subsequently, and there have been comments advocating for a change to make the grant of discovery more liberal.

One thing I think we have learned very clearly from the road shows, and this is very comforting at least to me, that the stakeholders at least understand the challenge associated with discovery and how liberal or not liberal the discovery requirements are.

It is certainly not the intention of the Board to deny due process to any parties in the case, and we understand that, sometimes, if you already knew what the thing is you wish to discover, it wouldn't be an act of discovery to discover it.

The purpose of a tribunal presiding over discovery is to allow things not known to one party to become known to it through the process. At the same time, we have an one year requirement that more than suggests; affirmatively it impinges on the ability of the Board to be free ranging in the discovery it will permit parties to take.

How to achieve the right balance between those two things, ample due process and the constraints of the trial format given to us by Congress, that's the challenge. We will digest from the comments the proposals suggested for how, if at all, we change that regime so as to make discovery any more liberal.

MR. THURLOW: Chief, can I just ask one question? Going back to your earlier point about the case with the redefinition, I guess, or

recalculation of the 15 page requirement for claims in the one case, Acting Deputy Chief Judge Boalick previously wrote a blog about claim amendment practice and recommendations.

There are a lot of practitioners that actively follow the written decisions and decisions from the PTAB each day, but to the extent the majority of people don't do that, if there is a way to do a short blog in that case to somehow get the word out, that would be helpful.

The second thing, on that one point, the rule is still the same. When a patent owner that is going to make a claim amendment today, if they cite it and say according to this case, this is the procedure that we are following, I would assume that would be acceptable. Things like that, it would be helpful to clarify because it's important.

CHIEF JUDGE SMITH: A couple of responses. Yes, we definitely can make it clear. Let me state that a little more thoroughly. I agree with you entirely that we should avail ourselves of the opportunity to make this information as widely known as we can to the

people engaging in the procedures, and we can do a number of things to heighten awareness of that recent decision, including taking advantage of one of the features we have added to the website, namely by sending a blast out to all those who have registered to receive blasts. We can make clear that opportunity exists.

I would say this, however. It is very important for parties to understand that in each case, the case needs to be made for the enlargement. It is not a change of the rule. We have the rule that we have and intend to abide by it. The rules also allow us to grant exceptions where a case is made for the appropriateness of the enlargement in a particular instance.

Let me also say this generally about blogs and additional communication of the Board in writing, we think that is valuable to undertake and useful for the stakeholders and also useful for the Board in clarifying to itself its practices.

We have noticed a danger with some communications of the blog type, where parties then wish to cite to the blog rather than the cases

as what the law is. That, of course, is challenging. Layered onto that is not only well, the Board said this in its blog, which controls, the blog or the case. Which controls, your comment on the blog or the blog or the case.

(Laughter)

Fundamentally, we understand the value of the additional communications. I think that is a good suggestion.

Any additional questions or comments on those parts of the report so far? (No response)

On to Board hiring. Several things to talk about in this area, but I will make it brief to the circumstance. We continue to look for administrative patent judges. We continue to look for high caliber administrative patent judges. I think representative of the quality of judge we are seeking, I would point to our two new Acting Vice Chief Judges, Benoit and Quinn, who like their many colleagues on the Board -- I feel a little embarrassed to say this because it's talking about our shop.

Here I'm talking not at all about me, but the tremendous caliber of colleagues I have

the unexplainable privilege of being able to work with.

Judges Benoit and Quinn represent the Board and themselves in their extraordinary caliber of career and performance. Perhaps not good to speak too much of the fact they have more degrees than I can use my fingers to point out, and clerkships and partnerships and all those other kinds of things, and good office experience, working with the Office or with courts.

Having been successful as we have been in attracting to the Board judges of that caliber, our intention going forward is not to seek for any less caliber of judge than we have managed to attract to the Board so far.

We are now at 224 judges, if you look at slide 19. We have another six or seven who are scheduled to begin between now and January. We are embarked on our 2015 offensive -- if that is not the wrong word -- to attract the next group of judges.

We see wonderful things in our various offices in terms of the growth of our judge corps.

You will recall two or three PPAC meetings ago, I informed you that the PTAB was challenging itself to have more judges in California than already were allotted to the Board for when we would move into the permanent space in calendar year 2015.

Check that box off the list. We are now at 21 judges, which is one more than the allotment. By January, that number will be even higher, and by the time we actually move into the permanent space, it will be higher yet.

We will be calling on our PTO colleagues involved in space allocation to find even more offices than they put into the original plan.

We had hoped to find at least 60 judges in fiscal year 2014. We exceeded that number quite a bit in terms of the number of judges we actually were able to recommend -- or judge nominees we were able to put forward to the Under Secretary and the Secretary. As of this date, not only have we exceeded in the number nominated but from that number, we also have managed to exceed the actual number of judges who we were intending to find.

Not by much. But in the recruitment area, in particular with the caliber of judge we are looking to find, finding more nominees, substantially more nominees than the actual allocation, and then exceeding the allocation itself, we view as a considerable accomplishment.

We will run out on time. Let me just mention three or four other things very quickly in somewhat summary fashion, but again the slides are there to provide the more robust explanation.

We are invigorating our patent attorney program. We understand at the rate proceedings are coming to us, more judges will not be a sufficient solution to the workload needs. It has been some time since we have had active patent attorney hiring ongoing. We are proceeding down that path and are already seeing some success with decisions on supervisory patent attorneys who will supervise the patent attorneys we will bring in.

We also have several support staff positions on slide number 28. You see some indication of the positions we wish to fill. Some of our support staff have worried that, as

their ranks have not grown and the Board judge ranks have grown substantially, they will be unduly squeezed for more and more performance. We don't mind squeezing them a little, but there is only so much of that that is appropriate. We also intend some expansion there.

Why the expansion across the ranks? If you look at slide number 31, you will see the AIA progress indicated there. Please note that in October of 2014, 195 AIA petitions were filed. That is the highest monthly number yet.

At a district court, 195 filings of patent cases might result in say five percent of those cases going to trial. Let's say at most, 10 percent, so 5 to 10 percent would mean 10 to 20 trials at most.

At the PTAB, our throughput rate for filed petitions that result in trials is easily 5 to 8 times higher than district courts, so 195 petitions well could mean 145 to 150 actual trials we have to conduct. This is in addition to the inflow rate of between 700 and 900 ex parte appeals per month.

So far, we see no cooling off in terms

of the amount of work increase coming to us and the corresponding increase we need in staffing in order to handle it. So far, so good.

Let me just point out two final things in conclusion. Again, these are very pro-PTAB indicators in terms of our viewing ourselves as successful, but they are not random items selected from a mix of things to report on. They really are the fundamental things we look to as indicators of performance, whether they come out nicely or not nicely.

To date since the PTAB acceded to its AIA jurisdiction and with the stringent requirements both on the initial determination whether to institute a trial and the final written decisions, the Board has not yet even in one instance failed to meet the requirements of the AIA. Every written decision in full blown form has emerged from the PTAB in under 365 days, and every initial determination has been made similarly in full blown form prior to the deadline imposed by the statute.

In addition and meanwhile, and let me direct your attention to slide number 39, the

Board somehow has managed to keep the ex parte appeal inventory below the high number, which goes back about a year and a half, more than a year and a half, when it was 27,200 cases or about five percent higher than it is now, and it is managing to stay mostly under 26,000. In recent times, we have been more definitively in the below 26,000 range, even though by only a small amount. All our predictors indicate we are not likely to go above 26,000 again unless something really unexpected happens, and we think if we can keep our pace of hiring with the caliber of judges that we have been able to hire and manage the other factors in a fashion we have done over recent times, that in fact, the ex parte appeal inventory will begin to decline at a more substantial rate.

MS. JENKINS: Louis, just real quick. That was the slide that just really stood out to me, and I am glad you mentioned that. Is there any way that maybe we could spend some time in the next meeting really honing down in this particular area?

I commend the Board for all of its efforts with respect to the AIA implementation.

I commend the hiring. All the other slides are beautiful.

This slide is just still so troubling. We really need to work as a group to help the Office find ways to get this significantly lower than where it is now.

CHIEF JUDGE SMITH: I think the next PPAC meeting will be an ideal time to discuss this particular slide. In particular, I think that is so because the passage of time between now and the next meeting will reveal more clearly that this slide is somewhat less troubling than it appears on its face.

In particular, I think this slide more than any other points to the tremendous success of the Board. Why is that so? Well, in the entire period shown in this slide, the number of AIA filings which were predicted to be 520 for fiscal year 2014 were 1,494, three times the predicted amount, which should have spelled catastrophe for this slide.

We have worked day and night and weekends so this slide actually appears the way it does rather than to reveal a spike over the last

six months that took it above 30,000.

That's good, I think, for the past, but it's even better for the future because the things we did to cause that to happen now mean that as we have more judges who have longer tenures and are not in the ramp up particularly, instead of having 100 judges who have been at the Board less than a year and a half, just the passage of time will make those judges more adept at their job.

All of our new judges, in fact, work on ex parte appeals, and we envision that having maintained this level now, we really are in a period where we will begin to see the dramatic drop that results from the enormous containment that we were able to achieve over the last six months.

MR. THURLOW: Just a quick follow up on the report. This morning when we had the discussion on patent operations, we have been extolling the riches of the Track 1 program. The problem with the appeal part is that there really isn't anything there. Once you appeal, you are stuck. Once you are in the appeal process, you are pretty much stuck. If we can throw around

some ideas before that meeting, I think the stakeholder community would find that very helpful.

CHIEF JUDGE SMITH: We have been having very robust discussions about the possibility of Track 1. The Chief Economist of the agency has been very integrated in those discussions.

Without any premature dismissal of that as a way to go because we think, for example, there is at least continuing discussion about a pilot program that would include a Track 1 option, but what we would like to see is every filer, every applicant, every appellant, come to have a sense that quicker is becoming possible for everyone, so that maybe it's not quite Track 1 like but something hinting at Track 1 that is available to everyone with an appeal in the backlog.

We are as firmly committed to bringing down this inventory as we have been and continue to be about meeting every AIA deadline.

CHAIRMAN FOREMAN: Thank you, Chief Judge Smith. We appreciate as always your presentation and we will make sure that more time is allotted for the next meeting so we can really

delve into the meat of some of those slides we weren't able to get to at this meeting.

At this point we are into our lunch hour. I want to remind everyone that we do have a luncheon speaker. Sam Helfgott is the Director of Patents, and is going to give us a discussion on international patent activities. That is scheduled to begin at 12:15, which is in 10 minutes.

I would just ask that everyone go grab their lunch and bring it back so we can give Sam the full amount of time for his presentation. We will begin in about 10 minutes. Thank you.

(Recess)

CHAIRMAN FOREMAN: We will pick back up where we left off with the presentations from the Patent Office. First up is Tony Scardino, Chief Financial Officer, to give us an update on the finance and budget.

Good afternoon, Tony. How are you?

MR. SCARDINO: I'm great. Thank you for having me.

CHAIRMAN FOREMAN: Welcome back.

MR. SCARDINO: Appreciate it. We are

going to go through our usual slide deck in the sense of chronology. We just recently finished fiscal year 2014. It was a very positive year. We collected almost \$130 million above our appropriated amount; on the patent side, of course.

It was a little bit below our working estimate. You will see the footnote at the bottom there. The primary reason there was the growth rate for patent filings weren't quite 6.5 percent, which is what we predicted. It was closer to 2.8 percent. Still, a very positive year.

You will see this next chart is very interesting. This is kind of a snapshot of all of USPTO funding, and the first column is the patent side, but a total of \$148 million for the first time ever was deposited into the Fee Reserve Fund. We had anticipated this.

We had been working with the Administration, OMB, as well as congressional staff on the appropriations committees. We submitted a request, a reprogramming request -- a proposal, notification, I guess I will call it

-- I think on October 20. That is proceeding apace. We anticipate moving the money back to our operating account, working with the Treasury Department, later this month. We are very excited about that.

That mechanism, of course, has changed things since AIA. We have full access to the fees we collected above our appropriation, and the money is going into our operating reserve, which was a planned kind of investment, and our goal remains to build a three month operating reserve in the future on the patent side.

I guess it was 13 months ago, it really helped us during the partial government shutdown. It also is helping us manage through the continuing resolution.

For fiscal year 2015, we have a continuing resolution, like the rest of the government, until December 11. I'm sure you have followed the news. Nobody really knows what is going to happen in terms of a spending bill on December 11. We are anticipating another or possibly a series of continuing resolutions.

We are prepared to ride that out. The

operating reserve helps us to do that. While we are constrained in terms of funding--a continuing resolution funds us at last year's level -- because of the operating reserve, there is no impact on hiring, contracts, anything we wanted to do on the information technology perspective for investments.

Things are in good shape.

MR. THURLOW: Tony, just a quick question. How do you request that money? Do you request all of it at one time?

MR. SCARDINO: We did, all at one time. It was one action, exactly. We did basically a reprogramming notification to the appropriations committees.

MR. THURLOW: Based on the 2.8 percent growth rate, did you have to revise the growth rate for 2015 based on that number?

MR. SCARDINO: We have, yes. Instead of six percent, I think we are closer to five percent.

We are also still continuing to work on the 2016 budget. As a Federal agency, everyone submits a budget through the President to

Congress the first Monday in February. That will be February 2 of next year.

Before that, OMB, the Office of Management and Budget, will be giving us what is called a "pass back." We should get that probably the first week in December. What that means is they looked at our 2016 request, what we are requesting to actually collect and spend, and they will comment on it.

We have gotten a lot of support from the Office of Management and Budget. We have answered any questions they have. We anticipate a very healthy pass back in terms of we don't have any inclination that we are not going to get support for what we requested. If we do get something different, we will certainly let you know.

You will see it in January when we actually prepare the President's Budget, our budget, which is part of the President's Budget, so you will get another chance to review it and see what we intend to do for 2016.

I think that is it.

MS. SHEPPARD: Quite a few questions,

but I'll limit some of these. You mentioned that you were in the process of your notification to Congress. You have talked to us already about where you are in that process. Do you want to elaborate on that? That's the first question.

MR. SCARDINO: Sure. The House Appropriations Committee Chairman Wolf has already responded saying he supports our shift our transfer to the operating account, and we have been working with Senate staff very closely. We anticipate a letter from them over the next week or two of support. There are no indications they are not supporting us.

MS. SHEPPARD: After a decade of five percent or more growth, you are seeing a decrease. How are you preparing for a soft landing?

MR. SCARDINO: That's where we are working with Peggy and her folks. We will probably end up hiring fewer examiners than we had anticipated. Working with Robert -- that soft landing is a little bit of a Kabuki dance, you know to have the right kind of fire power -- I'm sorry. Should I call you Budens? (Laughter)

MR. BUDENS: I think it's "Budens."

MR. SCARDINO: I was thankful Louis called me by my proper name. Thank you. We have had a rough week on that at USPTO. (Laughter)

We are working very hard on the soft landing. It is a challenge because we don't know if it was kind of a blip for 2014 and it will come back or whether it will kind of tail off a little bit or stay the same. We will certainly work that out with Patents' management.

MS. SHEPPARD: I hope it is a blip, but you know my quarterly --

MR. SCARDINO: I know. Your voice remains in our heads.

MS. SHEPPARD: Lastly, on the same topic, there is legislation that may affect the budget and finance obviously that is coming up. It is something that definitely is going to pass in early 2015. The biggest question I think in my head, and Dana is going to talk about legislation, is how you would handle if the Copyright Office was incorporated into the PTO, what would you need from them to come along with them financial-wise to make that work?

MR. SCARDINO: I can't say I am fully

up to speed on that. I think there are several thoughts out here in terms of what could happen to the Copyright Office, if anything. If we were to bring them in as part of the USPTO and you had a USPCO or whatever it may be, we would work very closely with Congress because they are not fully fee funded, unlike the rest of USPTO.

There was a time, 20 some years ago, where we weren't fully fee funded. We have experience with that and a history. I don't know what would happen there in terms of whether they could raise their fees more, whether we would need an appropriation to fund their activities, but again, this is me guessing. I know nothing because we haven't had any discussions with anyone on the Hill.

I would only imagine there would continue to be a fence between patents and trademarks and then copyrights. We have a fence now between patents and trademarks where we can't spend trademarks money on patent operations and vice versa. I don't anticipate we would have anything different with the Copyright Office.

Again, that is not any knowledge that

I have of that. That is just my speculation.

MS. KEPPLINGER: One observation that came out in our finance meeting yesterday, which was interesting, from a historical perspective, when the USPTO was put on their own to be completely fee funded, we were generating about 66 percent of our fees through the fees -- our need through fees.____

The interesting thing is they went on line and discovered that is exactly where the Copyright Office is. It was just interesting there is a real parallel there. Whether they can support that increase in fees, I don't know. It is exactly the same as where we were.

MR. THURLOW: Just real quick on the reserve fund because of the concerns in the past and so on. You have the letter of approval, I guess, or the letter from the House. You expect one from the Senate. Who are the next folks involved? What is the time line for getting finality on that?

MR. SCARDINO: Once we get approval, we work with the Treasury Department, through OMB, and we get our apportionment, which OMB has

already expressed support on that. Then we just move it to Treasury. Treasury does these transfers roughly once a month in terms of the end of the month. We hope to do it in November. If we don't do it in November, we would do it in December.

MS. SHEPPARD: Along the same lines, the fee setting report, I'm not sure where you are with that because that is closely tied to what the optimal level of fees should be and what the optimal level of pendency should be. Where are you in the review process?

MR. SCARDINO: We committed to doing a comprehensive fee review every two years. We just started. As you recall, we set fees the last time, at least on the patent side, in March of 2013, so next March, of course, would be two years.

Brendan Hourigan on our team, our Office of Planning and Budget Director, he's heading up a review of fees right now. We are still in the initial stages but we have been working with folks, primarily Patents and Trademarks, but of course, John Owens, too,

because he likes to spend our money. (Laughter)

We have to look at the whole picture, right. We have a statutory requirement, of course, to recover all of our fees at the aggregate level, so if we want to adjust any fees, of course, raising fees or introducing new fees, we go through a longer process than if we are just lowering fees.

For example, we are lowering fees on the trademark side right now, next January, and we didn't have to go through the 18 month process we did leading up to March 2013 fee change on the patent side.

It kind of depends on where we are. If we end up deciding we should keep these the same, lower them, or introduce new fees or raise them, it will dictate the length of the process and the amount of involvement from PPAC and others.

MS. SHEPPARD: Where are you with the public commentary period? I am going to stop with that; sorry.

MR. SCARDINO: I don't know.

MR. KISLIUK: Are you speaking of the optimal pendency?

MS. SHEPPARD: Yes; right.

MR. KISLIUK: That closed and we did receive comments. We discussed it at the subcommittee level yesterday on the pendency. The short summary is we did not hear strong consensus to change the targets. So, we will be maintaining the 10 and 20 targets. We will be adding some additional measures both to the public view and some other measures we will be tracking around pendency. That is kind of the summary.

What we will do is we will detail that when we go into the fee setting process in terms of the resources needed to meet those objectives.

CHAIRMAN FOREMAN: Any other questions for Tony?

(No response) Again, Tony, thank you for the update. It is always good to hear good news at these briefings. We have heard worse in the past, so thank you for the positive news.

MR. SCARDINO: Thank you for having me.

CHAIRMAN FOREMAN: At this point, I'd

like to welcome Dana Colarulli to give us a legislative update. Welcome, Dana.

MR. COLARULLI: Thanks, Louis. Good afternoon, everyone. I'm going to run through a couple slides with a few goals. The goals are to get a sense of the impact post-election on some of our issues.

I will give an update on what to expect in the new Congress, and what to expect during this lame duck period between the election and the end of the year before the new Congress starts. I am happy to also talk a little bit about our activities earlier this week up on the Hill.

Let me start with breaking news - the Republicans took the Senate. (Laughter) My team and I went and did a little bit of an analysis on the new members coming in, some which came to the Hill this week for their first time, starting to get comfortable with being a member, finding their offices, and all of that.

Do any of the new members have background in technology, background in IP, and we certainly direct some of our outreach to those members with that knowledge as they are coming in.

Of course, some of those members might have a role on our judiciary committees.

As you have all heard me talk about at recent meetings, we have expanded our scope to a number of other committees because frankly there are a number of folks up on the Hill who have an interest in IP, whether that is the foreign affairs folks, whether it is the appropriations committees, or others.

The take away from the election, the balances have changed. We have 11 new Senators in the Senate that we are looking at, a net gain of about 12 new GOP seats in the House, but roughly 60 new members elected. Again, some of those on committees that are of interest to us, some with potential backgrounds in technology issues.

That is our challenge for the beginning of the next new Congress, as we reach out and talk about what PTO does and what some of the challenges we have are.

I will mention this Congress is seeing the departure of a few members of Congress and at least one Senator I wanted to highlight here. I put up this list because if you look at it, I think

actually for every single one, there is some connection with the PTO.

Certainly, our two Michigan folks for our Detroit Office. Mel Watt, the departing Ranking Member for our Judiciary Subcommittee. Jim Moran, our Virginia Senator, who has shown up at almost every large event we have done here at PTO.

Certainly, Howard Coble, who has a long history in IP as the Chair and then the Ranking Member of the IP Subcommittee, and really at every major IP reform in the last two decades or more. Frank Wolf, our Chairman of the Appropriations Subcommittee, and then Tom Coburn, who many people were very supportive of because he was looking at our fees, the ability for PTO to keep its fees, before the AIA, and continued to be a good voice to ensure that PTO had its good funding.

The other significant thing about this slide certainly is the number of terms that some of these folks have. These are members of Congress that have been there for a while, seen a lot of things. They are being replaced by brand

new members. Again, a challenge on education, but just something significant to recognize.

Ending the 113th Congress, this is our current committee leadership. I already mentioned Howard Coble is retiring. The committee will be looking for a new subcommittee chair. Chairman Goodlatte was re-elected by his party earlier this week to continue in that role. I expect John Conyers and Jerry Nadler to stay the same.

The Senate, clearly a flip. Mr. Grassley is expected to be the Chair, and Senator Leahy will be the Ranking Member.

In the past, we have seen when there was a Republican Senate, there was also a subcommittee formed in the Senate, so we will be looking to see if that again will happen this year. We have heard no indication that will be the case yet, but it certainly happened in the past.

There are a few viable candidates, I think, for the IP Subcommittee within the Judiciary Committee that certainly we are trying to pay attention to.

Big picture, lame duck session. These are issues that the Congress really is focused on. Significantly, the satellite t.v. reauthorization passed the House just yesterday. There was a hold in the Senate that was lifted on that bill. We do expect that to go forward, and that somewhat relates to us.

The other item on that list, the third one down, is on nominations. We are hopeful that the Senate and the Senate Judiciary Committee will move forward with Michelle Lee's nomination hearing soon. There are three steps in that process. There is a hearing. There is a vote of that committee to the full body, and then there is a vote on the Floor.

It does take some time to go through that process. It could happen as soon as this December, but the schedule has not been set yet. Michelle has gotten around to start meeting a number of the members in advance, as is the usual protocol, will continue doing that, and be prepared whenever the Senate calls us up.

Again, these are the issues the Republicans in the House and the Senate have said

they want to focus next Congress on. I suppose patent litigation reform might fall in that second to last bullet, reducing excess regulation and frivolous lawsuits. I think IP issues do fit in to the stated Republican priorities for this coming Congress.

What impact on IP issues? Certainly, these four issues - patent litigation reform, copyright, and at this point, just copyright review, which may turn into copyright reform, trade secrets and trade promotion authority, all topics that had been discussed in the 113th Congress. They set good ground work for action in the 114th Congress. I think we will see activity on all of those.

On the trade secrets side, certainly there was legislation that didn't make it all the way through the process, both in the House and the Senate this year. Again, expect that to move forward. We will talk a little more about patent litigation reform, and certainly copyright and trade promotion authorities are on the table.

I am going to talk a little bit about one of the more visible activities that PTO

engaged with earlier this week on Capitol Hill. As we have talked about, there were this summer two IG reports on PTO operations followed by press coverage of a third IG investigation the PTO itself had investigated a year or so ago.

Both the Oversight and Government Reform Committee and the Judiciary Committee had both reached out to us with interest to learn more, and for us to explain both what the problems are and certainly what the steps were that we were taking to address any problems that existed. We had an opportunity to do that on Tuesday.

Commissioner Focarino did an excellent job testifying on behalf of the agency, and doing a good job of educating, which certainly we can do on the staff level, but in the public forum, that is critical, but then really laying out here is what we think are a problem, here is what we think are certainly management challenges, and here are the steps we are taking to address both.

That was the goal of our testimony. I think we did a fine job doing so. I think there certainly will be continued questions from the Hill, continued oversight. We expect that. My

team has been engaging with staff daily on a lot of these issues as they have questions. We will continue to do that as this Congress ends and certainly as the Congress begins next year. I think both of these committees will continue to have some level of interest.

I will say Esther did a fine job as well representing PPAC, and we had Robert and Bill Smith from the stakeholder community as well up there on the panel.

My last comment on the hearing, because it's curious to me, but you can tell the interest of the members moved away, I think. They were concerned about some of the conduct allegations, but it moved towards really operations. It moved toward production. That is where a lot of the conversation actually focused. I find that interesting. I think we have challenges there as well, but we had a good showing.

Patent litigation reform efforts. We are aware of staff discussions now both in the House and the Senate. I can happily report I know they are talking to each other to try to determine where they are going to start with legislation in

the 114th Congress.

As you all know, the President has made this a priority as well this Congress, not just on the legislative side but also directing the PTO to engage in a number of administrative actions.

We have also seen even since this discussion started on the Innovation Act lots of activity in the courts, lots of activity here at the PTO through the AIA trials. There is a lot more data since we started the discussion on what actions to address abusive litigation tactics might be appropriate.

I think all of that we need to bring into our legislative discussions. Certainly, there are some things you can do in legislation that you can't do through the courts, you can't do administratively. I think that is an appropriate place for the legislation to focus and I think it is.

Where they will start this coming Congress will be essentially where they left off last year. The House passed a bill in December of last year. I would expect the proposals you see coming out early in the next Congress to be

similar to what passed the House, maybe with some changes influenced by a very robust discussion that occurred in the Senate on some of the very heavy litigation reform issues.

What exactly that will look like, I don't think anyone knows at this point, but as I said, staff are actively discussing, and we have made ourselves available on the technical side to discuss once that have proposals down on paper.

This slide I have shown previously on the other activity that is going on around this same area. As I said, I know staff are talking even these last few months, and will continue to engage as the lame duck session gets to the end, and certainly I have added here monitoring the impact of court cases, which I think are very informative.

Again, in the slide deck I included two slides you have seen before. This is where we left off. This is the bill that actually passed the House. As I said, it passed by a large majority of members, both Republicans and Democrats. The House is likely to start off in a similar position this Congress.

In the Senate, as you will remember, we had only gotten through committee discussion, lots of discussion on the staff level, and discussion at the committee member level as well. Lots of discussion is not reflected in the introduced bill, so again, that discussion will continue.

With that, I will end. I am happy to take any questions. I think the 114th Congress holds a lot of promise for further legislation. Again, I focused on the patent litigation. I think the copyright review discussions will probably come to a head and folks will want to move forward with something there that may have an impact on PTO. We will be monitoring those as well. Happy to take any questions.

MR. THURLOW: Dana, quick question. For those that don't deal with this every day, on the outside, on the House side, we know where to start because that bill has been passed. In the Senate, I think there are just a lot of bills that were being considered in draft last year.

Can you recommend if possible a good place to start as to where the Senate is going to

start? Is that the Cornyn-Schumer bill? Is it the so-called "transparency bill?" Just a quick comment, obviously like everyone else, we are reading the press and we expect something to happen.

MR. COLARULLI: I think, Peter, the best place to start certainly would be with that House bill that passed the House. It was comprehensive patent litigation reform, meaning it included most of the issues that folks had been talking about, most of the issues that were introduced in the individual bills.

I think it is fair to say and I have said it here before that the Senate discussion after the introduction of the Leahy bill included a lot of those items as well. It will be interesting to see what the House and the Senate decide to do on demand letters in particular. There was separate legislation outside of what passed the House. The House had some provisions, but didn't address that issue as much as later discussion did.

It is significant to note that the Chairman of the committee in the House leading the

demand letter discussions lost his election, Lee Terry. It certainly will be taken up by someone else. Those discussions had gotten pretty far and there are certainly stakeholders who are very supportive of the progress the Energy Commerce Committee made on demand letters.

It is not clear if that is the approach the Senate would want to take. There have also been discussions of enhanced powers for the FTC. Again, not clear where the Senate will start on the demand letter issues.

I think a combination of certainly the House bill, the language in that demand letter bill, and then the Cornyn-Schumer compromise that you had talked about, never an introduced bill, but certainly I think as a starting point reflects where the members of the committee as of May of last year thought they could come to agreement on. At the end of the day, it fell apart on some of the provisions, but certainly it was the last good faith attempt to get consensus among the committee.

I think with the Republican Majority and Senator Grassley taking over the Judiciary

Committee -- certainly Senator Cornyn was a main driver, and some of his proposals -- he had his own individual bill as well -- will certainly get a lot more attention.

The only other difference -- I think a lot of the dynamics in the Senate Judiciary Committee stay the same. The only other difference is you have a new Majority leader in the Senate as well. Certainly, the press characterized Senator Reid as having concerns and pointing to Senator Reid as one of the reasons why the legislation didn't move forward, and that dynamic is not there any more, but you still have the dynamic of the fact that with that compromised bill, folks did walk away from the table.

I think the Judiciary Committee will still have challenges, but there are some things that have changed.

MS. SHEPPARD: I think you know what I'm going to ask. Another one of my quarterly concerns. What is the PTO doing about the states' patchwork of laws? I think I read somewhere that almost 28 states now have enacted laws that impinge the right of patent owners to

assert their rights.

MR. COLARULLI: Yes. I think at the last meeting, I may have reported on the numbers I had in front of me. There were a number of states pending, there are less states pending now. More states have adopted laws. That is one of the concerns that we have heard from the stakeholder community and from the Hill.

I think one of the goals that the Terry language was trying to run at is making sense of and creating at least a floor for all the states as they are moving forward on these issues.

PTO is making itself available as a technical advisor certainly. On demand letters, I think that patchwork of authorities that AGs are using is an important one. I think on trade secrets, we have another set of a patchwork of laws that needs to be addressed as well, and the proposed legislation we have seen does attempt to address that. That may be the most on the trade secret side valuable things of moving forward with legislation in this area, making some sense there.

As a company, you don't market in one

state. You don't hire employees from one state. You have lots of other issues, so making some sense of that patchwork would benefit our companies.

MS. SHEPPARD: One sentence, it is preempted, might be helpful.

MR. COLARULLI: Preempted is good.

(Laughter)

MS. SHEPPARD: Dana, I think I suggested last time that since you had down time because of patent reform having stopped --

MR. COLARULLI: Yes, I'm looking for things to do.

MS. SHEPPARD: We will hire you out to different states for assistance. (Laughter)

I just want to go back to the telework hearing, and just help me understand are there next steps. I know there are next steps internally, and I don't want to talk about that, for the Office, but as far as a legislative viewpoint.

Anything that we need as a committee to consider down the road on this?

MR. COLARULLI: I think the next steps

in the formal legislative process is we expect that five days from Tuesday, the record will close, and we will get a number of questions for the record from members either who were not in the room or had additional questions. I expect in this hearing, we will get quite a few, and we will respond to those.

It will certainly give us an opportunity to spell out good answers that we may not have had an opportunity to during the hearing. That certainly is the formal process with the committee.

I expect that as we move into next year, at least the Judiciary Committee will continue in its oversight of the PTO, and we will continue to be asked about telework issues. I expect these questions will also come up in the context of Michelle Lee's nomination hearing.

With that, I think we have a good story. There are a lot of things that we are doing. I didn't highlight but I included in a slide what others may have mentioned earlier today that in the last few weeks we have retained NAPA, the National Academy of Public Administration, to do

a third party audit of our telework programs here at PTO. They will move forward with their investigation and come out with a very useful report.

Chairman Wolf testified at the hearing and said he thought that was a very good step that the PTO is taking, to bring in this third party to give an objective independent look.

We will have a number of things that we can go back to the Hill and report on. I expect we will want to try to report back to the Hill as developments occur, both to help them understand what we are doing, but also to bring them further in on helping them understand the challenges that we have.

No place is that task more important than in the Judiciary Committee with direct oversight of the PTO, so I expect we will have a lot of interaction there triggered by milestones in our own activities.

Last, I expect, and you can make a list if you watch the hearing, there are a number of members that expressed considerable concern and maybe some misunderstanding, my office will want

to follow up with them specifically and talk through some of their concerns so they really understand what we are doing here. There were a number of members who I have on a list that I think I want to go back and talk to. So, a lot of things to do still.

MR. BUDENS: One last thing along that same line. I noticed you left Howard Coble's name in there on your slide. Would you care to hazard any guess who the front runners are for replacing him on the subcommittee?

MR. COLARULLI: Subcommittee chairs generally wouldn't be announced or even decided upon until the beginning of the next Congress, so January or February. Certainly, Darrell Issa has expressed some interest in that role. He had some good banter with the only other patent holder on the committee, Tom Massie, comparing how many patents they have.

I think Chairman Issa has had a continuing interest in the PTO, certainly on these issues. He certainly is a likely candidate.

There are others both higher ranked and

lower ranked from Chairman Issa who I know have an interest in this subcommittee. Mr. Marino is a Vice-Chair. There are others on the committee who have expressed interest.

We will see what happens. I expect to formally know in January or February who takes over that gavel.

MS. SHEPPARD: I'm surprised to hear you say Issa because he's Chair on Oversight. Is he term limited?

MR. COLARULLI: He is term limited. Earlier this week and actually concurrent with the hearing on telework that we were at, both the Democrats and Republicans held steering committee meetings on committee chairs, not subcommittee, and they took votes.

Jason Chaffetz will be taking over the gavel for Oversight and Government Reform, as we understand. Yes, Mr. Issa is out of a chairmanship at the moment, so I think he will have an interest in finding another gavel to hold.

MS. KEPPLINGER: Just one thing, Dana, in terms of clarification for the Congress, the Congressmen that were there yesterday,

particularly with Georgia, that slide that he put up there was one individual, and I think everyone in that room, at least on the congressional side, believed that represented end loading for the entire organization. That is an important clarification to make.

MR. COLARULLI: I think that is a good clarification as well. There was some time spent on that not just by that member but by other members trying to understand what that meant.

It is certainly in the talking points we are providing for staff, helping them understand what is "end loading," What does it mean, what does it not mean. Helping them understanding "mortgaging," another topic that was in that draft report. What does it mean and what actions do we take. Very good point.

CHAIRMAN FOREMAN: Thank you, Dana. You may want to provide proper pronunciation to the members also to avoid some embarrassing moments. (Laughter)

MR. COLARULLI: There was some correction of Mr. Budens' name and Peggy. (Laughter) Mr. Chairman, I'll take down a note

and we will follow up. (Laughter)

CHAIRMAN FOREMAN: I appreciate that. Thank you, Dana. I'm sure your next presentation next year will have quite a bit more information. It seems like it is going to be a very active beginning of the 114th Congress.

MR. COLARULLI: It certainly will.

CHAIRMAN FOREMAN: Thank you. We have one presentation left. It seems to be the guy that has all the money at the Patent Office these days. (Laughter) I would like to welcome John Owens and David Landrith to give us an update on OCIO and PE2E.

MR. OWENS: I don't know about having all the money but I guess as Mr. Scardino was saying, I like spending it. Of course, I reminded him who has the newer and better more expensive cell phone, and that I am everywhere because I am the CIO, and I heard what he said. (Laughter) That being said, I'd like to just kick this off.

I have, of course, with me David Landrith, and Cat is behind us, and of course, my very close colleague, Debbie Stephens

representing Patents, and we will just get right into it.

Mr. Landrith, if you would take it away.

MR. LANDRITH: Sure. To start off with our largest effort, the examination tools effort, something we called "PT&I." We have been working toward it for several years. You all have seen demo's of it. We are working toward a March release. Right now we have 340 pilot examiners using it, and we will soon be expanding that to 188 -- I'm sorry, expanding that by 188.

The release that we have, it is listed as Q-4 of fiscal year 2014. It is actually tomorrow, November 21. We have an enhanced viewer for the IDS that shows thumbnails. We have enhanced continuity data where the user will be able to see family maps. Additional case contents to round out the information that is available to the examiner. Visible CPC classifications, links where appropriate to PALM's web interface.

The one portal dossier access that will give examiners the ability to view documents out of the IP-5 patent offices, and the initial batch

migration for the entire patent corps.

That is going to be going on for the next several quarters. We actually have two primary data issues with PED. One is an initial one, in order to get all the old data in, so that is kind of getting the mouse through the snake, and the other is the synchronization which keeps then in sync once the data is loaded.

For Q-1 in fiscal year 2015, we have improved synchronization of PALM. That is the second form of data input. The ability to compare different claims and see the differences over time. Enhanced analytics. Speed access to the examiner and art unit dockets. Initial integration of fee processing systems and additional data migration that is beginning this quarter.

Then we have even more additional data migration in the second quarter of 2015. It is quite a lot of data.

This release will have eDAN parity. EDAN is the legacy tool that examiners currently use to view their docket and to view patent applications.

This will also display SCORE contents. SCORE is the content repository that shows documents that are not appropriate to display as black and white images. The way eDAN works right now is everything is basically a black and white image, SCORE holds things like maybe a WORD document, a JPEG. Frequently, it is protein sequences that need to be displayed as text. The tool will be able to display those directly.

It is worth emphasizing this is the release that we will be going live with in March.

MR. OWENS: If I could take a moment to point out in previous years, we would go for almost yearly releases of some of these tools, so we would have to work for an entire year. With our iterative development and deployment model, we are never more than a quarter away from a major piece of functionality being released in actual production for the corps to use.

We will continue that iterative release quarterly as we move into the other projects. It won't be big bang, all delivered all at once any more. It will be nice quarterly releases and hopefully in the future, quicker releases, even

quicker than quarterly.

I think bringing it all together, this product in Q-2 will replace IFW, PFW, eDAN, SCORE, and a bunch of the systems and integrate them all into a single user interface that is modern and web based. I believe we are making arrangements to show a demo of that product at your next meeting, and I am looking forward to that.

I wanted to point out that there is a lot of foundational stuff here that has gone on and off and started and stopped over the years, and last year was a good year. I asked for the budget and I did get it. This year, I am hoping to be another good year where I have asked for the budget, and I have it for now and I'd like to keep it, regardless of what Tony said. Thank you.

MR. LANDRITH: In keeping with what John just said about quarterly releases, looking at the common patent classification, which is the effort to harmonize patent classification between the USPTO and the EPO, we completed an August release that was enhancements to the classification allocation tool and the transfer and search assistance tool.

We also just completed last month secure authentication for USPTO examiners to the EPO's cooperative patent classification website, as well as enhancements to the DB conflict resolution.

We are on track for January release of reporting tool enhancements as well as automation improvements for the revision and reclassification tools.

We referred to this a little bit in the examiner tools slide, the first item, examiner access for foreign application dossiers. That is being implemented in the examiner tools to be deployed tomorrow to pilot examiners and then in March to the corps.

As far as public access to foreign application dossiers, this is being implemented in Public PAIR as an additional tab that the user will be able to click on in order to view the foreign patent applications in the same family as the patent application they are viewing.

This project started in September of this year. We are on track for its first two major milestones which is the June and December,

where we will provide access to our documents using one portal dossier, and then we will host the documents for public access in 2015. I'm sorry, December 2015.

In terms of accomplishments and key releases, we also have the Hague Agreement. What we recently completed is integration with fee processing, the office actions tool, what we are on track to complete very shortly is the search systems which are CSS, East, West, IFW is the image content that we referred to earlier, the eDAN, the legacy application tool.

You can see this is quite extensive. Over the next two quarters, this actually accounts for nearly a third of our total deployments into production. The biggest challenge is the agreement is still awaiting approval by the State Department.

With the patent law treaty, we completed in late August the patent term adjustment for the Novartis vs. Lee court case. We are on track to release very shortly the patent term adjustment for the PTA calculation visibility and PTA administration capabilities.

The assignment search improvements, this is listed as improvements. It is actually a complete rewrite of the assignment search functionality. As you can see, it started in October. It is on track for a December release. This was a three month project. That is the shortest project that I know of that has a major deliverable at the end of it.

One of the things that has allowed it to be so short is it is based off the same technology that we have been using for the examiner search tool, so we have been able to leverage that, and it reflects the flexibility and the power behind that.

You might also remember with the global patent search network, GPSN, we also had a very fast turn around using the same kind of approach.

This provides many more searchable fields. For example, correspondent name, correspondent and assignee addresses, application number, execution date. It allows multi-field searching with Boolean operators as well as fuzzy searching. It displays the assignment document and it allows for sorting and

filtering, and it also adds an assignment tab for Public PAIR. It is currently feature complete and it is in bug fix sprints to be on track for the December 2014 release.

This is very much the same slide that you saw in August. The difference here is it says "completed." In August, it was on track. With completing the PTAS TM Taskforce enhancements, we have added the on line resubmission function for non-recorded assignments. We have allowed modifications to recognize multiple related assignments. We are allowing the selection of multiple conveyance types. There is an automated three part roll over of recordation notices, e-mail to fax to paper. The improvements reduced the usage of "Other" as a catch all conveyance type.

We also have the electronic data hosting that is on track for March release. This is a master repository of bulk electronic data. It provides an in-house alternative to contractor provided public data dissemination service.

Another goal was to provide an API that allows for direct external access by external

stakeholders to the patent data electronically.

With the PAIR bulk data that is on track for May release, this widens the search options available in PAIR and allows for the user to select multiple applications or multiple patents to download rather than just downloading them one at a time.

The initial search fields will include the application number, the customer number, the PG pub number, the patent number, PCT number, issue date, filing date, attorney docket number.

As far as the OCIO budget and hiring, the total OCIO budget is \$105 million more this year than last year, with about \$60 million more going to patent allocation. In terms of the project count, between PE2E-SE and PE-E2, PE-E2 is the follow on investment, which is what we have been reporting on now for close to four years. We have 34 total projects, and within legacy, we have 25 projects.

We had a very successful year in hiring last year, adding 104 people to the Office of the CIO, 22 of whom, about a fifth, were dedicated to patents.

Any questions?

MS. KEPPLINGER: I was just a little curious about patent allocation. What does that mean exactly?

MR. OWENS: That is if you were to just cut the budget of what monies are solely dedicated to patents, patent improvements, just not core infrastructure, just dedicated to projects to improve patent systems, patent capabilities, operations of patent systems, that is that amount of money.

MS. KEPPLINGER: It seems shockingly low, considering that is the vast majority of what the office does. I'm just not quite understanding how there is so much that is not strictly patent.

MR. OWENS: I can further clarify that number for you. It doesn't include people, people's pay. It doesn't include generic infrastructure, storage, hardware, operations, maintenance, call centers. It is just patent projects. In other words, things that I am doing to build and/or enhance or improve the systems or replace them, but not keeping the lights on,

keeping the infrastructure. I mean if I did that, it would pretty much be the whole thing.

What this is trying to convey is there is still a significant amount of money being placed into investment and improvement, not just keeping things the same, right? That is what is trying to be conveyed here. I'm sorry we did a poor job of it.

MS. KEPPLINGER: I'm sure it's not a poor job. I'm sure it's me. It is just perhaps misleading. I wonder if it is not a good optic.

MR. OWENS: I can certainly clarify it on the slide to make it a better optic. It is actually supposed to be a pretty good deal considering in years past, the number has been low and then variable. Although David is right, start, stop, start, stop, got de-funded, funded, de-funded, sequestration.

We have certainly been through our series of turmoil's, and I wasn't kidding, last year was the first budget year that I had that didn't change by the end of the year, and I like that, by the way.

Through all that turmoil, what I wanted

to convey here is there is a significant amount of work being done to enhance the current system and rebuild the system. Unfortunately, we have to keep both systems alive, fully functional and operational for at least a year after deployment, and then we will start shutting them down. Of course, that is reflected in the budget as well.

It is a significant amount of money to do what we are doing. It's not trivial, and increasing.

MR. HALLMAN: I had the same reaction that Esther did when I saw the numbers, and I was actually wondering whether or not the total budget number included things like people's salaries and the like.

MR. OWENS: It does, it includes everything.

MR. HALLMAN: I agree, I had the same reaction Esther did, just for the record.

MR. OWENS: Go ahead, Deb.

MS. STEPHENS: I just wanted to mention that from 2014 to 2015, we have an increase of 50 percent more patent IT projects, so literally in 2014, and don't quote me on the numbers, but we

literally went from 25 to like now we are up to 55 separate patent IT projects. Just to help further clarify.

MR. OWENS: Yes. Now in hindsight listening to you all, I realize the number not in complete context is not as impressive as it is meant to be. We make mistakes. It doesn't help that we live, eat, and breathe these numbers all the time, right? We look at it and go wow.

(Laughter)

I promise you the next time we are together, that will look a lot more impressive.

MR. JACOBS: I wanted to underscore a couple of things that PPAC pointed out in our annual report that dove tails with some of the comments you just made, John. First of all, there have been some humorous remarks about the amount of spending here, and these are large numbers, I mean they are not being taken lightly, almost \$700 million.

That is a big increase, not only from 2014 but from 2013, which was a year where we had virtually all of your projects cut, and that is one of the reasons why these numbers are large.

We are talking about replacing systems that should have been replaced years ago.

As you pointed out, not only do we have to do that, but while these new systems are being rolled out, these new very ambitious systems to support the work of the examiners and the user community, we have to maintain these legacy systems, which is pretty expensive in its own right.

As we pointed out in our report, this will go beyond, as you mentioned, this will go beyond fiscal year 2015 because we are not done yet. This is a huge milestone that we are nearing in the spring with the roll out of finally these tools to the entire user community.

There are systems still that we have heard about, projects that have been initiated such as the office action system, the search engine, which ironically is being used in two other searches but is not in this release of the examiner tools, text to PTO, which was an initiative that was brought before the committee several years ago and put on hold and still isn't on the schedule and so forth.

What I wanted to point out is we still have a lot of work to do, and the expectation at least for a couple of years before we retire all these systems, and maybe this is going to start to taper, we are going to have to press ahead and we are going to have to expect that your shop is going to need this kind of money to complete the work over a period of at least a couple more years.

MR. OWENS: Yes.

MR. JACOBS: I have to ask a question. Is that correct? (Laughter)

MR. OWENS: Yes, that's correct. We will release the tools. Again, I have to thank everyone here for being understanding as we have gone through various years of funding, de-funding, starting and stopping, restarting and keeping the momentum going each time has its toll.

We have now gotten to the first release. In fact, and I didn't plan it this way because I think only an insane person would plan it this way, it was supposed to happen over two years, but this year it just so happens that after sequestration, I will have five major releases

this year, Patents and Trademark NextGen, a brand new website, redesign, infrastructure, MyUSPTO, and with the CFO's Office, FPNG, or fee processing next generation.

Like I said, that is a lot of change. We do keep the legacy stuff around. We made commitments to the Union to keep it around for a year. That means every piece of legislation, every court decision, every change that we come to an agreement on either with the Union or another organization, I have to do it in two places.

I have to tell you that changing it in the new system, and we just saw what operating in a new system is like because we developed one in three months, because we basically started it from scratch, not linked to anything legacy -- it is a lot easier and a lot less costly than modifying the large and complex systems, the aging systems that we have.

We do have that added burden, but I don't have it just here in patents. I have it in trademarks. I have it in FPNG. I have it in all those areas. After about a year, we will start

shutting that stuff down, and then over time with our iterative release model, year after with each one of the releases, we will shut down more and more.

We also have this built up technical backlog, right, which is every year that we had to reprioritize or put something on hold or stop or de-fund or whatever, my customers didn't forget about that work they asked me to do. They put it on a shelf. Every year when we reprioritize, it comes back off the shelf, we dust it off, and we prioritize it against all the other work.

Let's just say I've put in an infrastructure of enterprise project management where we no longer forget about these things and they stay on the list. Over time, that backlog of mine has grown. We want these things. We want them to happen. They just keep building up.

What will end up happening is as we start shutting off systems, more and more of that money and resources can be given back to Tony, which I'm sure he will be happy with, but my customers are going to say I want to spend that

on getting some of the stuff I've been waiting for for three years. You should see some of the things that are on that list that I inherited that were on that list before I got here.

The work isn't over yet. I know Tony likes telling everyone that I spend the money. It is true, I do spend the largest discretionary fund here at the agency, but if you come to my office and you look at the wall, you know that I do each and every project in order to fulfill a need of the customer. We don't just do it for the IT sake, and I just don't spend money because it is Tuesday. I do it to manage the business and to contribute to the business.

Although I have certainly heard my share of comments over the years about the delays, I promise you, and we have gone over them here, some of them can't be helped, but we are a team player when they happen, and we do contribute to the overall solution for the agency.

Like I said, although this slide did not properly reflect the increase of 50 percent, and maybe we should have just said that, to me, the numbers look cool, but not in context I guess.

The other thing to note is we have hired a significant number of people to focus on patent systems to make up for previous years of non-hiring, and that is the largest area of growth for any one particular group.

Out of the rest of them, the bulk of them are shared resources, which means they handle infrastructure, so on and so forth for the agency. They all contribute pretty much, except for a small handful for trademarks, to patents in one form or another.

I want there to be a day where I have a much reduced manageable backlog of work, let's say a year or two's worth of work on my list, and not the four or five years' worth of work on my list today.

MR. BUDENS: First, be careful, I think Mr. Issa wants you to have no backlog at all.

(Laughter)

MR. OWENS: Yes. I don't think he's managed a workforce there, Robert.

MR. BUDENS: One comment and one question. First, to let you all know, that with PE2E coming up, we are starting now, there is

feedback coming to me that the viewer and stuff have really come together here in the last few months and are starting to look really useful.

In fact, we actually have people up in Debbie and John's area who are using it to actually teach other examiners right now, using it when they are instructing. It looks like it is coming together and we are looking forward to the roll out.

One concern that has been raised at least to me multiple times has been the concern back on the first slide, the so-called "data migration." Basically, I would call it "data conversion" or whatever to get us into where we have text based data and stuff.

I'm just wondering how that is going. I know there were some bumps in the road there, but I'm wondering how we are doing now, getting all of our data up, so when the examiners get the new tools, they will have the data behind it driving it to be able to use it for examinations.

MR. OWENS: I'm going to take the first crack at that and then I'll give it over to Debbie. I think there are basically five sets of data.

MR. LANDRITH: Six.

MR. OWENS: Six sets of data. I know about half of them are where we want them to be, but they are on a schedule, and we are in the schedule where we thought we would be with the quality. We are paying very, very, very close attention along with OPIM on the quality, to make sure it is good, like beyond good, very good, and useable.

Don't forget in every instance you can always click on the image and say show me the image of what I'm looking at. If you ever did have a doubt, is this right, did they really put that in there, was it converted appropriately. You can always go back and look at the source, and we made sure of that.

That focus is on schedule. It was on this schedule for a reason, and we are putting forth an immense amount of effort on the quality and making sure the conversions and enhancing the conversions is going along at a steady pace.

Debbie and I have talked about this at least bi-monthly. It is a topic of conversation in the OPIM bi-weekly status updates, and we are

watching it very closely.

If the data is not in what I consider an incredibly good, very good position, I will not get approval to push the system into full use. I give you that commitment. Debbie?

MS. STEPHENS: I would just like to say that we are definitely looking along with John's team, it is definitely probably the focal point of our every two week discussions. The good news is everyone has a heightened awareness of it, and as John said, we are on schedule. Now we just need to follow through with all the things we put in place collaboratively to make it happen. We are just watching the data bytes convert.

MR. OWENS: Yes. I give you that commitment, Robert. It will be more than acceptable, I promise you that.

CHAIRMAN FOREMAN: Thank you, John, Debbie, and David for that presentation. We look forward to hearing more next year.

We are at the end of our session. Everyone knows I love to keep these meetings on time, on schedule. I do want to say a few things, however. I only have 173 slides, so I will try

doing it as quickly as I can. (Laughter)

First and foremost, I have to personally say this has been a privilege and an honor to serve on PPAC for the last seven years. It went by way too fast, and it has been quite a journey. Leaving is going to be very difficult.

I need to thank Clinton Hallman and Valerie McDevitt, who will also be cycling off PPAC, for their service. Clinton has volunteered to organize the PPAC Alumni Association. (Laughter) We will be coming back. Valerie will be organizing the first Homecoming and tail gate events. (Laughter) You will see us out in the parking lot grilling before the next PPAC meeting.

To the current members, you are left in great and able hands with Esther elevating to Chair. I know she will do a tremendous job, and you will welcome the new members of PPAC and not make tart comments to them. (Laughter) You will explain to them what a "water weenie" is, and warn them of the effects of Ebola. (Laughter) I got all those in. Kind of an inside joke. (Laughter)

To the staff and management at the Patent Office, I only wish that the public truly understood how capable and how passionate this organization is. Being on PPAC gave us a very inside look at just the quality of the management, the dedication of the workforce, and how committed to seeing that inventors get their intellectual property rights.

To the extent that you can open up the doors a little bit wider and let people see what you do, I think there is great benefit. I think people would appreciate the real value here.

Also, thank you to the patent holding community for allowing us to serve as your representatives here at PPAC.

I hate to say good-bye, because that seems so definitive, so I will just leave with a thank you. With that, our meeting is adjourned.
(Applause)

(Whereupon, at 2:21 p.m., the
PROCEEDINGS were adjourned.)

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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.

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