

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Thursday, February 19, 2015

1 PARTICIPANTS:  
2 PPAC Members:  
3 ESTHER KEPPLINGER, PPAC Chair  
4 MICHELLE LEE  
5 PETER THURLOW  
6 PAUL JACOBS  
7 WAYNE SOBON  
8 P. MICHAEL WALKER  
9 MARK GOODSON  
10 DAN H. LANG  
11 CATHERINE FAINT  
12 USPTO:  
13 PEGGY FOCARINO  
14 VALENCIA MARTIN-WALLACE  
15 ANDREW HIRSHFELD  
16 ANDREW FAILE  
17 CHARLES PEARSON  
18 MARY CRITHARIS  
19 ARTHUR WARREN  
20 NADIA KHOSHNOODI  
21 DAVID LANDRITH  
22 JOHN OWENS

1 PARTICIPANTS (CONT'D):

2 ANTHONY SCARDINO

3 DEBBIE STEPHENS

4 DANA COLARULLI

5 BRUCE KISLIUK

6 Union Members:

7 ROBERT D. BUDENS

8 PTAB:

9 JUDGE JAMES SMITH

10 Other Attendees:

11 SCOTT BAOLICK

12 TONY CHILES

13 FRANK MURPHY

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

(9:17 a.m.)

1  
2  
3 MS. KEPPLINGER: Okay, good morning,  
4 everyone. We've been waiting for the court  
5 reporter to get started but we're going to start.  
6 So it's my pleasure to open this meeting, the  
7 Patent Public Advisory Committee. I'm Esther  
8 Kepplinger, the Chair of this Committee and it's a  
9 great honor to have this role. I really am glad  
10 to be in this position.

11 And it's my honor to welcome our new  
12 members. We have three distinguished gentlemen  
13 who are joining now, Mike Walker, Mark Goodson and  
14 Dan Lang. Thank you for taking your time to be a  
15 part of this organization. We really look forward  
16 -- I, just from interacting with you yesterday, I  
17 see that you're going to have a lot of good ideas  
18 and contributions for the Committee. So we really  
19 appreciate you taking on this role.

20 Perhaps what we could do is go around  
21 and have everyone introduce themselves and then,  
22 we'll start the session. So Cathy, maybe we'll

1 start down there with you?

2 MS. FAINT: I'm Catherine Faint, Vice  
3 President of NTU245 and a member of PPAC.

4 MR. BUDENS: I'm Robert Budens. I'm the  
5 President of the Patent Office Professional  
6 Association, the Examiner's Union and a member of  
7 PPAC.

8 MR. GOODSON: Mark Goodson (inaudible).

9 MR. WALKER: Mike Walker, Vice President  
10 and Chief IP Counsel Dupont.

11 MR. JACOBS: I'm Paul Jacobs with PPAC.

12 MR. SOBON: Wayne Sobon, PPAC.

13 MS. FOCARINO: Peggy Focarino, PTO.

14 MR. FAILE: Andy Faile, USPTO.

15 MR. THURLOW: Peter Thurlow, PPAC.

16 MR. LANG: Dan Lang (inaudible).

17 MR. KISLIUK: Bruce Kisliuk, USPTO.

18 MR. HIRSHFELD: Drew Hirshfeld, PTO.

19 MS. MARTIN-WALLACE: Valencia  
20 Martin-Wallace, USPTO.

21 MS. KEPPLINGER: Okay, thank you and  
22 welcome everyone. I'll turn it over to Peggy

1 Focarino, Commissioner for Patents.

2 MS. FOCARINO: Thank you, Esther, and  
3 good morning. On behalf of Deputy Director  
4 Michelle Lee who will join us later this  
5 afternoon, I'd like to officially welcome you and  
6 the rest of the members of PPAC for today's  
7 quarterly meeting.

8 Before we talk about today's agenda, I  
9 would like to acknowledge some changes since our  
10 last meeting. And I want to echo Esther's  
11 congratulations to our new members, Mark Goodson,  
12 Dan Lang and Mike Walker. I especially wanted to  
13 congratulate Esther on her role as the Chair of  
14 PPAC and Marylee Jenkins is not here today but she  
15 is the new Vice Chair of PPAC.

16 As many of you know, former PPAC member,  
17 Christal Sheppard, is our new regional director of  
18 the Detroit satellite office so we want to thank  
19 her for her service on the Committee. We're  
20 already enjoying working with Christal in her new  
21 capacity and as you can see from the agenda, we  
22 have a full program scheduled for today and will

1 bring you up-to-date on our activities here at the  
2 agency.

3 So you'll be hearing from our Deputy  
4 Commissioners and also get an update on PTAB from  
5 Chief Judge James Smith just prior to lunch. And  
6 then, you'll receive a demonstration of our  
7 patents and docket and application viewer tool.  
8 And the demo will be conducted by one of our very  
9 talented patent examiners. And you'll receive  
10 updates on our IT, our budget and legislative  
11 picture.

12 And also, Michelle Lee will be back this  
13 afternoon and close out the session today. So we  
14 hope the session is informative and that you'll  
15 free to ask questions and offer input throughout.  
16 We always value and appreciate your comments and  
17 feedback.

18 As you know, one of our top priorities  
19 is to implement our new patent quality initiative.  
20 And the goal of this initiative is to build more  
21 confidence in our patent system by improving  
22 patent quality and the public perception of the

1 patent system overall. This will make the system  
2 more understandable and usable by all inventors  
3 and will ensure that each of our customers feels  
4 they are treated fairly and professionally  
5 throughout the application process.

6 As part of this initiative, we'll focus  
7 on building the workforce and the tools that we  
8 need to support a world class patent quality  
9 system. Deputy Director Lee and I feel this  
10 initiative is so important that we've created a  
11 new position to oversee it, a Deputy Commissioner  
12 for Patent Quality and we hope you'll join us in  
13 welcoming and congratulating our new Deputy  
14 Commissioner for Patent Quality, Valencia  
15 Martin-Wallace who will start our agenda today but  
16 updating you on the quality initiative.

17 Valencia?

18 MS. KEPPLINGER: If I may just interject  
19 one thing. For those of you that are online  
20 listening to this session, if you have any  
21 questions you can send them in to PPAC, P-P-A-C  
22 @uspto.gov and we'll try to address them as they



1       come in. So thanks very much.

2                   Valencia?

3                   MS. MARTIN-WALLACE: Thank you, Peggy.  
4       Thank you, Esther. I'm very honored to have been  
5       selected by Peggy for this position in overseeing  
6       our quality efforts. And I'm very happy to be  
7       working with this Committee as well.

8                   So I'd like to start by spending some  
9       time discussing patents path forward with  
10      enhancing quality. First, I'll start with  
11      addressing why this is the right time to put an  
12      even greater emphasis on quality of our product,  
13      our process and our customer service. So for the  
14      first time in recent history, the USPTO has  
15      financial resources to consider long-term and more  
16      expensive improvements to patent quality by  
17      leveraging the sustainable funding model provided  
18      by the fee-setting provisions in the AIA.

19                   The USPTO has made steady progress in  
20      reducing both the backlog of unexamined patent  
21      applications and patent pendency. In fact, the  
22      current backlog of unexamined patent applications

1 has dropped from a high of 764,000 in January of  
2 2009 to under 600,000 in February of this year.

3 Also, the pendency from filing to  
4 disposition has dropped from 34.5 months in 2010  
5 to currently 26.8 months at the end of January.  
6 Now, while we still have progress to make in  
7 further reducing both the backlog and pendency,  
8 the confluence of these events make this the right  
9 time for USPTO to pursue this enhanced quality  
10 initiative and our IT advancement initiatives as  
11 well as training initiatives that are going on  
12 currently are giving us an opportunity to address  
13 our employees' needs.

14 We have already taken steps to clearly  
15 and consistently enforce statutory examination  
16 mandates like providing our examiners new training  
17 in functional claiming and issuing guidance on  
18 subject matter eligibility of claims and improving  
19 our classification system for searching  
20 (inaudible). We have begun to implement  
21 long-range plans to improve our operational  
22 capabilities like upgrading our IT tools for

1 patent examiners and expanding international  
2 work-sharing capabilities.

3 And finally, I'd just like to say it's  
4 the right thing to do. High-quality patents  
5 permit certainty and clarity of rights which in  
6 turn fuels innovation and reduces needless  
7 litigation.

8 So next I'd like to talk about our core  
9 quality elements. So our new patent quality  
10 initiative is built around these core elements or  
11 pillars in order to deepen and refine how we think  
12 about general aspects of quality. Our first  
13 pillar, excellence in work products, it includes  
14 both quality of issue patents and the quality of  
15 all work products during the filing, examination  
16 and issuance process.

17 We're committed to issuing patents that  
18 clearly define the scope of the patent rights  
19 therein that are within the bounds of the patent  
20 statutes as interpreted by the courts and that  
21 prov -- (clears throat) excuse me, and that  
22 provides certainty as to the validity to encourage

1 investment in research, development and  
2 commercialization.

3 As a key building block to the  
4 infrastructure and foundation needed to enhance  
5 and sustain quality, we're committed to taking the  
6 steps necessary to evaluate the needs of our  
7 examiners to ensure that they have the tools,  
8 resources and training required to perform their  
9 job optimally and provide a superior work product.

10 Now, the second pillar, excellence in  
11 measuring patent quality. We're focusing on the  
12 measurement of quality in order to evaluate our  
13 work product and our customer service interaction.  
14 So we're seeking the input of the public on the  
15 measurement of our current patent quality or, I'm  
16 sorry, the current measure of our patent quality  
17 and how to improve it.

18 I'm sorry, go back one. So almost  
19 forgot the third, our customer service. So we're  
20 focusing on the quality of the customer experience  
21 at the USPTO. We're seeking feedback to ensure  
22 that customers are treated promptly, fairly,

1 consistently and professionally at all stages of  
2 examination process. We're also focusing on  
3 maximizing our effectiveness and professionalism  
4 of all customer service interactions.

5           So next is our ongoing steps. We have  
6 current initiatives that I'm sure you're all aware  
7 of. And so, I will just list a few of the many  
8 that we have going on such as claim clarity and  
9 functional claiming training that we're doing  
10 through Drew's shop as well as Andy's shop.

11           The promotion of more applicant examiner  
12 interviews and in one way we're doing that is the  
13 first action interview program that we have going  
14 on as well as the initiative we have to have  
15 examiners initiate more interviews with  
16 applicants. Also, our pro se pilot program where  
17 we have a pro se examining unit dedicated to  
18 working with the pro se's in order to have a  
19 superior quality of product as well as our  
20 crowd-sourcing program.

21           Now, last fall, October of last year, we  
22 also held brainstorm sessions. We had nine

1 sessions with a cross-section of our patent  
2 employees. Over 200 employees participated in  
3 this event where we gathered over 400 ideas from  
4 them; ways we can improve, that includes ways we  
5 can work more efficiently and communicate more  
6 effectively. Just a few of those ideas that came  
7 through are incorporating more public feedback  
8 into the patent process, resolving problems during  
9 prosecution, notifying applicants of their  
10 application status during the process, increasing  
11 levels of training both internally and externally  
12 and improving our call centers' capabilities.

13 We've continued to refine the examiner  
14 guidance that we've issued about court rulings and  
15 Drew will be speaking very shortly of that. And  
16 just yesterday, Deputy Director Lee and  
17 Commissioner Focarino held a patents forum where  
18 they met with our employees. We had over 1,000  
19 employees to participate in this where we garnered  
20 even more ideas. And I have to say, I did  
21 participate in that as well and it was very  
22 encouraging to see the number of examiners who

1 were interested in taking part in this process and  
2 inputting as to how we can improve the quality of  
3 our product.

4 (Coughs) Excuse me. We're  
5 committed to providing necessary  
6 tools and resources needed to  
7 support building a world-class  
8 quality system as part of this  
9 initiative. And we're working with  
10 our patent counterparts  
11 internationally to share these  
12 ideas and collaborate to implement  
13 best practices. And we're also  
14 considering how we can better use  
15 our data to improve the examination  
16 process.

17 Now, our external steps towards proving  
18 equality include our efforts of measuring quality  
19 and getting public feedback on how we're currently  
20 measuring and what improvements we need to make.  
21 This means we continue ongoing dialogue with our  
22 stakeholders about the current measurement

1 methods.

2           Now, I'd like to add at this point that  
3 our stakeholders have never been shy so we're  
4 constantly receiving feedback and receiving  
5 positive feedback on us being more transparent as  
6 well as soliciting the feedback from them.  
7 Whether they're agreeing with how we're addressing  
8 issues and I can speak as the lead of the  
9 ombudsman, patent ombudsman program, that we're  
10 not necessarily telling everyone that comes  
11 through the program exactly what they want to hear  
12 but we are giving them the appropriate and the  
13 right decisions. And it is greatly appreciated by  
14 them.

15           We're also eagerly awaiting the public  
16 comments through the federal register notice that  
17 we put out and that comment period's going to end  
18 May 6th. And we're also gearing up for our patent  
19 quality summit in order to continue the dialogue  
20 with our stakeholders. Now, late next month,  
21 March 25th and 26th, we're going to have this  
22 two-day quality summit where we've invited in



1 speakers who will represent various aspects of the  
2 patent industry from practitioners to independent  
3 inventors to manufacturing companies as well as  
4 academics to join us as we focus on these  
5 specifics of quality initiatives.

6           And we've developed six proposals for  
7 the public to consider as part of this summit and  
8 have breakout sessions. And I will just speak  
9 very, very briefly about each of these. So we've  
10 divided them up amongst the three pillars and the  
11 first proposal under pillar one is applicant  
12 request for a prosecution review of selected  
13 applications. So the Office of the Patent Quality  
14 Assurance will conduct reviews of randomly  
15 selected office actions from examiners.

16           The USPTO proposed a mechanism for an  
17 applicant to request the OPQA prosecution review,  
18 particular application when the applicant believes  
19 that it contains an issue that could benefit  
20 further review. And the second proposal under  
21 pillar one is the automated pre-examination  
22 search. The PTO is continuously looking into

1 better ways to get the best prior art in front of  
2 our examiners as soon as possible in the  
3 examination process.

4           So this is the second way that we're  
5 opening up to the public and asking for their  
6 ideas and the third proposal under pillar one is  
7 the clarity of the record. And we've made great  
8 strides in this area and we're looking to see what  
9 more we can do, get feedback from the public on  
10 what we have done and effectiveness and any ideas  
11 forward.

12           And proposal four which is under pillar  
13 two is review and improvement to our quality  
14 metrics with I've discussed a little further so I  
15 won't belabor that. And proposal five which is  
16 under pillar three review of our current compact  
17 prosecution model and the effect on quality.

18           So in an effort to resolve outstanding  
19 issues in an application before prosecution on the  
20 merits -- before the merit closes, the USPTO is  
21 seeking assistance from the public on determining  
22 whether the current compact prosecution model

1 should be modified. Revisions to the compact  
2 prosecution model seek to enhance both overall  
3 pendency and the quality of the prosecution.

4 And finally, under pillar three our  
5 proposal six is in-person interview capability for  
6 all examiners so regardless of where their  
7 location that we seek the public's comments on how  
8 to practically provide in-person interviews for  
9 those applicants who feel that the remote  
10 interviews are not appropriate or not working.

11 So our next steps, analyzing our quality  
12 summit and the federal register comments. So we  
13 are looking to have a product from there towards  
14 early summer. Reason being is we have the 90-day  
15 comment period. We have a series of focus  
16 sessions internally that we plan on having so we  
17 need to gather all of that information in order to  
18 address the initiatives and the direction that  
19 we're going.

20 Now, after we do that, we do plan on  
21 after we solidify more initiatives, having quality  
22 enhancement roadshows this summer where we go

1 around, (coughs) excuse me, and seek more  
2 information and more ideas about our initiatives  
3 from the public as well as holding the internal  
4 focus sessions throughout this process as well.

5 And this is our quality Web page which  
6 will give you some of the more important links and  
7 the contact information necessary and give you the  
8 process as we're going through this effort. And  
9 as you can see at the bottom, if you go to our Web  
10 page, and the link is  
11 patent/initial/patent-quality-initiative to go on  
12 and get more information and updates.

13 And we've also established the email box  
14 that you can see that  
15 worldclasspatentquality@uspto.gov open to the  
16 public for any ideas that they may have and would  
17 like to forward to us. So this concludes my  
18 presentation and I'm happy to answer any  
19 questions. I know we're running a little short.

20 MS. KEPPLINGER: Mike?

21 MR. WALKER: Thanks, Esther. Hate to be  
22 at my first meeting and ask the first question but

1 I'll try. Valencia, welcome, congratulations and  
2 it's great to have a Deputy Commissioner for  
3 patent quality.

4 One thing I've always thought about  
5 because various associations have looked at  
6 measuring patent quality. And one thing I haven't  
7 been clear about whether the office does this but  
8 one of the approaches is looking at litigated  
9 patents. To look back and say, this patent has  
10 survived litigation, gone through appeal or this  
11 patent has been knocked out on a summary judgment  
12 motion on a validity basis or 112 or something.

13 Is that one of the things you're looking  
14 at in terms of quality? Looking at results from  
15 patent litigation?

16 MS. MARTIN-WALLACE: That's actually a  
17 great idea. We have had some programs in the past  
18 that we've partnered with the solicitor's office  
19 and Drew's office to go through a year in review  
20 of patent litigation. And we are looking towards  
21 even more programs in that direction. So you're  
22 absolutely right and it is one of the areas we're

1 looking to.

2 MR. SOBON: I think it's very good that  
3 you're also focusing on the examiner interviewing  
4 process. We've talked about that before and I  
5 wondered if you have metrics, obviously, I'm  
6 intrigued by examiner initiated interviews  
7 especially and I think from the application point  
8 of view, as we've said before, we think that's  
9 sometimes the most productive way to get to a  
10 quality result by having a full two-way  
11 communication.

12 Can you elaborate a little bit more on  
13 the steps you're taking in those areas?

14 MS. MARTIN-WALLACE: So the steps with  
15 the --

16 MR. SOBON: Examiner -- inspiring or  
17 encouraging examiner interviews and maybe  
18 measuring --

19 MS. MARTIN-WALLACE: Yes, we actually  
20 have had a huge internal campaign with making our  
21 examiners more aware of the positives and the  
22 reasons for them initiating interviews and not

1 waiting just for the applicant or attorney to come  
2 in and ask. We also have a Web page for our  
3 examiners that walks them through the process for  
4 especially those who are remote on how to make it  
5 easier for applicant as well as themselves on  
6 having the interviews.

7 We've had a training campaign and a  
8 workshop campaign as well with our examiners and  
9 our supervisors on the benefits of interview. So  
10 we've made great strides in the last few years on  
11 promotion of interviews and the purpose and we're  
12 going to keep moving forward with that as well.

13 MR. SOBON: Do you have some metrics so  
14 maybe next time you can share some further metrics  
15 with us about how many are happening and how many,  
16 you know, where the trend is going?

17 MS. MARTIN-WALLACE: Absolutely. I'll  
18 get that information.

19 MR. LANG: So I'll echo the  
20 congratulations to Valencia for taking on this  
21 very important role and this is a great initiative  
22 on the patent office's part. It emphasizes

1 something very important.

2 Just a couple of things. One is that  
3 the discussion of quality seems to also  
4 incorporate discussions of customer service and  
5 timeliness and those are both important things but  
6 I want to make sure that we keep independent and  
7 strong focus on quality being seen as the quality  
8 of the finished work product, the validity of the  
9 patents that come out of the office.

10 The second thing I wanted to point out  
11 is about the metrics and you get what you measure  
12 as an organization and when you drive an  
13 organization to achieve metrics you get those  
14 things. And with the metrics that we have now, I  
15 think they take into account some internal  
16 observation and analysis. They take into account  
17 input from some kinds of stakeholders,  
18 stakeholders who are themselves applying for  
19 patents or their representatives.

20 But I think we also need to capture  
21 information about what happens to patents after  
22 they leave the office. I like the idea of looking



1 at litigated patents but I also think we need to  
2 look at the perceptions of the system from the  
3 viewpoint of people who are themselves technology of  
4 investors in innovation but aren't necessarily the  
5 ones directly interacting with the office. The  
6 ones who are experiencing the effects of patents  
7 in the world after the patents leave the office.

8 MS. MARTIN-WALLACE: Those are both  
9 excellent points. And Dan, you and I have talked  
10 yesterday about the focus of patents, the patent  
11 product which is hugely important and absolutely  
12 our focus. And right now, we're trying to take an  
13 opportunity with the summit to take a holistic  
14 approach to what's affecting patent product but  
15 definitely the number one focus is the product and  
16 making sure that it's of the highest quality  
17 possible.

18 As well as your second comment with the  
19 measures, that's a great idea and that we can look  
20 into with patents after they've left us as well as  
21 I hope to hear more from you at the summit.

22 MS. KEPPLINGER: Thank you, Valencia,

1 and great that you're in this job. It's wonderful  
2 to have the focus on quality. I think we can all  
3 agree.

4           Following up on what Mike had said about  
5 looking at litigated patents, I think it could be  
6 useful for you to look at the pre-appeal brief and  
7 appeal conference data because there are a  
8 significant number of those that don't go forward  
9 to appeal. They're either allowed or they're  
10 reopened so I think that's a rich area to look at  
11 why. What were the causes of that?

12           And at the same time, you could also  
13 look at the process that's involved in the appeal  
14 conferences. Where there are ones that go forward  
15 and are maybe not so good, what fell down in the  
16 conference that allowed it to go forward to the  
17 board, to try to improve the process to weed out  
18 so that you can reduce the appeals.

19           MS. MARTIN-WALLACE: Excellent comments  
20 also and Andy I know has made great strides with  
21 looking at both the pre-appeal conference as well  
22 as appeal conferences and making sure that the

1 process is appropriate. And he's going through  
2 that right now and the data that's coming out of  
3 that, you're right, it's very rich data.

4 We're also partnering with PTAB right  
5 now, the Trial and Appeal Board on looking at some  
6 of the most recent backlog for them and what it  
7 looks like and using that data as well to help us,  
8 operations and training our examiners. But those  
9 are great, great comments.

10 MS. KEPPLINGER: And one last item that  
11 I raise all the time, of course, the initiative  
12 that you've mentioned with respect to having OPQA  
13 look at applications is a worthy one. But the  
14 staff that you have there is pretty small. You're  
15 not going to accommodate very many -- you're not  
16 going to be able to look at very many cases. And  
17 so, if you were to open, say, the pre-appeal brief  
18 conference process to include an interview where  
19 the applicant and practitioner could speak  
20 directly to the people looking at the case, I  
21 think that would be -- people would be really  
22 grateful for that opportunity.

1                   We'd have better resolution. I think  
2 we'd reduce the need for RCEs and appeals in that  
3 process.

4                   MS. MARTIN-WALLACE: Thank you, yes. We  
5 agree in this area that we are looking into now  
6 and we are going to further look into. So I'm  
7 really looking forward to the summit and getting  
8 even more ideas and really hope that all of you  
9 would be able to participate in it.

10                  MR. THURLLOW: So just on that note, the  
11 summit and of course, I'll echo everyone else's  
12 comments. I think it's a huge initiative. I'm a  
13 little bit concerned about how you're going to  
14 your arms around all these issues because we can  
15 have a full-day meeting just on patent quality and  
16 so, I guess one initial comment is somehow try to  
17 stay focused which is, to me, going to be, I think  
18 we all agree, patent quality is just a huge task.

19                  One of the things I was thinking of as  
20 the summit comes up in March, there is a lot of  
21 interest from bar associations. I think you're  
22 going to get a lot of participation. I think it's

1 going to be great. Some of the events I've gone  
2 to in the past at the patent office have been like  
3 the medical device working groups, software  
4 working groups. Maybe you could use that as a  
5 model and the reason I say is that because at  
6 those kind of meetings we actually had examiners  
7 and applicants in the same room.

8           So you mentioned that Peggy and Michelle  
9 yesterday spoke to 1,000 examiners. I'm pretty  
10 confident I can get a sense of what the examiners  
11 are saying that the applications coming in are of  
12 poor quality and they're missing a lot of things  
13 and a lot of them are very good points.

14           Now, if you're in the same room with  
15 practitioners, they're going to say the  
16 examination from the patent examiners is not good.  
17 So the interesting thing is to bring them  
18 together, let them share the podium and say, this  
19 is what we're seeing. How can we both work  
20 together to (inaudible) system. So something as  
21 you kind of frame out that day more interaction  
22 between actual examiners.

1                   Like on today's agenda, having the  
2                   examiner come today and run us through this P2E2  
3                   or whatever it is, PE2E, is something I'm looking  
4                   forward to so more interaction. And then, last  
5                   comment, over the last couple of years as I have  
6                   been a member of PPAC, we've been very active with  
7                   the PTAB roundtables, the AA roadshows. Esther,  
8                   in particular, for the RCE work. So to the extent  
9                   we can help you as you go outside the office on  
10                  stuff, we're willing to help wherever we can.

11                  MS. MARTIN-WALLACE: Thank you very  
12                  much. And I will hold you to that. We are -- we  
13                  have, as you mentioned, this is a huge task and we  
14                  are ready to take it on. And I can tell you  
15                  Deputy Director Lee and as well as Peggy and her  
16                  executive team have put in so much effort so far  
17                  and are just dedicated to making a difference  
18                  here. So I can tell you I thank you for your  
19                  support here and I feel the support of Peggy and  
20                  her team as well.

21                  All of her deputies here that we are  
22                  going to make great progress, there's a lot to be

1 done and I'll leave with one word. We are  
2 relentless in working on this.

3 MS. KEPPLINGER: Any other comments for  
4 Valencia? Questions?

5 MR. GOODSON: I have one. That would  
6 be, you know, the lawyers will tell you right now  
7 the gold standard is not the patent office but  
8 what the district judge says. And I'm hoping that  
9 would come back to your office instead. Thank  
10 you.

11 MS. MARTIN-WALLACE: Thank you very  
12 much.

13 MR. SOBON: I'll look forward to the  
14 next meeting after the summit and hearing what  
15 comes out of that. One thing we talked about  
16 before and I'd be curious. Maybe the next time  
17 you could report a bit more of the actions you're  
18 doing in the area of comparing quality results in  
19 the PTO with other offices because we now, with  
20 global dossier and the patent prosecution highway,  
21 you have a rich data set of comparison data of  
22 different offices looking at the same exact

1 application and seeing what happened. And I think  
2 that's a rich area to mine. And so, I'd be  
3 curious, you know, to see how you're doing at the  
4 next meeting.

5 MS. MARTIN-WALLACE: Absolutely, thank  
6 you.

7 MS. KEPPLINGER: Okay. Thank you. I  
8 think we'll go now to Drew Hirshfeld for an update  
9 on the 101.

10 MR. HIRSHFELD: Thank you, Esther. So  
11 I'm going to talk about the recently issued  
12 subject matter eligibility guidelines which came  
13 out in December. I'll start with a very brief  
14 overview of the guidelines. I wanted to focus on  
15 some of the changes that we made to this recent  
16 guidelines.

17 I wanted to also discuss some of the  
18 examples that we've put out and what the thought  
19 process was behind the examples and then, I'll  
20 close with some high level discussion of the  
21 examiner training and some of our next steps.

22 So as I mentioned, we issued the



1 guidelines on December 16th so right in December  
2 so very recently. This guidelines takes into  
3 account all of the body of case law. So they're,  
4 unlike prior guidelines, not limited to one  
5 particular area so to speak. So it takes into  
6 account, for example, the Alice, Mayo and myriad  
7 Supreme Court cases.

8           We also took into account a lot of the  
9 feedback that we received in the recent comment  
10 period. The comment period was actually for two  
11 different documents. It was for the March  
12 guidelines on biotech and the June preliminary  
13 examination instructions which came out after  
14 Alice. So we had a concurrent comment period that  
15 ran. We got a significant amount of feedback and  
16 we were able to incorporate that feedback into  
17 this guidance and I'll go through some of exactly  
18 how we did that.

19           So again, sticking to a very high level  
20 overview of the guidelines itself, I only have a  
21 short period of time. Can't do it justice here  
22 but basically the guidelines is two main steps.

1 You have your first step which is asking whether  
2 you're one of the four categories of eligible  
3 inventions. That is not a new step. That's  
4 nothing new. As long as examiners have been  
5 making eligibility determinations, they've been  
6 making determinations in the same step one.

7 Step two, on the other hand, is really  
8 where the rubber meets the road, so to speak,  
9 where there have been significant changes from the  
10 courts and hence our guidelines. And that is  
11 really a two-part analysis that mostly comes from  
12 the Alice and the Mayo case and that evaluates  
13 whether your claim is encompassing one of the  
14 judicial exceptions.

15 Again, that is the biggest part of the  
16 guidelines itself. That is where the law has been  
17 most evolving. So taking a look at this two-part  
18 analysis for the judicial exceptions, that would  
19 be the step two.

20 So part one of that asks you, are you  
21 directed to one of the exceptions? That's  
22 directly right from the Alice case. And then, you

1 go -- if you are directed, you get to step two.  
2 If you're not directed to then your claim is  
3 eligible. So if you are directed to then you get  
4 to step two which is the significantly more step  
5 where we're asking does the claim itself have  
6 anything in addition to that exception that would  
7 be significantly more so that the claim would be  
8 eligible.

9           So that's, again, very high level  
10 overview. I wanted to highlight some of the  
11 changes from the prior guidance. I think that  
12 will help everyone understand, not only guidance  
13 itself, but our process of how we went about this.  
14 As I said, we had a comment period. Some of these  
15 changes were directly responsive to comments we  
16 received. As long as we get comments that are  
17 consistent in nature from people on the outside  
18 that are consistent with the law and show us a  
19 better way or improved way to make a change.

20           So again, if that's consistent with the  
21 law, we're very happy to incorporate that. So  
22 some of the changes we made were directly

1 responsive to the feedback we received. Other  
2 changes that we made were our own ideas. So we  
3 basically have a combination of both approaches.  
4 So one of the changes from prior guidance is that  
5 the December guidance is an integrated approach  
6 for eligibility that applies to all claims.

7           So every claim goes through this  
8 approach. Now, I'm always careful when I say that  
9 because I don't want people to think that every  
10 claim goes through the exact same process, right?  
11 The two-step process is the same but there are  
12 certainly nuances that apply to each. For  
13 example, your markedly different analysis is going  
14 to apply to products of nature but not to say  
15 abstract ideas or other exceptions. So there are  
16 certainly nuances even though the overall approach  
17 applies to all claims.

18           Also, claims must be directed to  
19 judicial exception to trigger the full analysis.  
20 Okay, and that directed to language was something  
21 that was from, again, the Alice case and we got  
22 feedback from our prior guidelines back from the

1 March time period that our funnel of cases that we  
2 were looking at was too wide. So we had basically  
3 said, if you are recite or involve or you're based  
4 on one of the exceptions, we would do the  
5 analysis.

6 And we were receiving feedback from  
7 people that that was too broad of a funnel and too  
8 many cases were being put through the eligibility  
9 analysis. Concurrently with that timing, Alice  
10 came out and also used the words directed to. So  
11 we felt that was a change we could make to change  
12 from the broader involve or based on to directed  
13 to to be consistent with Alice.

14 Another change was the elimination of  
15 the factor-based approach. So in our previous  
16 March guidance we had a factor-based analysis for  
17 evaluating when you had significantly more and  
18 there were a number of factors to weigh. And we  
19 did hear from many people that that was too  
20 confusing and difficult to follow. So we tried  
21 very hard to simplify the analysis and we feel we  
22 were able to do that in that second part of step

1 two.

2 I wanted to highlight some of the  
3 changes regarding products of nature, again, the  
4 guidance goes on -- applies for all claims but  
5 there were a couple of changes that we made for  
6 products of nature which I feel are very  
7 important. The first was markedly different  
8 characteristics as opposed to markedly different  
9 structure. So again, for those of you that  
10 participated in the first forum that we had, we  
11 received significant feedback from the public that  
12 our focus on markedly different structure was not  
13 encompassing all of the case law and that there  
14 were other characteristics such as function or  
15 other properties that could show a difference for  
16 a product of nature and we did -- we were able to  
17 incorporate that into our guidance.

18 And another change, which I think is  
19 very important, was not one that was necessarily  
20 suggested from the public but something that we  
21 came up with to try to help have a very efficient  
22 analysis, is we moved that markedly different test

1       into the part one of that step two. And the  
2       reason why we did that is if you have a markedly  
3       different product, right, which you have markedly  
4       different characteristics, you can come right out  
5       and be eligible from that analysis without having  
6       to go to that significantly more. We felt that  
7       was much more efficient for examiners and just  
8       made a lot more sense.

9               And actually, when we were having these  
10       discussions, it seems like that was one of the  
11       keys that made everything fit together as we were  
12       having our discussions. So we feel it's very  
13       consistent with the case law. It's good for  
14       examiners and it's good for the public as you can  
15       really make that determination early on and cut  
16       off the rest of the analysis where it's not  
17       needed.

18              So I wanted to spend a little bit of  
19       time talking about some of the example sets that  
20       we put out. And at the high level, 30,000 foot  
21       level, we have the federal register notice itself  
22       and it does examples in it, it has significant

1 examples in it. Most of those were from case law  
2 discussion and we also thought it would be very  
3 helpful to have additional examples which our  
4 examiners in the public can look at and say, okay,  
5 my situation is closer to this or not closer to  
6 that.

7           So we feel the examples are very helpful  
8 and we've also received a lot of feedback from  
9 people in the public that the more examples the  
10 better, right? And our examiners are saying the  
11 same thing.

12           So we put out two sets of examples. One  
13 was in the biotech area and we did that  
14 concurrently with the guidance itself. And we put  
15 those examples on our Web site for people to see.  
16 These examples show things like how you would do  
17 the markedly different analysis, et cetera. I'll  
18 get a little into, in the next slide, what our  
19 goals were behind that.

20           We also have a set of abstract idea  
21 examples which just came out recently just a  
22 couple of weeks ago, actually, or a few weeks ago



1 in January for abstract ideas. So we were a  
2 little bit behind the December time frame but I  
3 have heard that those examples have been very  
4 helpful to both examiners and people in the  
5 public. So again, those examples are a next step  
6 of trying to continue the conversation about how  
7 to look at people's claims. Again, we want people  
8 to be able to compare their claims to as many  
9 situations as possible.

10 So turning back to the nature-based  
11 product examples, I did want to highlight some of  
12 the teaching points because as I'm out talking to  
13 people, I get asked how did you choose these  
14 examples. What was your rationale behind them?  
15 They are part case law and part hypotheticals and  
16 where we -- how we chose them was really to  
17 highlight some of the key points that we thought  
18 were important to get across not only to the  
19 examiners but also to the public.

20 So for example, in the nature-based  
21 products examples which we released in December,  
22 we have numerous examples that show that function

1 and other non-structural characteristics can show  
2 a markedly different. That was, of course,  
3 important because again our first guidelines was  
4 very heavily weighted towards structure. As we  
5 made the change, we thought it would be important  
6 so that people knew exactly what we were thinking  
7 in terms of other characteristics that could show  
8 a markedly different product.

9 We also wanted to have a number of  
10 examples to show that purified and isolated  
11 products can be eligible. And so, after our March  
12 guidance came out, we received a lot of feedback  
13 which said, okay, seems like nothing -- you can't  
14 ever purify or isolate and be eligible and that  
15 certainly was not the case then. We thought it  
16 would be very important to show that sometimes  
17 when you isolate, for example, you're not eligible  
18 but sometimes you can be eligible. So we wanted  
19 to include significant examples which address that  
20 and in that example set there are numerous  
21 different claims which address both purified and  
22 isolated products.

1                   And then, the last key point we wanted  
2                   to highlight was that where you lack markedly  
3                   different, so when you're in that first part of  
4                   that step two, if you have a product that is, say,  
5                   not markedly different, you still may be eligible  
6                   when you get to that step 2B. So we wanted people  
7                   to recognize you're still going through the whole  
8                   analysis and you could still have eligibility in  
9                   step 2B where in the first part of the step you  
10                   didn't have eligibility.

11                   So again, those were some of the key  
12                   teaching points, the goals behind that. I have a  
13                   similar slide for the abstract ideas and they  
14                   somewhat run in parallel. The first point we  
15                   wanted to get across and this does stem from  
16                   feedback we received, is that people are  
17                   interpreting after Alice that either all software  
18                   or all business methods are automatically directed  
19                   to an abstract idea and hence, not eligible or at  
20                   least not passing the first part of step 2B. So  
21                   we wanted to have an example that showed, no, you  
22                   can have software or even a business method that

1 is not even directed to an abstract idea. And our  
2 first example shows that point related to  
3 software.

4 We also were receiving feedback that the  
5 mere existence of a computer and a general purpose  
6 computer in a claim was leading examiners to  
7 reject claims in all situations. And so, we  
8 wanted to have an example that showed you can have  
9 the mere existence of a computer or routine and  
10 conventional elements in a claim and that doesn't  
11 necessarily mean that you are ineligible. So  
12 again, we were trying to balance that to give  
13 everyone a good view of what is eligible and what  
14 is not eligible.

15 And then, the third point very much  
16 mirrors the third point I made under the biotech  
17 examples that if you do have an exception in that  
18 first part of step two, you still need to proceed  
19 to the second part of that step and could still be  
20 eligible based on the significantly more analysis.  
21 So in other words, if you have a claim that is  
22 directed to an abstract idea, you still could be

1 eligible in that second part of the significantly  
2 more step.

3 In that regard, we actually really tried  
4 to focus our examples, excuse me, on improvements  
5 to another technology or technical field or  
6 improvements to the computer itself. And the  
7 examples that we have, we really tried to  
8 highlight those points. We actually took some of  
9 the federal circuit cases and made a couple of  
10 hypotheticals based on those so we changed them so  
11 that it was very clear that you do have a claim  
12 that is directed to an abstract idea.

13 We actually added math formulas to it.  
14 We did that so you'd get to the second step and  
15 you can evaluate the significantly more analysis.  
16 We thought that was very important for everyone to  
17 see the big picture.

18 So I've mentioned a lot of the feedback.  
19 We had a public forum on January 21st. This was  
20 the second forum that we had. The first forum was  
21 obviously after the March guidance came out. This  
22 forum was, of course, so people could give us

1 initial feedback on the December guidance that I'm  
2 discussing here today. At that forum we had about  
3 300 people participate either in-person or on the  
4 Web. Just as comparison, we were just over 500  
5 people back on our prior forum after the March  
6 guidelines came out.

7           So really a lot of interest in this  
8 topic, a lot of good feedback and really good  
9 discussion in both forums. So there were a few  
10 common themes that came out. I think it's fair to  
11 say that most people felt that our recent  
12 guidelines was certainly a step in the right  
13 direction. People seem much happier; feel it's a  
14 much more balanced approach. That being said,  
15 there's still feedback that more improvements are  
16 needed and that there's still things we can do the  
17 guidelines.

18           We certainly understand that and  
19 recognize that this is an iterative process. As  
20 we get feedback, we will look to see what changes  
21 can be made that are consistent with the law, of  
22 course. Case law is developing very rapidly, as

1       you all know. So we will continue monitor all and  
2       we'll make improvements as we go forward.

3               I think people felt -- there were many  
4       comments where people were expressing their  
5       opinion that PTO was very responsive to the issues  
6       raised in the March guidelines. I went over some  
7       of the changes that we made. A lot of those, as I  
8       mentioned, were responsive. So there was some  
9       good sentiment about the iterative process that we  
10      had. And of course, there was a recognition from  
11      all that the case law is developing and is still  
12      potentially changing and we will continue to have  
13      updates as we need it.

14             A final point which is the last bullet  
15      on the slide was there was some feedback about  
16      concerns regarding examiner implementation. So I  
17      did want to address that. We came out with the  
18      guidelines as soon as the guidelines were ready.  
19      That was in December. And we actually came out  
20      with them just before the holidays and our  
21      examiners were not even trained on these when they  
22      came out.

1                   So I know people in the public saw them  
2                   and wanted to discuss them with examiners which,  
3                   of course, is the right thing and is appropriate  
4                   to do but we are actually in the process of  
5                   training examiners on the guidelines now. So we  
6                   were trying to walk this balancing act of getting  
7                   the guidelines out knowing how important they were  
8                   to everybody but knowing that we have 8,500  
9                   examiners to be trained on them and so, we decided  
10                  as soon as the guidance was ready, because of its  
11                  importance, we were going to come out with it.  
12                  And we were going to immediately start training  
13                  POCs in all the technology centers but we have not  
14                  trained all the examiners or completed training  
15                  all of the examiners.

16                  So I did want to go through what our  
17                  approach is with the examiners. So we're  
18                  basically having a two-phased approach for  
19                  training examiners. Phase one of the approach,  
20                  which is completed, is training on the federal  
21                  register notice itself. And that even completed,  
22                  I believe it was either last week or just the week



1 before. I think we still had a couple of sessions  
2 last week.

3 So that was on the federal register  
4 notice itself which, as I said, was the approach  
5 to eligibility determinations as well as the case  
6 law on the subject. We are now in the middle of  
7 phase two which is training on the examples  
8 themselves that I had mentioned. So different  
9 technology centers are training in different ways  
10 depending on how they feel will be most effective.

11 And I can tell you, for example, the  
12 business methods area is deciding to have  
13 workshops where they can have smaller meetings  
14 with examiners so examiners can ask questions and  
15 have a discussion. And I certainly agree that in  
16 that area, that will be the most effective way to  
17 go forward given the difficulty of the issues in  
18 the business methods area.

19 So again, we still are underway with  
20 training. I do expect it to be wrapped up in the  
21 next probably few weeks but different technology  
22 centers are in different time periods for the

1 training depending on how they rolled it out.

2           So just turn quickly to some next steps,  
3 I've really discussed them all so just to  
4 summarize them, we'll, of course, our immediate  
5 next step is to complete phase two of the  
6 training. That's what I had just mentioned. We  
7 are, of course, monitoring case law and feedback  
8 that we get to see if there's any updates that we  
9 should be making to the guidelines itself. As I  
10 mentioned, there is a comment period. That  
11 comment period extends to March 16th. We will  
12 make all the comments public and, of course, we  
13 will be going through all the comments and seeing  
14 if there are any additional changes that are  
15 warranted based on the feedback we received.

16           And again, we're happy to make changes  
17 when we see something that improves the  
18 guidelines, makes it more efficient, for example,  
19 and is consistent with the case law. I do get  
20 back to the consistent with the case law multiple  
21 times because we have been asked a fair amount to  
22 ignore this case or that case and our approach is

1 not to ignore any cases and to really try to be  
2 consistent with the case law itself.

3           And I also wanted to highlight that we  
4 are working on additional examples. As you all  
5 know, the examples are very helpful but they're a  
6 start and we recognize that more is needed. I  
7 know I've heard from multiple people including  
8 some discussions with PPAC that examples in say,  
9 the diagnostic area, are important and we are  
10 working on those to move forward. So as we  
11 develop more examples we will, of course, put them  
12 on our Web site. They are, of course, something  
13 that the public can comment on during the comment  
14 period, and quite frankly, at any time. But  
15 again, we certainly recognize the value of  
16 additional examples for examiners and will  
17 continue to develop more as we go forward.

18           So the last slide I have is where you  
19 can get some of this information. You can go  
20 right our main page, it's linked from there, but  
21 all of the guidance materials that we create and  
22 all of the examples are posted on our Web site for

1 people to see and the links are on the screen.  
2 But of course, you can get there menu driven. So  
3 that is all I have. I'm happy to have a  
4 conversation or address any questions or comments.

5 MS. KEPPLINGER: Thank you, Drew.  
6 That's very informative. Comments, questions?  
7 Wayne?

8 MR. SOBON: Yeah, first of all I thank  
9 you for all the hard work you're doing to -- and I  
10 think the user community appreciates your  
11 listening to the comments and revising and  
12 reflecting on those. I think that's -- this is  
13 obviously a very, very important, delicate area.  
14 And so, I think that's extremely welcome and all  
15 the openness to public comment.

16 A couple of things I would comment on  
17 this. I think are important, maybe I would like  
18 to see maybe continue to be emphasized as the  
19 package gets finalized. One is the first, I think  
20 it encompasses a concern, is that 101 has been  
21 seen as just a easy blunderbuss just a wide  
22 ability to just attack patents as a class rather

1 than dealing with the specific invention and  
2 before the examiner. I think of your work is  
3 really good to focus much more carefully on the  
4 nuances.

5           But I think an emphasis on compact  
6 prosecution, that despite the fact they may say  
7 that something's rejected under 101, that they go  
8 on to actually fully examine under 102 and 103. A  
9 number of us have argued that 101 has really been  
10 converted from sort of a very basic threshold to a  
11 central examination is really problematic because  
12 it has these widespread attacks on classes of  
13 inventions rather than specific inventions.

14           And that it's far better, in a way, to  
15 focus on the details and whether something's just  
16 simply is actually obvious or invalid, which many  
17 of the inventions that may have been reviewed by  
18 the Supreme Court may have been easier examined  
19 under that kind of rubric. So that would be my  
20 first thing.

21           And the second thing is on the teaching  
22 points. I'm concerned that you're forming sort of

1 safe harbors or what's helpful for people to  
2 understand what may be patentable given if you  
3 really do have a lot of other additional materials  
4 added to a specific "abstract idea." But I'm  
5 concerned, one of the key holdings of the Bilski  
6 case may be being lost here which was the Court  
7 specifically that even pure business methods  
8 divorced from machines or transformations  
9 themselves are eligible for patentability.

10           And so that, I think, needs to be  
11 focused on and I think it may come down to nuances  
12 between what is the abstract idea and what may be  
13 a specific instantiation of the idea which may, in  
14 fact, be divorced from a machine or other  
15 materials. So I'm concerned that that doesn't get  
16 lost either in this analysis.

17           MR. HIRSHFELD: So on your two points,  
18 the compact prosecution, I agree 100 percent and  
19 in our training we are making sure to emphasize  
20 the importance of compact prosecution. And you  
21 are looking at all the statutes and should be  
22 examining under 102, 103, 112, et cetera. So

1       totally agree there.

2                   And on the second point, we certainly  
3       are not intending to convey any message regarding  
4       Bilski or not applying Bilski, actually it's the  
5       opposite. We are intending to simply state that  
6       where you have business methods, you know, there  
7       is no per say rule against that and we have said  
8       that in our guidelines.

9                   I take your feedback as a maybe this is  
10       an area we'll be expand on more in the example set  
11       as we go forward to further the points you're  
12       raising which I agree with.

13                   MR. WALKER: And, Drew, thanks, too. I  
14       add my thanks taking on all these comments. We  
15       don't, as a company, put in many comments but  
16       we're putting comments on this because of our  
17       interest in nature-based products. So thanks very  
18       much for the guidelines and especially the  
19       description about the nature-based products.

20                   So the two-part question. One is you  
21       mentioned about these additional examples you're  
22       working on. I think I heard you say this at the

1 very end but are you open to suggestions on  
2 examples to consider for the office to interpret?  
3 That's part one. And part two is both the  
4 examining corps and the user community; we are  
5 working on constantly moving targets around patent  
6 eligibility. And so, you know, the poor patent  
7 attorney who drafted cases 10 years ago and now  
8 the eligibility standards have changes, they're  
9 really kind of stuck.

10 The examples that you have, is it the  
11 intention of the office to keep those kind of  
12 standard examples so that as the law changes that  
13 the same kind of examples can be reviewed and  
14 understood in terms of patent eligibility?  
15 Because I think that would be really helpful with  
16 all the work you've put into the examples that as  
17 the law changes, those examples are updated and  
18 modified on an ongoing basis.

19 MR. HIRSHFELD: So to address your first  
20 question are we open to receiving examples, an  
21 absolutely 100 percent resounding yes. So quite  
22 frankly, I would like nothing more than to have



1        comments of suggesting examples and that we agree  
2        with that they're consistent with the law and to  
3        be able to use those in our guidelines. Because  
4        having people submit them, whether it's from  
5        examiners, right, or from the public is extremely  
6        helpful for us for seeing what is exactly needed.

7                    It sort of gets to the point Wayne was  
8        raising as well. So absolutely 100 percent yes.  
9        And some have done that and we've been able to use  
10       some more than others, right? But I think it's  
11       very helpful to have that feedback. I'm also  
12       hoping, quite frankly, that people can comment on  
13       the examples, that people do comment on the  
14       examples that we've put out during the during the  
15       comment period. So absolutely, if you can give us  
16       more examples and comment on those we've done,  
17       that would be absolutely wonderful.

18                    So your second question about standard  
19        examples, really almost goes to the process that  
20        we had in creating the federal register notice and  
21        the example sets. And what you'll see is the  
22        federal register notice is really our approach to

1 eligibility, as I said from the Alice and Mayo  
2 cases. And then, you have the significant body of  
3 case law being discussed.

4           And we ended it there and did it that  
5 way for a reason so that that hopefully becomes a  
6 foundational document that doesn't need to be  
7 changed. Now, of course, a case can come out any  
8 day and make significant changes and we have to go  
9 back and make changes. But we thought if we  
10 really stick to the case law in that document,  
11 that that will hopefully be a foundational  
12 document that people have as a good basis for all  
13 future eligibility determinations.

14           Of course, I know that's idealistic. I  
15 know the case law will change but that was the  
16 approach. Then the examples that we came out with  
17 on our Web site, which is a combination of  
18 hypotheticals and some case law, was specifically  
19 done to fill some of the gaps where we thought we  
20 needed to address and it wasn't specific from --  
21 there wasn't enough from the case law itself to  
22 address some of these issues. But recognizing

1       that that is probably where, in those gaps, where  
2       you are going to have the biggest changes in the  
3       courts.

4               And so, coming out with those on our Web  
5       site as training tools is much easier to be able  
6       to make changes to those documents should we need  
7       to make changes to them. So anyway, that was the  
8       big approach. Did that address your second point?

9               MR. WALKER: I think so, yeah. I got  
10       it. So I think those examples will be living --  
11       what I'm trying to say is they will be living  
12       examples and being on your Web site so that they  
13       can be updated if there is a case law change that  
14       fills in one of these gaps will be helpful to the  
15       user community as well as the corps.

16              MR. HIRSHFELD: Yes. So that's exactly  
17       correct. And I think all the documents are living  
18       documents and since the case law is evolving so  
19       much, any of them are subject to change. Again,  
20       our approach was that it's easier to change the  
21       examples than the federal register notice. You  
22       can certainly do both but if there is a case law

1 update or if there's additional examples or for  
2 any reason, an example is no longer viable, we  
3 would, of course, come out and make that known so  
4 that the public knows exactly how our examiners  
5 are applying the case law.

6 MS. KEPPLINGER: Paul?

7 MR. JACOBS: I'll try to be quick. So  
8 as the software guy, on slide nine, mere existence  
9 of a computer routine and conventional elements  
10 does not mean that the claim is ineligible. Well,  
11 now we know it doesn't mean the claim is eligible  
12 either and this is sort of the landscape that  
13 we're dealing with. And with respect to your  
14 talking about tracking judicial opinions, do you  
15 have any comments on decisions at the District  
16 Court level that apply section 101 to software  
17 claims?

18 MR. HIRSHFELD: So we watch the District  
19 Courts but our guidelines follow the Supreme Court  
20 or federal circuit. So we're watching the  
21 District Courts to really see what type of issues  
22 might permeate upward but I don't have specific

1        comments about any District Court because, quite  
2        frankly, we're move focused on the federal circuit  
3        and the Supreme Court.

4                    MS. KEPPLINGER:  Anyone else?

5                    MR. THURLOW:  So, Drew, thank you.  The  
6        feedback, just to give you the feedback I've been  
7        receiving, the examples have been very helpful.  
8        More examples you can provide will be really  
9        appreciated.  One of the things that we're working  
10       on, at least for different bar associations is  
11       looking at the federal register notice and  
12       providing some examples.  And we follow through  
13       the Amicus Committee and other committees more on  
14       the litigation side what's going on in District  
15       Courts.  So that seems to be relevant and, of  
16       course, PTAB.

17                    Just a suggestion.  I'm looking at, I  
18        guess, one of the slides where you said the public  
19        forum on January 21st, 300 people and you  
20        mentioned after the March was more than 500  
21        people.  Judge Smith recently, from PTAB, held a  
22        webinar.  I think it was well attended.  You know,

1 meetings like this where you give updates doesn't  
2 have to be as formal. I'd the same to Valencia on  
3 patent quality.

4           People chime in. It's stated on the Web  
5 site. It's very helpful. And then, the last  
6 thing, I mean, this is a tough area. The  
7 education that you're doing is helpful to show  
8 that there's still opportunities in this area.  
9 Because quite frankly, when we meet with clients,  
10 when we work with companies on 101 issues, I think  
11 what I'm taking from your presentation is there's  
12 still hope to get.

13           But I can tell you from -- and you've  
14 heard it in all the forms. The initial reaction  
15 that we're getting to 101, it's not patent worthy  
16 and through your education stuff we need to make  
17 clearer there is possibilities there. But the  
18 concern is that the feedback from Supreme Court  
19 which reigns supreme has really been challenging  
20 and we'll see in Andy's next presentation of  
21 patent operations like really major concern.  
22 Thank you.

1                   MS. KEPPLINGER: Thanks. I did have one  
2 comment. I haven't experienced it myself. I've  
3 had very good help on 101 but I have had comments  
4 from other people. A concern that some examiners  
5 have expressed the opinion that they are not  
6 permitted to allow cases that have a 101 issue in  
7 them. That someone at a higher level in the TCs  
8 is the deciding person.

9                   So I don't know if that's true or not  
10 but one thing I could suggest is that if you don't  
11 have it, you create some sort of ombudsman or some  
12 sort of person in each of the TCs that could be  
13 contacted. Because the concern from some  
14 practitioners is that they don't even have an  
15 opportunity to address the person that's making  
16 the decision. And so, they'd like a little more  
17 ability to do that.

18                   MR. HIRSHFELD: So thank you, Esther,  
19 for the comment. There are -- I've heard the same  
20 feedback about these either bodies, whether  
21 they're in patent operations or in OPLA, so to  
22 speak, overseeing and mandating yes or no on any

1 kind of rejection. And that's certainly not the  
2 case.

3 We do have POCs in every technology  
4 area, every TC and we have -- they all are working  
5 directly with folks from the Office of Patent  
6 Legal Administration for advice and discussion  
7 should it be needed. But certainly, the  
8 decision-makers on the case are whichever primary  
9 is responsible for deciding that case, right? So  
10 whether it's a junior examiner working with a  
11 primary, they can get advice and input from other  
12 people but certainly, they're not -- there is no  
13 body that's mandating over this and I'm glad you  
14 brought that up because I have heard that from  
15 others. Your feedback about an ombudsman or  
16 somebody people can talk to is something that --

17 MS. KEPPLINGER: Yeah, because you just  
18 go online and see who are the interference  
19 practice specialists, things like that and if you  
20 put something about 101, that could be helpful,  
21 too.

22 MR. HIRSHFELD: Thank you.



1                   MR. BUDENS: I think we need to qualify  
2                   that a little bit. I'm not necessarily sure but  
3                   I'm wondering if the basis for some of the  
4                   feedback you just gave and some of the reactions  
5                   we've seen is because of the fact that for --  
6                   until just recently we've basically been operating  
7                   under the original interim guidelines which I  
8                   think most people felt were far more restrictive  
9                   than what the second set of guidelines are and the  
10                  examples.

11                  And we're, as Drew said, we're just now  
12                  getting the examining corps even trained on the  
13                  examples and stuff and the second set of  
14                  guidelines which I think seem to be opening things  
15                  up again. I'm not necessarily disputing, you  
16                  know, there may have been a knee-jerk reaction for  
17                  lack of any better guidance than what we had,  
18                  sorry, Drew and Carolyn but we had to do --  
19                  examiners have to do what we get from the 10th  
20                  floor.

21                  So I'm -- I don't necessarily agree with  
22                  your need for an ombudsman or anything else. I

1 think we need to let the system play out a little  
2 bit and what these new guidelines and the new  
3 examples and even additional examples that may  
4 come out of the comment period have on the  
5 application of these interesting pieces of case  
6 law.

7 MS. KEPPLINGER: Thank you. Anything  
8 else? Okay, we'll move on to Andy Faile for a  
9 patent operations update.

10 MR. FAILE: Okay, thanks, Esther. So I  
11 have a number of slides on patent ops data. I'll  
12 run through those and then, we'll take questions  
13 at the end. And to the extent we have time,  
14 Esther, there is a few points that we'd like to  
15 get some input from the Committee on particularly  
16 in filing rates. So if we have a little time for  
17 a discussion there, that would be very helpful to  
18 us to get some insight on this area.

19 So speaking of filing rates, our first  
20 slide is and I'll try to -- I know we have some  
21 new members. I'll try to hit some of the  
22 acronyms. If I miss some, feel free to get back

1 to me at the end and say what does that actually  
2 mean? So the first slide we're looking at the  
3 filings.

4 We break this down into two general  
5 groups. We call one the serialized filing.  
6 Serialized meaning a new application that gets a  
7 serial number. Regular utility, continuations,  
8 continuation parts, divisionals, et cetera.

9 That is the red line you see and then,  
10 the blue line at the bottom is our RCE filing for  
11 request for continued examination filings. This  
12 chart's hard to see from where we are here.  
13 Basically starts at the left at 2002, all the way  
14 to the very small bar on the right is our progress  
15 so far in 2015.

16 So the bar immediately to the left of  
17 2015 would be how we ended last fiscal year. A  
18 couple of notes on filings and I'd like to loop  
19 back at the end of this presentation for a little  
20 discussion. First of all, historically, we  
21 generally see a five percent increase from year to  
22 year in our filings going from fiscal year to

1 fiscal year. You see 2009 it's a bit of an  
2 anomaly there. It's the lower bar in the middle.

3 What we're seeing now starting in 2014  
4 is a bit of a slowdown of that filings. We saw  
5 about a 2.8 percent increase of last year. So far  
6 this year, we're running in the serialized filings  
7 about a percent, 1.2 or 1.3 percent above where we  
8 were last year. And interesting to note, in the  
9 RCE filing rate, we're down about 12 percent from  
10 where we were last year.

11 So I'd like to circle back to this at  
12 the end and talk a little bit about that, some of  
13 the questions we have. Is this an anomaly? Is  
14 this a new trend? What are some underlying  
15 effects that might be driving this? Very  
16 important for us to as accurately as we can guess  
17 our incoming workload or estimate our incoming  
18 workload to which we bring our 8,600 examiners to  
19 bear on that workload.

20 So speaking of that, the next slide kind  
21 of shows the effect of bringing those examiner  
22 resources to the tune of 8,600 or so on the

1 backlog. This shows, kind of the application  
2 inventory trends. Valencia had mentioned in her  
3 initial talk on quality that at one point in time  
4 that would be about the fourth quarter of February  
5 '08, I'm sorry FY08 or beginning of FY09, we were  
6 somewhere in the three quarters of a million cases  
7 in the unexamined patent application inventory.

8           You see kind of a steady march downward  
9 through the years. If you look at a little bit of  
10 the bubble towards the right of the graph in FY14,  
11 there's quarters two and three, you're seeing a  
12 little bit of a CPC effect. We had an investment  
13 in changing to our new classification system that  
14 was in terms of learning curves and training  
15 times. So you're going to see a little bit of a  
16 bump up there as our resources were dedicated to  
17 that.

18           That transition was complete as of  
19 January of this year. You're going to start  
20 seeing that move down again for this year. As of  
21 yesterday, we had just a little bit over 600,000  
22 cases on this unexamined patent application

1 inventory.

2                   This is a slide where we're trying to  
3 capture kind of our optimal state in the out  
4 years. So in the blue you see the optimal  
5 inventory and you'll see at the end there it says  
6 as of today, 3/27, 983. That represents the  
7 number of staff we have onboard, examiners,  
8 8,600ish carrying a 10- month backlog. Again,  
9 we're shooting for 10 months first action  
10 pendency. You would calculate that optimum  
11 inventory would be at that number.

12                   What you see in the red is the inventory  
13 where we are today, somewhere around the 600,000  
14 mark. And the optimal state, in the out years,  
15 the red and blue lines we converge and we're  
16 operating at our target inventory. So this just  
17 gives you just kind of a sense of the red being  
18 what we could consider excess inventory off our  
19 optimal 10 months times the number of examiners  
20 that we have.

21                   So going back to inventory. So we  
22 talked a little bit about the trend line downward

1 in the unexamined serialized inventory with a  
2 little bump for CPC. This shows kind of our  
3 trajectory for the RCE inventory. That would be  
4 the blue lines on that first graph, kind of  
5 tracking that.

6 All the way on the left, we start back  
7 in the 2009 or so time frame. You see a steady  
8 climb up till about the zenith of about 111,000  
9 cases in the backlog as of somewhere in the  
10 February of '13 time frame. That's when we got an  
11 integrated team basically of USPTO personnel and  
12 PPAC, always like to give a good plug to our  
13 internal team and our partnership with PPAC;  
14 particularly shouting out to Wayne and Esther in  
15 helping us lead that charge.

16 We took a look at this and said you know  
17 obviously something needs to be done here. The  
18 backlog's way up at 111,000. So we had an RCE  
19 outreach effort where we did a number of town  
20 halls throughout the country to try to figure for  
21 more a root cause analysis. You know, why the  
22 backlog is the way it is and what are some things

1 we can do to alleviate that.

2 We kind of split that in two parts. We  
3 looked at backlog, moving the backlog down and  
4 also trying to figure out is there a way to stem  
5 the incoming RCEs that aren't -- that shouldn't be  
6 needed. So from that we devised a couple of  
7 programs, our after final continuation program and  
8 our quick path IDS to try to get at reducing the  
9 RCEs that would not be necessary to conclude a  
10 case. And then, on the backlog side, we worked  
11 particularly in concert with Robert and company in  
12 the union to look at our workflow plans and gear  
13 those towards moving those RCEs.

14 So from that point in about, the purple  
15 line there, in about February of '13, all those  
16 plan came into action and we've got the RCE  
17 backlog on a trend downward which is a good.  
18 Today we are somewhere in the 42,000 neighborhood  
19 down from about 111,000. So we've brought that  
20 RCE backlog starting to bring that down.  
21 Obviously, we want to do more in that area.

22 The average pendency for our RCEs in



1        somewhere in the five-month range down from about  
2        eight, eight to eight-and-a-half months. We've  
3        brought that down as well. Still more to do on  
4        RCEs but a pretty good, at least, trend from that  
5        high zenith point down to where we are today.

6                So speaking of RCE inventories, here's  
7        an interesting slide. On the Y-axis you see the  
8        average number of RCEs per examiner. So you're  
9        starting at 0, goes up to 30 at the very top. On  
10       the X-axis those are the TCs starting with 1,600  
11       all the way on the left, 17, 21 all the way to  
12       3,700 on the right.

13               If you look at the green trend line,  
14       you'll see that's the RCE backlog per examiner in  
15       October of '13. That would be the beginning of  
16       FY14 for us. As you can see in 1,600 you were  
17       somewhere in the neighborhood of an average of 26  
18       RCEs per examiner. We're somewhat all over the  
19       map down in 2,800 you had somewhere around an  
20       average of four. 3,600 you're back up to 19. So  
21       you can see that that line was high number one  
22       with respect to the Y-axis and a little bit all

1 over the place.

2 The dotted blue line you see is our RCE  
3 backlog per examiner of this month, February of  
4 '15. So two important things to note. Number  
5 one, you see a flattening of that line, i.e. the  
6 number of RCEs per examiner has come down which is  
7 good news. And number two, you see that line  
8 being a little more consistent.

9 So through some changes we've done in  
10 our workflow system, we've actually rebalanced  
11 movement of RCE in new cases. And so far, now,  
12 we've got a good trend line where the TCs are a  
13 little bit more equal in their average number of  
14 RCEs per examiner. And that entire line has come  
15 down in the average lower than it was back in '13.

16 Moving on to first action in total  
17 pendency; a couple of trends here. Total pendency  
18 is the purple line. First action pendency you see  
19 is in the green line. And we're shooting per the  
20 president's budget for the end of the year for the  
21 following targets. For average total pendency  
22 we're shooting for 27.7 months. Our current

1 progress is 26.8 months. So we're a little bit  
2 under our target which is good news.

3 We do expect a bump in the purple line  
4 towards the end of the year reflecting the delayed  
5 effects of the CPC adjustment which you see a  
6 little bit in the first action line towards the  
7 right, the green line towards the right. You see  
8 that little bump. We'll see kind of an equal  
9 effect in the purple line towards the end of the  
10 year. We still think we are on target  
11 modeling-wise to meet our goal of 27.7.

12 Currently, we are at 18.2 in the green  
13 line. 18.2 months, that's the average time. The  
14 first action, our goal is 16.4. We expect that  
15 line now that we have completed our CPC transition  
16 and those resource allocations to continue to move  
17 down and we expect to be at our 16.4 target by the  
18 end of the year. So right now we seem to be on  
19 target for both our traditional total pendency  
20 measurements and first action pendency  
21 measurements.

22 Here is another graph looking at

1 pendency from a different perspective. So we just  
2 talked about total and first action pendency which  
3 is basically cases that are complete. It's  
4 necessarily a rearward looking statistic. Another  
5 way to look at pendency is looking kind of  
6 predictive for first action pendency.

7           Mark, it's a question we discussed a  
8 little bit yesterday. So this line, what you see  
9 here is for a case filed within the time frame on  
10 the X-axis, that would be the month and year, how  
11 many months would it take us to get to that first  
12 action based on the months on the Y-axis? So you  
13 can see and then, what we do here is a calculation  
14 of the resources on hand at any given point, those  
15 resources that we've modeled out literally through  
16 the end of the decade and we do a prediction where  
17 we'll be in an average month pendency in kind of a  
18 forward-looking predicted manner.

19           As you can see here at the very end of  
20 that, as of the end of January, we predict that to  
21 be at the 14.8 months. So for cases filed in  
22 January, we would be at the first action in a 14.8

1 months' time frame. Again, a predictive look.

2 Yes, Wayne?

3 MR. SOBON: Can I ask a question? This  
4 is predictive. Have you gone back and checked  
5 whether your predictions that were existing -- now  
6 you have data to actually see if those predictions  
7 actually bore out. Have you checked to see the  
8 model actually works?

9 MR. FAILE: It's a good question. There  
10 was a couple of updates to this model in the first  
11 kind of -- the blip you see somewhat in the middle  
12 where we changed the -- we are -- as the model  
13 changes, this changes. So there's a lot of  
14 variables at play. I don't know that we've gone  
15 back and actually validated the points here that  
16 were predicted going back to the past and see if  
17 they actually came true. That would be an  
18 interesting thing to do.

19 And a number of variables at play, we  
20 need to be careful to make sure we're doing apples  
21 to apples there. That's actually a good point.

22 MR. HIRSHFELD: Wayne, I will add that

1 we do check the model annually when -- assuming  
2 our -- the big variables we predict are correct,  
3 the filings for example. If we get that right,  
4 the model is extremely accurate. If we miss  
5 filings, everything's off. So again, this is only  
6 as accurate as our estimates of filings which is  
7 one of the things I think we need a little input  
8 on.

9 MR. FAILE: Yeah, we'll circle back to  
10 that. So very interested in filings. Okay,  
11 looking at our attrition rate, the thing to draw  
12 from this slide basically is that we're somewhere  
13 in the neighborhood of a four percent attrition  
14 rate. That would mean that if we -- when we move  
15 into steady state and we're going attrit level  
16 hiring, that's basically four percent of a close  
17 9,000 person workforce. Would put us right at  
18 attrit hiring. We're scheduled this year to hire  
19 a little bit above attrit level right at 450 for  
20 this year.

21 We're going to continue to move that  
22 down. Again, a lot of it depends on the filing

1 rate trends and what we -- what assumptions we  
2 make there and what predictions we use there to  
3 feed the model.

4 MS. KEPPLINGER: Just, UPR is Utility  
5 Plant Reissue. So what's not counted in that are  
6 the design examiners.

7 MR. FAILE: Thank you, Esther. Yeah, I  
8 see UPR in there. It flies right by me. Yeah.  
9 Utility Plant Reissue.

10 We talked a little bit about interviews.  
11 I got a couple of slides on interviews. The  
12 takeaway from this slide is that we continue to  
13 have more interviews. One could argue we hire  
14 more examiners, we're going to have more  
15 interviews and we get that but the interviews  
16 continue to climb in number. The stat at the  
17 bottom says that we had about 68,688 hours on  
18 January '15 compared to the same point in '14 it  
19 was about 66,000. So we're continuing to climb in  
20 interviews and there's really no real surprise  
21 there.

22 The next slide --

1 MR. THURLOW: Just real quick on this.

2 MR. FAILE: Sure.

3 MR. THURLOW: I think we've all over the  
4 years know the importance of interviews. I've had  
5 some recent ones. They're always very productive.  
6 Back to I think Valencia made a point and  
7 something we'd love to see the office do more  
8 where the examiner calls and says I reviewed the  
9 (inaudible) and make some suggestions.

10 In the past it's always been one-sided  
11 from the applicant to the patent office. To the  
12 extent there's a little change here, I think that  
13 would be helpful. In fairness, just ironically a  
14 few weeks ago, an examiner did call and said, I  
15 think we can get allowance for some cases which we  
16 always like to hear.

17 So that's from that but if it can be  
18 initiated from the office more, the open dialogue,  
19 I think that's something that would be new.

20 MR. FAILE: Thanks, Peter.

21 MS. KEPPLINGER: Wait.

22 MR. SOBON: We may have mentioned this



1 before but I think, just a suggestion, I think a  
2 more interesting chart here would be year-on-year  
3 awaited or a ratio of interview hours over total  
4 hours so we see on average and even by TC, too, we  
5 see on average what percentage of time examiners  
6 are spending for the average examiner each year  
7 and whether that's going up or down. Because it's  
8 hard to tell here whether this is just our fact,  
9 whether it's good or bad.

10           It could be actually going -- the  
11 percentage being spent could be going down even  
12 though you're hiring more examiners. You know,  
13 this overall increasing the hours. So I think  
14 normalizing it to the number of total examiner  
15 hours and even maybe having it by TC too to see if  
16 there's difference among those would get -- would  
17 be an interesting lever at this issue. Because I  
18 think a lot of us sort of have talked about it and  
19 agree that examiner interviews are probably a very  
20 extremely productive way to resolve backlogs,  
21 resolve problems, avoid appeals, avoid waste,  
22 avoid redos and achieve higher goals. But I think

1       having a better tool would be useful for that so.

2               MR. FAILE:  So let me take them -- let  
3       me get the next slide, Wayne, which gets, I think,  
4       a little bit at what you're saying but not quite  
5       and we can take your suggestion back.

6               MR. SOBON:  Yeah.

7               MR. FAILE:  So in -- oh, I'm sorry,  
8       Robert.  Robert had his hand up.

9               MR. BUDENS:  Thanks.  I just going to  
10       say on this slide, too, it's only been in recent  
11       history, relatively recent history, that examiners  
12       have been provided time for examiner-initiated  
13       interviews.  And I wonder why we are not  
14       splitting, you know, or tracking.  This looks to  
15       me like just tracking interview time as a whole  
16       and why we're not tracking interview time, you  
17       know, initiated by applicants and interview time  
18       initiated by examiners and stuff to see what's  
19       really going on behind the scenes there.

20              MR. FAILE:  Yeah, it's --

21              MR. BUDENS:  Especially with Peter's  
22       continuous reminders and Wayne's continuous

1 reminders.

2 MR. FAILE: A good question. One  
3 question I need to get back with the data guys is  
4 can we actually discern between the two. If there  
5 was widespread use, I believe it's the 413 form  
6 where we know whose initiating, whether it's  
7 outside or the examiner. We could cut the data  
8 that way. I don't know that there's a clean way  
9 to do that but that's something we should  
10 certainly look into. It's a good point.

11 So back to another kind of cut of  
12 interview. So what this slide shows is we look at  
13 a case and by serial we mean a case with a serial  
14 number. We look at the disposal. And by disposal  
15 we mean the actual ultimate abandonment or  
16 allowance. We look at that case when it reaches  
17 one of those two terminations points.

18 We look back to see if there was at  
19 least one interview in that case. And then, if  
20 the answer is yes, it becomes a data point. So  
21 this is a little bit of the normalizing that  
22 Wayne's talking about. Not quite exactly the look

1 that he's asking for.

2 So if we look at that, we started back  
3 on the left end of the graph. We're back in  
4 October of 2007 beginning of our FY08. We're at  
5 about 18 percent of those cases that are finally  
6 disposed, i.e. abandoned or allowed, had at least  
7 one interview. If there were two or three, it  
8 would just as a single data point.

9 And you can kind of see the trend line  
10 moving up there to where we are today where we're  
11 roughly at a 28.7 percent; I believe is what the  
12 slide says, in cases that have a final disposition  
13 of an allowance or an abandonment where we had at  
14 least one interview. So you kind of see a trend  
15 line moving upwards. When those cases are finally  
16 disposed, we've gone from about 18 percent to  
17 somewhere in the neighborhood of 28 percent of  
18 interviews in that case.

19 So that's one look at trying to kind of  
20 normalize the data from just having a number of  
21 interviews which arguably scales up by the size of  
22 examining staff you have. And per Wayne's point,

1 we'll take that back and see if there's a way we  
2 can figure another look at interviews.

3 So at the end, I'd be interested in any  
4 other interview-type data that you guys think  
5 would be helpful for us to mine.

6 MR. THURLOW: Just one quick comment if  
7 I can say. Saw a gentleman last night, in-house  
8 attorney, and he mentioned, you know, so many of  
9 the interviews in the past have been in person I  
10 guess and now they're being done, I've had  
11 interviews with examiners from all around the  
12 country. And sometimes I guess they try to do  
13 presentations and webinars and stuff.

14 And I guess there's still some basic  
15 technology issues. I don't fully appreciate all  
16 them but I guess to the extent that ever comes up,  
17 the interviews that I started with 15 years ago  
18 are a lot more in person. These days obviously  
19 they're over the telephone but there's a lot more  
20 types of technology-related interviews to get  
21 information across. So I hear there's problems  
22 with technology so.

1                   MR. FAILE:  Okay, yeah, so I'd be  
2                   interested in hearing more about that to the  
3                   extent you can get more details for me, Peter.  
4                   Let me just stop here real quick and point out  
5                   that we do have the ability, our examiners have  
6                   the ability to do WebEx interviews and applicants  
7                   can literally just request an interview.  The  
8                   examiner will send you a link and basically all  
9                   you need is a computer and a camera on the  
10                  computer and we can facilitate that interview for  
11                  remote examiners particularly via WebEx.

12                  I would direct you to our interview site  
13                  on the uspto.gov Web site.  If you search  
14                  interview, you'll pop that page up.  There are  
15                  instructions how to request that interview and  
16                  then, how that interview will be conducted.  
17                  There's also on that page some helpful hints both  
18                  from a practitioner point of view in conducting  
19                  interviews and from an examiner point of view.

20                  So that's a pretty rich page in  
21                  interview information but to Peter's point, we do  
22                  have the ability for examiners to do WebEx

1 interviews. You can share whiteboards and have  
2 the video conference piece of that. Per  
3 Valencia's early discussion, one of the things  
4 that we're teeing up for the quality summit in  
5 late March is a discussion about in-person  
6 interviews that Peter refers to in the old days  
7 where we had them all in-person interviews. Even  
8 with our remote teleworkers, that's very much a  
9 discussion point at this point.

10 MS. KEPPLINGER: I had one question.  
11 It's actually a combination from Marylee and me.  
12 Marylee is unfortunately unable to be here. But  
13 if you could give us more data, not necessarily  
14 right now, but at the next meeting on the RCEs,  
15 the initiatives that you put in place, how many  
16 people have been using them? What are the  
17 outcomes of those?

18 So, for example, the Cupid's program, I  
19 did see some numbers about how many people have  
20 been using. And I think that program has been  
21 considered a great success. That's a tremendous  
22 ability when you get prior art that comes in late,

1       you can still continue on and not have to do an  
2       RCE.

3                   The after final 2.0 at least, in my  
4       view, is a little less successful. So some data  
5       on that, how many people have requested it, how  
6       many times have the amendments been entered and  
7       the case goes forward, because an awful lot of  
8       examiners will say it's not enough time. And so,  
9       you're not able to get anywhere. So some  
10      additional data on that would be helpful.

11                   MR. FAILE: Okay, got it. So for  
12      Cupid's we do have data that basically says  
13      through the use of the Cupid program we have  
14      avoided X number of RCEs. I believe that number  
15      is somewhere between 2 and 3,000 at this point  
16      from the beginning. So pretty successful in that  
17      sense.

18                   For AFCP, as you know Esther, we've gone  
19      through a number of iterations from our original  
20      concept in AFCP. We're on now, I believe it's  
21      2.0. So we could get some data and kind of track  
22      the progress of that program as it's morphed into



1 its various versions.

2 MS. KEPPLINGER: And one thing that  
3 Marylee suggested was I don't know if you can  
4 track how many requests for interviews after final  
5 have occurred. At least from her perspective, she  
6 hears that some people don't get a call back. The  
7 attorney will call and ask for an interview after  
8 final and they don't get any response and then,  
9 they just get an advisory.

10 MR. FAILE: Okay. Thanks for that.  
11 Track one, oh, I'm sorry, Mark, sorry.

12 MR. GOODSON: Oh, just continuing on  
13 from yesterday. You've done half the statistical  
14 data. If you put in range, something like that,  
15 standard deviation, like on chart A, it would be  
16 most helpful. Thank you, sir.

17 MR. FAILE: Thank you. Okay, track one,  
18 so a pretty popular program that's gathering in  
19 steam, let me just kind of go through what we have  
20 here. These are the track one filings on the  
21 left. We start in basically the end of FY11 all  
22 the way through 15.

1                   Those are the months starting with  
2                   October all the way through September and we're  
3                   tracking trends by months. The end is the totals.  
4                   It might be a little hard to see from here but let  
5                   me just read a couple off.

6                   That in FY12 we had a little bit over  
7                   5,000 track one request. The next year, FY13, we  
8                   moved up to almost 6,900 requests. Last year, we  
9                   were just over 9,000 requests. 9,124 requests for  
10                  track one.

11                  So again, the message is getting out.  
12                  People are using the program. I've got some data  
13                  coming up about the effectiveness of the program.  
14                  This year so far we are on track. We are trending  
15                  higher in each month than we were last year.  
16                  We're certainly on track to the 10,000 cases that  
17                  the program is designed for this year.

18                  So a couple of little notes in the  
19                  boxes, they are hard to see that we have a pretty  
20                  good representation of small and micro entity apps  
21                  in the track one program. That's a little bit  
22                  over 51 percent that are small or micro entity and

1 it's very interesting.

2 And then, the track one request filed  
3 after an RCE, that number is at about 1,800.

4 MR. SOBON: That's cumulative to the  
5 beginning?

6 MR. FAILE: Yep. So speaking of the  
7 performance of the RCE, sorry, RCE track one  
8 initiative, here's a couple of graphs. They are  
9 split in two pieces. On the left, this is track  
10 ones without RCEs and then, track ones with RCEs  
11 and we're just looking at the pendency.

12 So starting on the left the first stack  
13 of colors is a regular case, a 12-month average  
14 and they are split up between the red is the time  
15 awaiting first action. You see it about 10  
16 months. The prosecution time with applicants, 6.9  
17 months and the prosecution time with the office,  
18 3.5 months, adds up to that number at a 12-month  
19 rolling average.

20 You see the same look for RCEs and just  
21 visually you can see you're at the 12-month mark  
22 when you add all those up. So we're getting our

1 track one cases right at the 12-month point which  
2 is obviously the goal of the program. If you pop  
3 over to the right side of that box we're adding  
4 the RCEs, your times jump up there. You still  
5 have the healthy disparity between the ability to  
6 conclude a track one compared to a case with RCEs  
7 on the right.

8 So again, looking at the performance of  
9 the program, you see a pretty good difference  
10 between a regular case and a track one case in  
11 terms of the pendency performance.

12 MS. KEPPLINGER: Mark?

13 MR. FAILE: Oh, sorry, Mark.

14 MR. GOODSON: Yes, sir. You mentioned  
15 10,000. Is that what the program was designed for  
16 or what you'll accept?

17 MR. FAILE: That's the cap of the  
18 program currently. And we're going to be punching  
19 up probably right at that cap by the end of the  
20 fiscal year.

21 MR. GOODSON: Okay.

22 MR. THURLOW: So what are you going to

1 do in those situations where you get more than  
2 10,000 I guess?

3 MR. FAILE: Well, it's only -- we can  
4 only take in the 10,000 per the program. We will  
5 likely be talking with Robert and talking about  
6 should we be moving this cap upward? It looks  
7 like it's a pretty popular program. We're going  
8 to probably need some more head room as that  
9 program continues to climb. We will -- it's  
10 inevitable we're going to hit that cap at some  
11 point.

12 MR. THURLOW: Just two suggestions. I  
13 don't think there's going to be any -- I know you  
14 made one round of changes to it. The one thing  
15 that comes up is we'll make initial filings and  
16 then the client later decides to do a track one.  
17 So we have to do a continuation. To the extent  
18 that it would make sense to me that before an  
19 application is examined, if you're able to submit  
20 the track one request, I don't know why in the  
21 process you need to file a new continuation to get  
22 that going.

1                   So if that could be a consideration for  
2                   a potential change in the future? And then, after  
3                   you get the track one, understand that only gets  
4                   you to the front line and beginning which is very  
5                   important. But after you submit a response,  
6                   you're still in general waiting four months. If  
7                   there's any way to up that? I know that probably  
8                   more challenging so if I had a wish list I'd  
9                   probably request the first one where you submit a  
10                  form and six months after the filing have to do  
11                  that.

12                  What do you think, Robert? I see you  
13                  smiling.

14                  MR. BUDENS: I think it's a wish list.  
15                  It's one thing to dream about. It's another thing  
16                  to figure out the impacts of doing that which is a  
17                  lot of thought went into it. When we first sat  
18                  down, the Agency first approached us with this,  
19                  and there were reasons why we put a cap on it and  
20                  had it only (inaudible). Because once you start  
21                  doing it across the board, then all of a sudden  
22                  what happens if everybody decides to make track

1 one cases? We don't have the staff to be able to  
2 make those time frames necessarily and then, are  
3 you willing to pay the extra?

4           And then, at what point do we start  
5 losing the fairness of the system of the first in,  
6 first out kind of situation for applicants who  
7 either don't or can't for whatever reason enter  
8 the track one program? There's a lot of variables  
9 that go in here. I'm not saying I'm not glad to  
10 see that it's being used more but I think it  
11 becomes a little bit interesting and heavier lift  
12 with trying to expand it more and more or trying  
13 to do what you want and expand it to encompass the  
14 entire prosecution history of the case.

15           MR. THURLOW: The only thing I'd say is  
16 I know the bar associations, everyone was  
17 concerned about everyone using track one and every  
18 case would be a track one. But the numbers show  
19 that 10,000 applications out of all the  
20 applications, the system are not every case. So I  
21 can tell you in practice, we don't do it in every  
22 case. We do it in the important cases and just

1 not to put Mark on the spot but we had  
2 conversations last night and over breakfast and I  
3 think you mentioned you used a track one. So it's  
4 really a nice program to have in the system.

5 MR. GOODSON: Well, it is a nice  
6 program. I just don't want it to be like a  
7 certain amusement part that you bought a ticket to  
8 get to the head of the line but so did everybody  
9 else so it did nothing for you. But it is a good  
10 program, thank you.

11 MR. FAILE: I like that analogy. So a  
12 couple of more slides here. This is on our  
13 current quality composite. Our quality metrics,  
14 and again, kind of the caveat here per Valencia's  
15 talk in quality in the summit; this is an area  
16 that we're actively seeking input. So I'm just  
17 kind of go over where we are now.

18 It's our second pillar and our quality  
19 efforts, you know, looking at quality measurement.  
20 That would be this. So this is where we are now  
21 and obviously, we'll be seeking a lot of input on  
22 this.



1                   For this slide, it's hard to see it's  
2 broken down into the seven components. The big  
3 takeaway is the very top line in quarter one of  
4 FY15. We see a slight bump in most of the  
5 categories. That equates to, at the very end  
6 there, the composite being at 76.9 percent, a  
7 little bit up from the prior measurement period.

8                   One thing to note here is all the way on  
9 the left, that's our final disposition column  
10 compliance rate. Those are the Office of Patent  
11 Quality assurance samples of final rejections and  
12 allowances. We had a stretch goal set a few years  
13 ago to be at 97 percent compliance rate.

14                   And FY15 quarter one was the first time  
15 we actually hit that number 97 which is a little  
16 bit up from our 96.9 on the previous measurement  
17 period. So cutting across that very top green  
18 line, you see there that we're at 76.9 percent.  
19 We've had a lot of discussions within PPAC about  
20 the weighted summation average at 76.9. Is that  
21 meaningful or valuable or not? Perhaps the value  
22 is in looking at each one of the components

1 separately.

2 That's a discussion that we will likely  
3 get into in the quality summit at the end of March  
4 and certainly we'd welcome comments there.

5 The last slide I have for you is the  
6 graph of the quality composite aggregate  
7 performance. This is the weighted summation of  
8 all the seven categories. Based on the weighting  
9 in the previous slide, again, our March is to be  
10 at 100 percent of all of our stretch goals by the  
11 end of '15 and this kind of shows you that's the  
12 red. So for each fiscal year we had a different  
13 target all the way up to 100 percent.

14 At the end of this year, if we hit all  
15 our stretch goals we're there. The blue tracks  
16 are performance. As you can see starting in 12 we  
17 did better than our targets. That's -- we're  
18 starting to ebb a little bit in that movement  
19 upward.

20 We're a little bit at 76.9. We're a  
21 little bit above where we ended up last year in  
22 the first quarter of 15. We have quite a ways to

1 go if we were to hit all our stretch targets by  
2 the end of the year. So there will be a big --  
3 that will be a big stretch, no pun intended, to  
4 hit that 100 percent mark at the end of FY15.

5 So if, Esther, do we have a few minutes  
6 for discussion or?

7 MS. KEPPLINGER: Sure.

8 MR. FAILE: Just real quick. So one of  
9 the things that we've been discussing internal to  
10 patents lately and we would really greatly  
11 appreciate any input that you guys have is back to  
12 kind of the first line on filing trends. So just  
13 to recap where in our serialized filings we're  
14 about 1.3 percent over where we were last year.

15 We expect to be about two percent at the  
16 end of the year, fiscal year. Normally we are in  
17 the five percent range. So there's a question  
18 there. Our RCE filings we're down 13 percent or  
19 so now. So any input you guys could help us.  
20 This feeds directly into our modeling the filing  
21 trends.

22 Bruce made a comment earlier which is

1 absolutely correct. The more accurate that is  
2 that's a huge lever in the model and the more  
3 accurate that is, the more accurate we can map our  
4 resources and hit pendency targets so.

5 MR. LANG: So I see at least uncertainty  
6 in future filing trend for a number of reasons.  
7 One is that there's been judicial evolution of  
8 patent law, in particular, for example, the courts  
9 have been aligning the metrics that they use for  
10 damages to focus on the incremental value added by  
11 a particular invention.

12 I expect there to be continued  
13 legislative reform of the patent system including  
14 particularly the patent litigation system to shift  
15 value away from patents that are lower quality or  
16 otherwise irrelevant. And also, the famous  
17 smartphone patent wars may be dying down.

18 You may see some of the larger filers  
19 refocusing their patent efforts on the  
20 technologies that are most important to them and  
21 not simply playing a numbers game to get the  
22 largest portfolios possible. Therefore, we should

1 be cautious in forecasting future growth of patent  
2 filing numbers.

3 MR. FAILE: Thanks. That's helpful.

4 MS. KEPPLINGER: Wayne?

5 MR. SOBON: I guess I would agree with  
6 Dan a bit but put a different spin on it. I think  
7 from the point of view of a number of a folks who  
8 are focused on patenting technology, there has  
9 been in especially my travels this last year  
10 globally, not only the United State but globally,  
11 anecdotally, concern at points bordering on  
12 anguish that the U.S. system is actually devaluing  
13 the patent estates of corporations. And that so I  
14 agree in some sense that significant filers are  
15 reevaluating the value of filing.

16 And so, it's sort of the eye of the  
17 beholder whether that's depressing the number of  
18 patents of less quality or all patents overall is  
19 going down but people are -- that I've talked to  
20 that are in, you know, actively making decisions  
21 for investment in filing new patents are concerned  
22 that the United States is no longer the preeminent

1 marketplace to seek protection and that other  
2 regions are increasing in importance including  
3 China and Europe. So I think it has to be  
4 calculated into this issue. And both the court  
5 cases as well as legislation have that effective  
6 dampening interest on the assets, so.

7 MS. KEPPLINGER: Paul?

8 MR. WALKER: Yeah, I agree with that and  
9 I think the PPAC has kind of repeatedly cautioned  
10 that the office should be conservative in its  
11 projections. And I think maybe now we should be  
12 even more conservative than ever because of some  
13 of the rest particularly that Dan pointed to.

14 A related matter, that's not good news  
15 for fee collections but it should be good news in  
16 terms of their pendency and reduction in  
17 inventory. But when you look at a lot of these  
18 data, even as the filing rates, the rate of  
19 increase of filing has slowed on almost to the  
20 point that they're flat, at the same time we've  
21 added examiners and we've completed the CPC  
22 training and these other things, you might expect

1       that some of the headway we'd be making in  
2       reducing inventory would be greater.

3                   And I think you answered this but I just  
4       want to make sure I understand the answer that  
5       there's a lot of lag time in the system that we're  
6       still just getting out of CPC. And so, right now,  
7       we're only making small reductions in pendency and  
8       inventory but we would look like next meeting and  
9       the meeting after that maybe to see a steeper  
10      decline particularly if we've got a continued  
11      plateau sort of in filing. Is that correct?

12                   MR. FAILE: Correct. Yeah, it's a good  
13      observation too. You do a lot -- the pendency  
14      data but for the forward-looking pendency setting  
15      that to the side, the other pendency data we  
16      discussed are cases that have ended. So you're  
17      going to -- they have ended and the data was  
18      calculated from that point. So you'll always see  
19      a bit of a lag there.

20                   So we will see -- potentially we saw the  
21      CPC kind of bump in inventory. We'll see that  
22      come down. There'll be a reflection 11 months-ish

1 or so in that purple line. In total pendency, we  
2 still see those coming down. What we do there,  
3 Paul, is we, in our model, there's different  
4 levers we can use to kind of make sure that we're  
5 moving into a soft landing in the out year so to  
6 speak as far as pendency reduction.

7 We don't want to have the staff and the  
8 system geared up where we have a crash in  
9 pendency, obviously. Go down to very extremely  
10 low numbers and have staff running out of work, et  
11 cetera.

12 So what we do there is we have a number  
13 of larger levers including hiring, overtime,  
14 things that we can modulate to make sure that  
15 we're moving back. And if we're shooting for the  
16 10 and 20 pendency world, we can model to make  
17 sure that we're coming in there. The model is  
18 only good as the assumptions one makes, obviously,  
19 thus the discussion on filing trends which is a  
20 huge impact on the model.

21 So trying to get that right is our best  
22 chance to make sure we're ensuring that soft



1 landing in the out years. Making sure we're  
2 gliding into the pendency path that we're shooting  
3 for. But yes, we -- the long answer to your  
4 question, we will see that start to move down.

5 MS. KEPPLINGER: Mike?

6 MR. WALKER: So, Andy, in response to  
7 your question, it's a U.S. -- when I talked to  
8 other chief IP counsel, increasing pressure on our  
9 patent budgets for sure and certainly with the  
10 currency impact with the strong U.S. Dollar. So  
11 I don't know if that balances out that you get  
12 more foreign companies filing U.S. applications  
13 versus U.S. Entities but when I talked to the  
14 chief IP counsel, that's one thing.

15 The other thing I think that is just a  
16 factor is prior user rights. And I hear other  
17 people talking more about keeping inventions as  
18 trade secrets with the changed AIA. So I don't  
19 know if that's a big influence or people are just  
20 talking about it but it's certainly a topic being  
21 discussed and I think more companies are taking  
22 that -- looking at the decision to keep something

1       that's a trade secret as a more favorable post  
2       AIA.

3                       MS. KEPPLINGER:   And Robert?

4                       MR. BUDENS:   And essentially I'm glad  
5       you brought up the idea of the soft landing I  
6       mentioned yesterday.   Going back to your slide  
7       four, as we're looking at trying to reach optimum  
8       pendency and I know we're pushing for a 10- month  
9       pendency right now, but in an effort to -- one of  
10      the problems we're seeing with that is we're  
11      already seeing pockets within the agency that are  
12      starting to run out of work and we're having to  
13      move technologies around and having to have  
14      examiners doing perhaps technologies that they're  
15      not as familiar which, of course, is probably  
16      going to impact quality, too.

17                      So in an effort to both inform the  
18      discussions at the quality summit in March and in  
19      our forward looking on discussing pendency and  
20      appropriate levels, could you put together some  
21      statistics for us of how many art units in the  
22      different technology centers have had already to

1       move technology or who are getting very low in  
2       their docket so we could start figuring out just  
3       what kind of impacts we're going to have as, you  
4       know, are we going to have enough time and enough  
5       leverage to pull to get a soft landing? Or are we  
6       liable to bounce off the ground a little bit in  
7       some of the areas? Thank you.

8                   MR. THURLOW: Just a last comment. So  
9       years ago, we used to file, just to give you an  
10      example of the trend, the international  
11      applications, the PCTs we would file all the  
12      different countries. For the most part now, we  
13      only file in EP, in Europe and in China. Japan  
14      and Brazil, other countries it's just -- we don't  
15      see the value in it.

16                   So I saw that because now the trend in  
17      the U.S. is we used to file everything in the U.S.  
18      and I think Mike hit on it, the budget is a key  
19      issue. It's not, believe me it's just not  
20      attorney fees. It's just the -- it's everything  
21      included.

22                   I have not seen in discussions at bar

1       associations and, quite frankly, internally  
2       decisions to say don't file. I find more  
3       decisions on how to file and how to claim. And  
4       all the work, good work, that Drew and everyone  
5       else at the patent offices is helpful but the  
6       one-on-one has definitely raised a lot of issues.

7                   And then, the last point I'll make is  
8       you know, when I started doing this years ago, the  
9       business side was not involved in the patents as  
10      much as they are now. So there's a lot more basic  
11      questions on what are we getting in return for  
12      this investment? And it just not file. It's what  
13      is the value of it?

14                   And that's an interesting thing where  
15      you have people in the business side getting  
16      involved in patents that I didn't see maybe 15  
17      plus years ago. So that changes dynamics a little  
18      bit.

19                   MS. KEPPLINGER: Okay. Let's take just  
20      a 10- minute break. Let's be back at 11:15  
21      because we're quite behind schedule and maybe we  
22      can catch up a little.

1 (Recess)

2 MS. KEPPLINGER: Welcome back. We're  
3 now going to have a presentation by Charlie  
4 Pearson and Mary Critharis on the international  
5 update. Thank you.

6 MR. PEARSON: Okay, yeah, thank you.  
7 It's a pleasure to address you today. I'm  
8 substituting for Deputy Commissioner Mark Powell.  
9 He had a family emergency so I hope people aren't  
10 too disappointed that I'm pinch-hitting today so.

11 Okay, and I'll just go through some of  
12 the highlights here quickly. A lot of things are  
13 happening in the international arena. The  
14 cooperative patent classification system has been  
15 implemented here at the USPTO and the transition  
16 was completed on January 1 of this year going from  
17 the USPC to the CPC.

18 Slide looks a little funny. Transition  
19 completed then more work ahead. Well, it, in  
20 fact, you know, it's going to be ongoing. A lot  
21 of work on quality issues in conjunction with the  
22 EPO so I imagine the CPC will be keeping the

1 office busy for a long time.

2 Now, the Geneva Act of the Hague  
3 agreement concerning the international  
4 registration of industrial designs was the  
5 instrument ratification was deposited at WIPO last  
6 Friday the 13th. And so, it will become effective  
7 three months from that date on May 13th of this  
8 year. And at that point in time, and a lot of  
9 Americans will be able to file international  
10 design applications that will have effect in a  
11 number of countries around the world.

12 And also, one thing, it's been a point  
13 of contention out there, a concern. The 15-year  
14 patent term will start for applications filed  
15 after May 13th. Those are for both Hague and  
16 regular national design applications.

17 The first of the global dossier services  
18 have been implemented and this is going to be or  
19 will be implemented. It's going to provide a  
20 single portal access to IP5 file wrapper  
21 information. And this will become available in  
22 May to USPTO examiners. And then, in December it

1 will be available to the public through U.S.  
2 public user interface. And this will be something  
3 like the Paris system for the five offices  
4 involved.

5 Now, global dossier, there's been a lot  
6 of activity there. There was a taskforce meeting.  
7 This is an IP5 meeting with industry groups in  
8 January. And there was a lot of discussion trying  
9 to identify next services to be delivered. The  
10 industry set forth some goals here and a number of  
11 them. It's -- these are in no particular order  
12 but they wanted a proof of concept for interoffice  
13 exchange of documents including things like change  
14 of address, bibliographic data, things like that.

15 In addition, they were concerned about  
16 the indication of patent legal status whether  
17 something is a family member may be pending or  
18 patented and of course, it does offer some  
19 problems for the U.S. sometimes to determine  
20 whether or not -- it's difficult to determine  
21 whether or not a patent is expired or not. So  
22 it's going to be a challenge there.

1           There's been a proposal to have sort of  
2           standardized system for applicants' names and  
3           it'll be interesting to see where that goes. Also  
4           we're looking at transmitting these documents in  
5           XML so it can provide ease for both users and  
6           offices. And the fifth item was sort of an alert  
7           function that would tell applicants when something  
8           was happening in their application. Maybe a  
9           change in status or a due date was coming up.

10           And right now, they're doing feasibility  
11           studies to determine the next steps on these  
12           issues. Okay.

13           There's also a couple of search  
14           collaboration pilots that are being considered and  
15           the USPTO has proposed two such pilots; one with  
16           the Japan Patent Office and a second one with the  
17           Korean Intellectual Property Office. And the  
18           purpose is to determine whether a collaborative  
19           search and its evaluation to commonly file the  
20           claims can be useful prior to examination and  
21           whether it can improve the examination process and  
22           provide more consistent results between offices.



1           Additionally, the pilots will determine,  
2           hopefully, whether the offices can control the  
3           sharing of search information between the offices  
4           so that unnecessary delays in prosecution are  
5           avoided. Now these pilots are based on the  
6           first-action interview program here at the USPTO.  
7           They're a bit different.

8           In Japan, the exchange of the search  
9           information will occur prior to when the USPTO  
10          examiner establishes the pre-interview  
11          communication. Now, with Korea there will be the  
12          two independent searches and the results of those  
13          searches will be furnished to the applicant at the  
14          time of the pre-interview communication.

15          A federal register will be forthcoming.  
16          We'll certainly look for participants and I  
17          certainly urge practitioners out there to help us  
18          with this pilot and hopefully participate. And  
19          the office intends to make the public aware of  
20          these programs and actually do a little marketing  
21          to get people interested.

22          There is also a PCT collaborative search

1 and examination pilot which has occurred with  
2 USPTO in conjunction with the EPO and the Korean  
3 Office. And plans are underway, it was discussed  
4 at the meeting of international authorities under  
5 the PCT at a meeting in Tokyo a couple of weeks  
6 ago and the EPO is taking the lead in this program  
7 and trying to come up with a third in a series of  
8 these pilots. Hopefully, we'll have some sort of  
9 collaboration tool developed that'll make it  
10 easier for examiners to communicate between  
11 offices.

12 In addition, we're currently having  
13 discussions with the JPO to have Japan serve as a  
14 competent international searching authority for  
15 applications filed in the U.S. Receiving Office.  
16 And this is something that applicants have  
17 mentioned in the past as being important. And I  
18 think we're making a lot of progress in that area.  
19 There probably will be some limits on the number  
20 of cases as well as to the subject matter.

21 Japan is pushing hard to have it focused  
22 primarily on green technology. So we'll see where

1 that goes.

2                   And just finally here, very briefly, you  
3 know, we have this new organization within the  
4 patents cost center, the Office of International  
5 Patent Cooperation. And as we are developing our  
6 work plans here we plan to focus on education and  
7 promotion of programs with -- that the Office is  
8 offering. Plus we want to discuss users' needs  
9 and get a feeling from them in which direction we  
10 can focus.

11                   So and of course, intend to discuss  
12 things like the global dossier and the patent  
13 prosecution highway with user groups. And in  
14 addition, we intend to take a little larger pres  
15 -- have a little large presence at IP industry  
16 meetings so we can promote the program's services  
17 and tools offered by the office. So, anyway,  
18 thank you very much. And I guess now I can turn  
19 the program over to my colleague, Mary Critharis,  
20 who's a Deputy Chief Policy Officer and she'll  
21 talk about harmonization. Thank you.

22                   MS. CRITHARIS: Thanks, Charlie. Is

1       this on? Okay, great. Before I talk about  
2       harmonization, I want to apologize for not having  
3       a formal presentation. I was a last-minute  
4       addition to the agenda but I'm still really  
5       delighted to be here to have this opportunity to  
6       talk about a lot of our international  
7       developments. And also, feel free to interrupt me  
8       with some questions.

9                 First, just to complement what Charlie  
10       was saying, the U.S. deposited the instrument of  
11       ratification for the Hague agreement concerning  
12       the protection for industrial designs but on the  
13       same date that we deposit our instrument of  
14       ratification so did Japan. And that's kind of a  
15       real milestone because the U.S. and Japan are both  
16       examination countries. And so, we were key  
17       players in the development of the Hague agreement.  
18       So it was really very nice that we were able to  
19       deposit the same day.

20                But that also provides a lot of  
21       advantages for our users because now in addition  
22       to being able to use the Hague system to file in

1 the U.S. and to designate a whole host of  
2 countries, the list of countries that are  
3 participants to the Hague system is also  
4 expanding. So Japan is now a member. Korea is a  
5 member. So that's another added benefit to our  
6 users.

7 In addition to the Hague agreement, I  
8 did want to just highlight one other development  
9 on designs in that we will be having a new  
10 multilateral, international forum to address  
11 designs in the context of the ID5 which will  
12 comprise of the five largest design offices which  
13 are the USPTO, OHIM which is the Office of  
14 Harmonization for Internal Market that handles  
15 design registrations in Europe, the Japan Patent  
16 Office, the Korean Intellectual Property Office  
17 and the Chinese, CIPO, the Chinese Intellectual  
18 Property Office.

19 So we are going to address both  
20 technical issues related to cooperation and some  
21 other policy issues as well. And that inaugural  
22 meeting will be held here at the PTO in November.

1       So I just wanted to give a heads up to that  
2       meeting.

3                   And now, I'm going to talk a little bit  
4       about harmonization. We've been working on  
5       substantive patent law harmonization for over 30  
6       years unfortunately with not much success. You  
7       know, ideally, we'd like to work within WIPO  
8       because that's the norm setting body for  
9       intellectual property law but for political  
10      reasons there is a lot of -- there's not really  
11      much meaningful work being done there on  
12      harmonization.

13                   So back in 2005, a group of countries  
14      who were interested in trying to achieve  
15      meaningful progress in harmonization got together  
16      and we call these the friends of harmonization and  
17      we started this Alexandria group which has now  
18      evolved into what is called Group B Plus. And  
19      Group B Plus is a UN term of art which really  
20      includes most of the developed countries.

21                   Group B Plus, the plus was added because  
22      there are certain parties to our discussions like

1 EPO and the Commission that are not formally  
2 members of the WIPO. And so, what this group  
3 really wanted to focus on was not all substantive  
4 harmonization, not issues like relating  
5 patentability eligibility requirements but issues  
6 related to examinations in order to enhance our  
7 work sharing efforts here. Ones that Charlie  
8 mentioned, PPH, some of the new projects we've got  
9 going on, the collaboration projects as well.

10           And in order for those to really be  
11 maximized, it's important that we had the same  
12 standards for prior art and how they're evaluated.  
13 This way, when Japan examines an application, we  
14 at least know with certainty that the definition  
15 of prior art is the same in Japan, in the U.S. so  
16 that there doesn't have to be additional searching  
17 going on and it would really streamline the work  
18 sharing.

19           So the goal was really to focus on these  
20 prior art related issues. Unfortunately, we  
21 haven't had so much progress there. I think what  
22 happened was we really got bogged down in going

1 back to some of the treaty language that was used  
2 in some of the earlier WIPO forum for discussing  
3 harmonization. And so, we're recently trying to  
4 have a new approach that is not really a  
5 treaty-based approach but more principle-based  
6 approach so that the countries can come up with a  
7 way of defining what are the best practices in the  
8 patent examination realm.

9           And so, we had a roundtable back in  
10 November to identify those topics for discussion  
11 and they included things like definition and scope  
12 of prior art, grace period, prior user rights,  
13 termination of novelty and non-obviousness and  
14 how prior art relates to those determinations.  
15 And so, we held our first meeting with this new  
16 Group B Plus meeting to kind of follow on on that  
17 approach for having a principle-based approach and  
18 it seemed like the participants were really  
19 interested in going down that path as opposed to  
20 really having specific treaty language.

21           So we'll be meeting in early April with  
22 our counterparts to try to put together a package



1 that is principle-based approach that we would  
2 present to the Group B Plus plenary which meets in  
3 Geneva every year in the margins of the General  
4 Assembly. This year it'll happen to be in early  
5 October.

6           So those are -- that's kind of what's  
7 happening on harmonization. But I also wanted to  
8 talk a little bit about in addition to trying to  
9 have progress in that forum; the office is very  
10 engaged in all of our free trade agreements. And  
11 I know a lot of people aren't really familiar with  
12 that but we've been using the free trade  
13 agreements as a forum vehicle to try to get some  
14 robust harmonization. And, for example, in all  
15 our previous free trade agreements we've been able  
16 to secure a one-year grace period.

17           So that includes countries like Korea  
18 that did not have a grace period. As a result of  
19 our free trade agreement with Korea, there is now  
20 a one-year grace period. And so, those include  
21 countries like Australia, Morocco, Peru, Colombia,  
22 Chile, El Salvador, Honduras, Nicaragua,

1 Guatemala, Costa Rica, Dominican Republic and  
2 Panama all have a one-year grace period because of  
3 the free trade agreements.

4 And in addition to some of the one-year  
5 grace period provisions, there's also some other  
6 robust protections related to making sure these  
7 offices give patent term extensions for delays in  
8 examination. So that really helps our industries  
9 a lot when they get protection and they lose time  
10 due to delays in patent offices which can be very  
11 substantial in some of these countries.

12 Currently, we're in the process, the  
13 U.S. Government, is in the process of negotiating  
14 a Trans-Pacific partnership agreement. It's  
15 called the TPP and it's with a mix of real  
16 developed and developing countries. It's  
17 countries that border the Pacific Ocean.

18 So there's 12 parties to that agreement.  
19 They include the U.S., Mexico and Japan, Chile and  
20 Peru, then New Zealand and Australia, Brunei,  
21 Malaysia, Vietnam and Japan. So it's a very  
22 interesting mix which makes the negotiations very

1 complicated because the developing countries,  
2 obviously, want to kind of scale back on the  
3 patent protection and the more developed countries  
4 are really pushing to have more robust protection.

5           Having said that, these negotiations  
6 have been going on for over five or six years and  
7 the goal really now is the administration is  
8 really pushing to close this agreement. Obama  
9 apparently wants it done by mid-March or April.  
10 And one of the most controversial topics of the  
11 TPP is the patents sections and in particular the  
12 pharmaceutical patent sections because of  
13 political implications relating to preventing  
14 access to medicine.

15           So while a lot of the -- there's a whole  
16 host of chapters in our free trade agreement and  
17 half of them have closed. And there was a meeting  
18 in New York in January during the blizzard where  
19 there was some progress being made in a lot of  
20 patent provisions. And there will be an upcoming  
21 meeting in March to try to close out some of the  
22 patent provisions. So there's a real push for

1 that as well.

2 And again, I can't really reveal the  
3 substance of the negotiations but again, the goal  
4 is similar to previous FTAs to try to push for  
5 enhanced rights with respect to patenting plants  
6 and new uses, patent term extensions, patent term  
7 restorations for marketing approval delays but  
8 also a one-year grace period. So the hope is to  
9 have a one- year grace period.

10 Paralleling that track is also another  
11 agreement called TTIP which is an agreement with,  
12 a potential agreement, with our European partners.  
13 And so, again, that would be a good opportunity  
14 for us to discuss grace period because Europe has  
15 been the real holdout in grace period. So one of  
16 our strategies was to make sure that the rest of  
17 the world adopted a one-year grace period and  
18 then, Europe would really be isolated on this  
19 issue.

20 And so far we've been successful in that  
21 approach. So we're hoping that the TPP will have  
22 positive results and that will bleed into the TTIP

1 with the Europeans.

2 So that's kind of our overview on  
3 harmonization. I don't know if anybody has any  
4 questions on that. Mike?

5 MR. WALKER: Mary, thank you. Just a  
6 quick question on TPP. It also I think covers  
7 trade secrets. Is that right?

8 MS. CRITHARIS: That is correct.

9 MR. WALKER: And does the office deal  
10 with the trade secret aspect as well as the  
11 patents? I just want to make sure.

12 MS. CRITHARIS: Yeah, we deal with the  
13 patents, the trademarks, the GI issues, the  
14 copyright and the trade secret and all the  
15 enforcement and board enforcement issues.

16 MR. SOBON: I have a quick question  
17 about just maybe a mundane issue but I was looking  
18 at the proposed budget as well. I think travel  
19 especially during the sequester was a key issue of  
20 our ability to really field at delegations to  
21 these various international meetings. And I would  
22 just wonder just if your reaction to the current

1 budget proposal, whether you feel you have enough  
2 resources, especially travel resources to be able  
3 to do this? It's one of the key things that just  
4 allows us to be in those rooms with an adequate  
5 number of people to do that.

6 MS. CRITHARIS: Right. That's always an  
7 evolving issue. In the past we had that. So far  
8 we've been able to really, you know, support USTR  
9 in these negotiations but that may always change.  
10 So we always encourage your support on those  
11 efforts.

12 MR. SOBON: You have my support. I  
13 think it's obviously very critical for the United  
14 States to be there with adequate resources in  
15 those rooms to be in the discussions.

16 MS. KEPPLINGER: Robert?

17 MR. BUDENS: My question is more  
18 directed at Charlie. Don't worry; I'm not going  
19 to shoot the messenger. But take a message back  
20 for Mark. You brought up a couple of topics that  
21 caused me some fear. The global dossier, the  
22 first rollout in May to examiners and also this

1 PCT pilot you mentioned, I don't -- I'm not aware,  
2 I think we've had one meeting with Mark and Maria  
3 at a high level on the global dossier. But I  
4 don't think we've ever been shown any like details  
5 of what this is going to encompass. We've got to  
6 be able to -- if you're going to sit here and  
7 think it's rolling out in May we've got to be  
8 having some talks about what's going to be the  
9 impact on the examining corps and stuff with that.

10 And I have no idea where the impacts are  
11 going to go. We have had some talks with, I think  
12 Dan and Amber, on the JPO and type and we're  
13 working to that one but the global dossier sounds  
14 to me pretty large and kind of worried about what  
15 its impact is. And the PCT pilot, I don't know  
16 whether that's going to impact. Is it at all or  
17 if that's going to be a contractor issue? But I  
18 think we ought to have some talks on it at some  
19 point very soon.

20 MR. PEARSON: No, I'll certainly take  
21 that under consideration, Robert. I think the one  
22 PCT search examination collaboration pilot that we

1 -- we've had two in a series in the past and I  
2 think we worked together with the union very  
3 nicely in that to work out the details. And the  
4 third phase is probably still a long way off so  
5 I'm sure we'll be able to have discussions on  
6 that. Thank you.

7 MR. THURLOW: Just a couple of quick  
8 points. So there was a meeting a few months ago,  
9 I think right here, where a bunch of foreign  
10 patent office representatives came in and spoke.  
11 And I made some comments. In your discussions, I  
12 guess, one thing I could ask, we have a lot of  
13 discussions internally about budget issues and  
14 sometimes I think the foreign governments use --  
15 have increased fees over the years and look at it  
16 as a making money for the government.

17 When in fact, what happens is that we  
18 decide not to file in certain countries. So the  
19 extent you can give that message that would be one  
20 thing. And just a small pet peeve of mine is that  
21 we do a lot of international filings. A lot of  
22 countries based the fees that they charge for



1       examining the application on the claims in the PCT  
2       and not necessarily on the national stage  
3       application in that country, which of course, they  
4       get more money, increases the fees for us so  
5       that's problematic.

6                   And then, Mary, I have a question you  
7       probably can't answer but I'm going to ask. I've  
8       been reading more and more about the TPP. It's  
9       obviously very important. You've been working on  
10      it for five, seven years. Is there -- I'm getting  
11      a sense it's getting closer, is that fair to --

12                   MS. CRITHARIS: Yeah, I mean, you know,  
13      there's not even too much information that goes  
14      down to our level but the understanding is, you  
15      know, Obama wants this done in his administration.  
16      So the pressure is really on right now that if  
17      it's not concluded by March or April then it may  
18      just even fall apart. Having said that there's  
19      some other political pressure because we do not  
20      have TPA, trade promotion authority, at the  
21      moment. And the Republicans are saying they will  
22      not support a TPP unless they have trade promotion

1 authority that's passed.

2           So some people are saying they're  
3 stalling to April so that Congress can get trade  
4 promotion authority. But I will say a really good  
5 source of information for what's happening on  
6 these issues and now really focused on TPP is  
7 Inside U.S. Trade. So they kind of --

8           MR. THURLOW: That's a publication?  
9 Inside U.S. Trade?

10           MS. CRITHARIS: Yes. So it's a really  
11 good publication as far as, you know, keeping up  
12 to date on kind of really it's more the inside  
13 scoop and a lot of it is just maybe rumor but some  
14 of it is substantiated.

15           MR. THURLOW: Right. And just one last  
16 point and I'll end. We had early discussions  
17 today about the concern with filings in the U.S.  
18 I was at a CLE conference last week with a bunch  
19 of people on and based on China. And so, their  
20 numbers are like two million now. They have a  
21 utility model. It's completely different. But  
22 everyone in the audience was just shocked by and

1       it's been known for years but just point of  
2       reference, point to note. I mean, that's amazing.

3               MS. CRITHARIS: Right. Well, they have  
4       a real innovation campaign and they also subsidize  
5       a lot of the filings. So they've got government  
6       subsidized and pushing applicants to file  
7       applications. So they've really pushed the  
8       filings. A lot of it is in the utility model  
9       context which is pretty easy for them to file an  
10      application in that area.

11              So we're hoping to address some of those  
12      utility model issues in our design forum.

13              MR. THURLOW: Well, yeah, their utility  
14      model I just, I don't get it.

15              MS. KEPPLINGER: Okay. If we could move  
16      along? Okay because we're way behind. I'm  
17      failing at my first chairing of a meeting.

18              MS. CRITHARIS: Just the opposite.

19              MS. KEPPLINGER: Okay. No, no, thank  
20      you. Thank you very much and we'll have an update  
21      now on the telework program from Andy Faile.

22              MR. KISLIUK: So I'm going to -- well,

1 I'm going to go ahead and frame it up and then,  
2 I'll reference Andy and Dana that'll jump in. So  
3 just want to give an update on some of the recent  
4 tension we've had around the telework and time and  
5 attendance issues.

6 I'm going to frame it up into two  
7 categories. One are what I call are external  
8 aspects that are going on and then, some internal  
9 aspects and then, I'll ask Andy to elaborate a  
10 little bit on some of the internal things and Dana  
11 to elaborate more on some of the external.

12 So on the external aspects, there's  
13 really three things that are going on right now.  
14 One is we have the National Academy of Public  
15 Administration, or NAPA. They're doing a  
16 third-party review of our telework programs.  
17 That's one aspect.

18 Another is we have an ongoing engagement  
19 with the Office of the Inspector General as well  
20 in terms of some of these issues. And we have a  
21 congressional report that will be due this summer  
22 on these issues. So those are three external

1 things I've mentioned.

2 From the internal aspects, there's five  
3 things I'll point out. One is we did just have a  
4 recent union agreement and that's again, to level  
5 the playing field with all full-time teleworkers.  
6 And then, four things and they kind of come in an  
7 order; so one is increasing awareness for  
8 employees around telework resources and best  
9 practices for those that are teleworking.

10 Another aspect of that increased  
11 awareness is training and this is specific  
12 training on time and attendance issues. And  
13 that's both for supervisors and for employees.  
14 That's number two.

15 The next one is preventative measures to  
16 avoid problems. And this is really directed  
17 towards early detection and early intervention.  
18 And when that fails, we're looking at improvements  
19 in the process when there is misconduct being  
20 alleged and that gets to the roles and  
21 responsibilities of employees in that process and  
22 the evidence used are computer records used in

1 those.

2                   So those are kind of the categories and  
3 I'll ask Dana to maybe elaborate a little bit more  
4 on the external aspects.

5                   MR. COLARULLI: Sure, thanks Bruce. I  
6 think in terms of the external engagement,  
7 particular with Capitol Hill, you're all aware  
8 Peggy testified at a briefing last year, we  
9 haven't had a lot of specific follow up but we're  
10 able to provide a good list of things that we're  
11 actively working on right now. Our internal plan  
12 for when we go back up to Hill and engage again  
13 includes specific briefings triggered by events.

14                   So in particular, Tony Scardino and I  
15 briefed our appropriators last week on the FY16  
16 budget. We had the opportunity there to say  
17 here's what we're working on. We're going to  
18 continue working. And to set the expectation that  
19 when the NAPA report comes out we would come up  
20 again. Again, probably do a briefing with our  
21 appropriators who have asked us to keep them  
22 regularly updated and talk about the upcoming

1 report Bruce mentioned due in July.

2           So no hearings at this point on the  
3 radar coming up but we have made sure we're  
4 keeping our congressional audiences very well  
5 informed. I anticipate when the NAPA reports  
6 comes out, my team will also want to organize some  
7 briefings with our authorizers as well, the  
8 judiciary committee. You're all aware that the  
9 chairman of the oversight committee now has moved  
10 over to a judiciary role. So I expect that some  
11 of these issues will not be exclusively focused on  
12 but as he does oversight question where's the  
13 agency? What progress have we made?

14           So that's the extent of our proactive  
15 congressional engagement at this point.  
16 Certainly, it's come up in questions as we've been  
17 engaging with members of Congress individually or  
18 staff and we've again, talked about the NAPA  
19 report. I think that'll be a good opportunity for  
20 us to reengage.

21           MR. FAILE: Okay, so to just pick up on  
22 what Bruce had laid out kind of five general

1 areas, I'll just give a little flavor of some  
2 things we're doing in those areas. The first he  
3 mentioned was in kind of the labor arena. So  
4 we've just recently concluded a series of  
5 discussions with all three of our unions. We have  
6 three unions here at the office; our patent office  
7 professional union represents examiners and then,  
8 240NTE, NTEU chapters 245 and 243.

9           And we came up with kind of three new  
10 requirements for full-time teleworkers. One is  
11 the logging on to the computer systems at the  
12 beginning of one's workday. The second is the use  
13 of collaboration tools including a presence  
14 indicator. Currently, we're using Microsoft link  
15 for those that are familiar. That indicates  
16 availability of employees to each other for  
17 collaboration.

18           And the third is a work schedule  
19 information exchange for managers and employees to  
20 better know when they are available as far as  
21 their work schedules. The key for this piece of  
22 it I think is kind of a baselining of all our



1 full-time teleworkers throughout the agency.  
2 Again, with three different unions we had  
3 full-time teleworkers at various places. Per this  
4 agreement we've kind of equalized that and it's  
5 kind of our first foray into discussion with our  
6 labor folks on that issue.

7           The second Bruce mentioned was kind of  
8 the increased telework resources and best  
9 practices. Things we're doing there is revamping  
10 our information about scheduling, about our  
11 telework programs in terms of the Web site for  
12 both managers, employees, some activity in that  
13 area. Also mentioned was the training. We are  
14 doing some training on not only time and  
15 attendance training but also work schedules, leave  
16 policy, overtime policies. We completed a  
17 training session for the managers back in October  
18 of last year. The employees are scheduled to go  
19 into their training phase this month.

20           There was a delay there pending the  
21 outcome of our union negotiations. We want to  
22 make sure that training is refreshed with the

1 information from that. We'll start that this  
2 month. That'll take about a month to go through.  
3 The idea there is to get everyone on the same  
4 baseline as far as the training. We anticipate  
5 doing this periodically to refresh that training,  
6 likely annually we'll have training available for  
7 managers, employees on these topics.

8           The next part was kind of the  
9 preventative measures, things that we can do to  
10 identify potential issues early, resolve them at  
11 the lowest level to the extent that's possible.  
12 An example of that would be looking at the work  
13 output. We'll just talk for the patent examiners  
14 for the moment. You probably heard terms like end  
15 loading or more work in a certain period of time  
16 versus less work in other periods of time.

17           We've started a corps-wide initiative  
18 called our constant credit initiative where we're  
19 actually looking at thresholds of work above a  
20 certain amount of work and a certain period of  
21 time. And we're addressing those situations in an  
22 attempt to kind of smooth that out. That helps us

1 enormously with workload being more even, getting  
2 reviewer resources and maximizing those. We don't  
3 have spikes of work that we're looking at.

4           It's an effort going in the preventative  
5 side and then, the last part is looking at the  
6 process where we have a situation that does need  
7 to be addressed more than in the preventative  
8 realm. Looking at our conduct process for taking  
9 those actions forward and doing some work there  
10 with our labor relations specialist and looking at  
11 that whole process and making sure that we've got  
12 that done as efficiently as possible. So just a  
13 little flavor of some things that we are doing in  
14 each one of those areas.

15           MS. KEPPLINGER: Thank you for that  
16 update. That looks like you're addressing a lot  
17 of the concerns that have been raised and that's  
18 excellent. I wanted to make one point that some  
19 statistics that were told to me. As you know,  
20 Tuesday was a snow day here and the government was  
21 closed. The USPTO was closed but people who are  
22 full-time teleworkers have to still work on a day

1 when the office is closed because they're working  
2 at home.

3 And the statistics that the office  
4 gathered from this past Tuesday compared to a sort  
5 of equivalent Tuesday two weeks ago show that over  
6 80 percent, about 82 percent of the amount of work  
7 that had been turned in in the previous Tuesday  
8 was done on this past Tuesday when the office was  
9 actually closed. So that's a significant amount  
10 of work that actually was done. And this is  
11 clearly a benefit of telework but it also  
12 demonstrates to me something else because the data  
13 also seems to say, since we have fewer than 50  
14 percent of the people who work at home all the  
15 time but we had 80 percent of the work. It says  
16 to me that some employees that didn't have to work  
17 actually did work even though the office was  
18 closed.

19 And I think that is a result of the  
20 flexibility that laptop distribution and things  
21 like that that have been given to the employees.  
22 So I want to congratulate the office and the

1 employees on the dedication in turning in that  
2 amount of work on a snow day.

3 Robert?

4 MR. BUDENS: I want to check that a  
5 little bit because it's not only our full-time  
6 teleworkers. We also have people who telework  
7 like 32 hours out of a week. They're also  
8 required to be telework ready during office  
9 closures and stuff. So you have a large number of  
10 our workforce that is set up and even if they come  
11 in here some days, if the office is closed, they  
12 have to work -- they have to be prepared to work  
13 from home. And to be able to think that we have  
14 some kind of mass amount of waste and abuse of  
15 this system as some news media might have led us  
16 to believe is ridiculous and this is good evidence  
17 of it.

18 MS. KEPPLINGER: Thank you, Robert. So  
19 I stand corrected. All the teleworkers, but  
20 either way that's an excellent program that's  
21 being run and shows clear value to the agency.  
22 Any other comments or questions? Okay, thank you.



1 off and that our time is somewhat contracted here  
2 so we'll try to be as brief as possible. The main  
3 story with regard to the ex parte appeals is that  
4 the inventory is declining. In November of 2014,  
5 the backlog inventory was at 25,844 ex parte  
6 appeals. It's about 600 cases lower right now.

7 It has a downward trajectory. We think  
8 the trajectory will become increasingly downward.  
9 One main thing to point out about the backlog is  
10 that what it is at any given time, that is, the  
11 amount of the inventory is really a function of  
12 two things. How many cases, how many appeals are  
13 being disposed of by the Board at any given time?  
14 And also, what number of new cases we are  
15 receiving?

16 We have, of course, given considerable  
17 attention to the disposition side of that  
18 including by increasing the number of judges who  
19 are hearing cases. We also have been very mindful  
20 about the receipts side of that and have continued  
21 to collaborate with the patents business unit to  
22 reduce the existing inventory.

1                   Just a little more granularity with  
2                   respect to that, there are two main things that  
3                   are working on and intend to increase our work on  
4                   with the patent corps. One has to do with  
5                   allowing the patent corps to help us better  
6                   understand which appeals are more readily the  
7                   subject of reversals might either be removed from  
8                   our inventory or not come to occupy it anyway.

9                   We've taken some shots at doing that in  
10                  the past and now working particularly with the new  
11                  Deputy Commissioner for quality, we intend to give  
12                  that renewed focus. We also want to look at  
13                  portions of the inventory which are newer to see  
14                  what more ready guidance can be provided to the  
15                  examining corps to prevent cases which can be  
16                  resolved in the corps before coming to the Board  
17                  to be identified.

18                 More specifically, our inventory has an  
19                 age spread out over at least two or three years.  
20                 And the decisions in the older cases provide, of  
21                 course, less ready guidance to examiners as to  
22                 what the Board thinks the disposition should have



1       been in the case. The newer cases, the ones  
2       entering our inventory in the last year or so,  
3       provide a more ready opportunity for the Board to  
4       provide guidance to examiners in whose minds the  
5       cases are still fresh.

6               So we want to look at at least sampling  
7       those cases to gather some guidance that we might  
8       provide to the corps both to help with our  
9       reduction and also to help with the quality  
10       initiative. This next slide shows something more  
11       about the size of the ex parte appeals inventory.

12               In one respect, one might think of this  
13       as a relatively flat chart with only gradual  
14       reduction at the end. But this is a relatively  
15       short time period from late last year to this  
16       year. Looking at the chart over a wider period of  
17       time, one sees more generally what has happened.

18               Starting in 2009, the inventory was  
19       growing at a very dramatic rate. And we show  
20       there the end of fiscal year 2012 number which is  
21       26,484. Before we brought it down to that, it  
22       actually peaked at 27,200 cases. So that upward

1 slope you're seeing in the left part of the chart  
2 continued for some time before we were able to  
3 cause it crest and then to bring it down.

4 Of course, had the Board not grown,  
5 27,000 would have been 40,000 at the rate we were  
6 going. The increase in the size of the Board, one  
7 would think, would have cause an equally dramatic  
8 downward slope so that we would be well below the  
9 25,000 where we are now. Why has that not  
10 happened?

11 Well, the growth in the size of the  
12 Board went to do -- had as its intention two  
13 things, one reducing the ex parte appeal backlog  
14 and also helping with the new AIA work. And we  
15 sized it actually to not only handle the AIA work  
16 but also to achieve a more substantial reduction  
17 in the ex parte appeal backlog than you see here.  
18 That did not happen because, as you all know, we  
19 had three times as many AIA cases filed as was  
20 intended.

21 That said, because we still were able to  
22 keep it relatively flat for some period of time

1 and now also to begin its decline and because the  
2 AIA cases have more or less leveled as far as we  
3 can tell, we are, as I said earlier, in a better  
4 position to cause a more dramatic decline in the  
5 ex parte appeal backlog which we think you will  
6 begin to see in the next several months, in  
7 addition to the efforts that we will be making to  
8 reduce the receipts of cases.

9 And since we are short on time, rather  
10 than waiting for questions and comment at the end,  
11 let me invite you to interrupt as freely as you  
12 wish so that we can economize.

13 MS. KEPPLINGER: Wayne?

14 MR. SOBON: I have one question for you  
15 about the age, maybe you get into that in the next  
16 chart but do you -- similar to the actual corps  
17 production goals, do you have a goal you're  
18 shooting for for optimal time, sort of inventory  
19 or optimal time for pending appeals for the Board  
20 that you are going to trend to? It obviously  
21 can't be zero like in any other sort of rational  
22 inventory management, if you call it that.

1                   But what is the goal you are shooting  
2                   for at the end for optimal pendency?

3                   MR. SMITH: We have a very definitive  
4                   goal and it's a one-year pendency. We're  
5                   somewhere between 10 months and 14 months. What  
6                   that means in terms of the actual size of the  
7                   inventory, we're not quite sure nor could we be  
8                   because, of course, how we maintain that inve --  
9                   or that pendency period of about a year and what  
10                  the corresponding size of the inventory would be  
11                  depends on the number of judges we have and patent  
12                  attorneys and other staff at the Board.

13                  Basically, we think rough numbers that  
14                  with a judge corps of about 300 and a patent  
15                  attorney corps of about 50, we would be able to  
16                  have an inventory of about 12,000 to 13,000 cases  
17                  which would -- ex parte appeals which would result  
18                  in a pendency of about a year.

19                  Here is some more detail about the age  
20                  of the pending appeals. To some extent this chart  
21                  shows more dramatically the great need for the  
22                  reduction in the ex parte appeal backlog. That is

1 some cases are three years old essentially. This  
2 chart was worse a year ago and what we did was  
3 undertake a reduction program on the oldest cases.

4 So we redirected the resources of the  
5 Board to go after all cases that had been pending  
6 for more than three years. And essentially, we  
7 eliminated them. We currently have an initiative  
8 to get rid of the cases that have been pending  
9 more than two-and-a-half years and hope to achieve  
10 that relatively soon.

11 Now, that has a consequence in that the  
12 newer cases, the pendency goes up but the age of  
13 the inventory goes down which overall we think is  
14 a suitable tradeoff.

15 MR. THURLOW: So, Chief, just for the  
16 record, this say that in past meetings we've  
17 always started with the AIA and we asked the Board  
18 to start with the ex parte appeals first just for  
19 the record because I receive many emails and  
20 someone saying we're looking forward to the PTAB  
21 part of the AIA trials. We request you do this  
22 first because in the past meetings we've always

1 kind of not given enough time to the ex parte  
2 appeals.

3           The only request I'd have for the future  
4 meetings, I guess it's slide three, where the  
5 word, you have collaboration efforts underway with  
6 patents. To the extent that we could have more  
7 specifics on that and we could provide any helpful  
8 input, the example I'll give on that and I'll give  
9 credit to Wayne and Esther and many others is  
10 that, and Andy mentioned earlier today, we've done  
11 a lot of work with the patent office on different  
12 initiatives namely with ERC and it's had a great  
13 deal of success.

14           If we get more specifics in future  
15 meetings about those kind of efforts, to the  
16 extent we can help, we would look forward to  
17 helping in that way.

18           MR. SMITH: We certainly can do that.  
19 The absence of specifics on the chart or on the  
20 slide is not a reflection of the absence of  
21 specifics in the actual working details, we could  
22 probably give you easily an hour just on the

1 specific initiatives in this area, both the  
2 history and the current activity underway with  
3 numbers and details and estimates.

4 MS. KEPPLINGER: Thank you. And we  
5 really appreciate that. I'll tell you one thing  
6 that worked very successfully with us on the RCE.  
7 We did a lot of work offline in talking with them  
8 and coming up with ideas and working on those  
9 ideas. They weren't reflected in the public  
10 meeting because we were just working on  
11 initiatives and suggesting and then, patents was  
12 able to put forward, put some meat on those by  
13 working with the union to get agreement on various  
14 initiatives. So that's one model that you could  
15 use.

16 MR. SMITH: Let me say generally about  
17 our efforts here and this is perhaps a good place  
18 to say this since the appropriate officials from  
19 the patent corps are here. At the Board we very  
20 much respect the expertise within the corps for  
21 purposes of helping to determine which cases are  
22 better removed from our inventory for further

1 treatment at the corps.

2 That is, of course, the Board in total,  
3 judges and non-judges, is an entity of 300 people  
4 and the corps is orders of magnitude larger than  
5 that or at least one order of magnitude and a  
6 multiple larger than that. And we respect the  
7 great amount and long history of the corps'  
8 expertise in cases in examination and which can be  
9 applied, in part, we believe to helping us prune  
10 the inventory.

11 MS. KEPPLINGER: You make an excellent  
12 point and we'll very, on the Quality Subcommittee,  
13 work with Valencia on working on some of those  
14 suggestions as well.

15 MR. SMITH: Unless there are more  
16 questions about the ex parte appeals area?

17 MR. BAOLICK: All right, so the first  
18 chart I have for you is a comparison just by  
19 technology center of the fiscal year 2014 filings  
20 versus patent grants just for the reason if you  
21 look at the totals, you'll see that the number of  
22 patents granted just in FY14 is over 300,000.



1       Whereas we only received just under 1,500 total  
2       petitions for AIA trials.

3               So just the relative numbers I think are  
4       illustrative of the portion of the patent realm  
5       that the trials occupy. Another point of interest  
6       is just looking at the technology center  
7       breakdown. They are roughly on par with the  
8       filings that we receive in AIA are roughly on par  
9       with the percentage of patents granted in each of  
10      the various technology centers.

11             The next slide is just a historical  
12      slide of the filings we've received. We've shown  
13      this one before but as you can see this last four  
14      or five months has been rather eventful ones  
15      starting perhaps in October when we received 195  
16      petitions and then, in December when we received  
17      194. This month so far we're at 73 as of this  
18      slide. So just on a straight line projection,  
19      we'd be looking at maybe 140, 150 for this month.

20             So and the historical trends, if they  
21      hold, last year January and February were  
22      relatively low months but then as the year

1 progressed into the next quarter, the filings  
2 started to increase. So we'll be monitoring this  
3 with great interest to see what the filings are.

4 As the Chief Judge mentioned, this is  
5 very important to us because it has great  
6 implications for the Board's resources and the use  
7 of the Board's resources. If the filings hold as  
8 they are and don't dramatically increase, we are  
9 looking forward to further reductions in the  
10 inventory of the ex parte appeals. But if the  
11 filings really start to increase dramatically,  
12 then again, that has some implications for how  
13 fast we'd be able to get the ex parte appeal  
14 backlog down.

15 The next slide is one --

16 MS. KEPPLINGER: Mike?

17 MR. BAOLICK: Sorry, yes?

18 MR. WALKER: Can I make a comment on  
19 that, please? So thank you very much. On that  
20 point, one of the things that I think is relevant  
21 is this issue that and I'll just give you the  
22 public perspective that there are people out there

1       who are looking to use IPRs as a financial tool  
2       for their own betterment. And so that, as you  
3       look at your potential workload, I mean, this  
4       raises all sorts of public policy issues and these  
5       companies are going to -- companies who are patent  
6       holders are saying if you pay me X I will not  
7       bring an IPR against your patent.

8               Or they may be saying, I'll bring an IPR  
9       against one your competitors. You don't have to  
10      pay me now but if I'm successful, you can pay me  
11      later. So there's a whole public policy aspect to  
12      that that I'm not getting into now. But in terms  
13      of your projections in the workload you just  
14      mentioned, I just pass that on as a comment that  
15      the original intent for these IPRs to really be  
16      some further check on patent quality from the user  
17      community.

18             This could be -- this could take on a  
19      whole 'nother trajectory that could impact your  
20      cost. And I don't know if you're hearing the same  
21      thing from others but that's definitely something  
22      that the user community is seeing.

1                   MR. SMITH: One quick comment in  
2 response. Yes, this has taken on a whole  
3 different trajectory than we anticipated even  
4 without some of the more recent developments of  
5 particular kind of uses of the proceedings.  
6 Clearly, even for purposes of just simple patent  
7 removal the trajectory has a slope three times  
8 what we anticipated and which has caused us to  
9 have to bake into the mix all sorts of things that  
10 are suddenly upon us.

11                   MR. BAOLICK: Right. Okay, thank you.  
12 Were there other questions before we move on?  
13 Okay. So the next slide, just to touch very  
14 quickly because we've seen this slide before, but  
15 the proportions broken down by technology of the  
16 filings remain roughly what they have been. This  
17 shows you for FY15 through the end of last week  
18 the filings again are largely in the electrical  
19 technology centers with the next largest group  
20 being in the mechanical and business method, TCs,  
21 followed by the biotech pharmaceutical and then  
22 chemical.

1           We still do have a very small sliver of  
2 design cases that are being filed. This slide I'm  
3 really just going to skip over but what it shows  
4 quickly is that parties are choosing most -- in at  
5 least 80-90 percent of the time to file  
6 preliminary responses in their cases.

7           This slide while busy, I would just like  
8 to have you focus on for the moment the percent  
9 instituted column and just noting that in FY15 our  
10 percent instituted for inter partes reviews is  
11 about on par with what it was last year. Keep in  
12 mind that this is really only four-and-a-half  
13 months' worth of data. Looking at the covered  
14 business methods, you'll notice the percent of  
15 institution is down. However, I would just  
16 caution that the numbers are much smaller there.

17           So small changes in numbers can make  
18 large changes in percentage. I would also note in  
19 the column all the way on the right, the total  
20 number of decisions on institution, you can see  
21 that already four-and-a-half months into FY15,  
22 we've decided over 500 petitions whereas we

1       decided 765 in all of last year. And the trend is  
2       the same in the covered business method realm.

3                 It also shows up in the next slide on  
4       the final dispositions, what happened to the cases  
5       that filed. And if you look at the column all the  
6       way on the right, the number of final decisions in  
7       inter partes review again, so far this fiscal  
8       year; we've had 108 final written decisions. In  
9       all of last year, we had 130 in inter partes  
10      reviews. So you can really start to see the ramp  
11      up that's a result -- it's a lagging result of  
12      that dramatic increase in filings that you saw  
13      back in the historical chart.

14                MR. THURLOW: Scott, just looking at the  
15      trend real quick and this is my third year in PPAC  
16      so I'm familiar with, obviously, the discussions  
17      we had. Going back some time there was initial  
18      concern what the damage to all the patent owner  
19      holders' owners and so one of the concerns, I'll  
20      try not to use that saying if we all know. But  
21      now I just say from the trend standpoint, I'm  
22      getting more questions or a lot of questions from

1 the petitioner side about how petitions are not  
2 being granted not just partial institution which  
3 was a significant concern but also petitions  
4 outright not being granted. So I only say that  
5 just as we look at trends and in several years  
6 doing this it's changing.

7 MR. BAOLICK: Right. It is interesting  
8 how -- I guess the one thing that you can  
9 guarantee about our proceeding is that somebody's  
10 not going to be happy with the result. Here's  
11 just a quick snapshot of a look at what happened  
12 in our final written decisions in inter partes  
13 review. And here this is similar to a chart that  
14 we had presented at least during the roadshows  
15 back in last April and May. And it's holding  
16 fairly steady.

17 There's about 63 percent of the final  
18 written decisions result in all of the instituted  
19 claims being found unpatentable. About 21 percent  
20 and again, this is at the very end, found some of  
21 the claims that were instituted unpatentable and  
22 we have about 16 percent of the time where none of

1 the instituted claims were found unpatentable.

2 The results for the covered business  
3 methods are similar but the percentages are  
4 slightly different but once again, the numbers or  
5 much smaller. So you can see, for example, here  
6 you only have 30 cases in this chart whereas we  
7 had 224 in the other chart. So just the sheer  
8 numbers of the IPRs is dwarfing the inter partes  
9 reviews.

10 MS. KEPPLINGER: Dan, did you have a  
11 comment?

12 MR. LANG: Yes, please. So I want to  
13 just take the opportunity to thank the PTAB for  
14 its work in establishing the procedures and  
15 realizing a good part of the vision that went into  
16 putting them in the AIA, that these procedures  
17 have, I think, assumed a very central role in  
18 enforcing patent quality and dealing with  
19 assertions of weak patents. Just a kudos for  
20 being able to scale up that effort in a few years  
21 and get this process going.

22 I mean, the procedures are, you know,



1 these are not inexpensive procedures from a  
2 petitioner standpoint. I mean, to maybe add a  
3 little bit of a different spin to the concerns  
4 about some of the things that have been brought  
5 from our perspective, that when somebody brings  
6 one of these petitions forward, there's a  
7 significant expense involved and that represents a  
8 pretty high level of confidence that this is a  
9 patent that deserves to go down.

10 MR. JACOBS: Just quickly. I have seen  
11 some data, though not here, about the nature of  
12 written decisions in terms of 102s and 103s. Are  
13 you collecting those data as well in terms of  
14 claims that are invalidated in terms of what  
15 grounds and so forth?

16 MR. BAOLICK: We do keep track of some  
17 of that data. One thing, though, to understand  
18 about our current data collection is that a lot of  
19 it is done manually. We don't have our next  
20 generation system in place yet which hopefully  
21 will result in more automated collection of some  
22 of this data. But we are keeping track of that

1 and we could present some of those slides at our  
2 next meeting if you'd like to see those.

3 We had done some of those for our,  
4 again, for our roadshows back in April and May of  
5 last year. And so, we've continued to collect  
6 that information.

7 MR. SMITH: I hope it is not unseemly  
8 for the Chief Judge of the Board to say a thing or  
9 to say a thing about our work complimentary of the  
10 Board. I will beg your leave to do so.

11 The Deputy Chief Judge and I, as part of  
12 our responsibilities, and particularly in  
13 connection with our consistency review at the  
14 Board, read a great number of our decisions in our  
15 various areas of jurisdiction. And certainly, for  
16 a variety of reasons including the newness of the  
17 AIA proceedings, we read a great number of AIA  
18 decisions.

19 We invite all of you to read as many of  
20 them as you possibly can stomach. We think that  
21 the quality of the work by our colleagues at the  
22 Board, the care they take in reviewing the cases,

1 the review of the evidence, the clear exposition  
2 of the decisional rationale, I think I speak for  
3 both of us in saying we consider it an enormous  
4 privilege to be colleagues of the people who are  
5 doing this work and the reason for that is seen  
6 most clearly in their written output which we  
7 recommend to all of you.

8 I think you would want us to touch  
9 before we end here on the rulemaking activity  
10 which is of great interest to the public. We  
11 received a great number of comments during our  
12 roadshows in 2014 which prompted an invitation or  
13 a request to stakeholders for comments which we  
14 have received in large numbers. We have been  
15 considering the comments and looking to what rule  
16 changes we would make in response to those  
17 comments.

18 We think the best way to approach the  
19 doing of this work for speed and efficiency and  
20 for getting it right involves a first package  
21 where we could put forward rules that are quick  
22 fixes to some things about which there seem to be

1 substantial agreement including, for example,  
2 increase in number of pages for various filings.

3           There's a second package that we  
4 envision undertaking a little later in time that  
5 is not Q2 of 2015 but more like Q3 or Q4 of 2015  
6 that would involve some things that seem to be the  
7 subject of greater dispute and we're arriving at  
8 the right rule revision is a little more involved  
9 and complicated. But that's the path we're on and  
10 we think we're in a good position to get where we  
11 need to be on that.

12           Just providing a bit more specificity  
13 about that, as I mentioned, the increase in page  
14 numbers in some particular areas specifically in  
15 the motions to amend area seems to be -- to have  
16 driven towards universal agreement. So we're  
17 likely to make that change very soon and some  
18 other page changes possibly as well.

19           And we also can make some changes with  
20 regard to the default protective order burden in a  
21 quick fix. Again, there seemed not to be that  
22 much disagreement about what kind of changes would

1 be useful there.

2 A bit more difficult to, in some of the  
3 other areas, including for example, discovery  
4 where we have had about 50 percent of the people  
5 commenting say discovery ought to stay just as it  
6 is and another 50 percent saying discovery ought  
7 to be more sweeping. And maybe we've had a few  
8 people actually in the mix indicate that they  
9 would prefer discovery be even narrower but I  
10 think there is not support for that.

11 Bottom line is there is a wide variation  
12 of view as to how that should move. So we need to  
13 look at it more carefully.

14 Some of the more complex things we've  
15 looked at that we are considering and might drive  
16 a change include, for example, whether or not new  
17 testamentary evidence can be put forward by patent  
18 owners in the preliminary phase before a trial is  
19 instituted. Again, we're not sure even given  
20 comments in favor of doing that that we would move  
21 in that direction because there are consequences  
22 to doing that that might cause other problems

1 including, for example, whether a new submission  
2 of a testamentary kind in the preliminary phase by  
3 the patent owner then would trigger certain  
4 responsive opportunities for the petitioner before  
5 the trial begins.

6           And you will recall that the preliminary  
7 phase of the trial or pretrial goes no more than  
8 six months and the patent owner response time is  
9 really only three months. If we burden that three  
10 months with additional exchanges between the  
11 parties, it becomes very difficult to meet other  
12 requirements of the statute. So again, even with  
13 some support for that kind of change, we have to  
14 do quite a bit more thinking before we actually  
15 arrive at a change.

16           You probably are aware that we have  
17 endeavored to bring forward a program of  
18 Board-side chats. We've had one of them already  
19 on the third of February. We've had great support  
20 from the Undersecretary's Office in putting this  
21 together and staging it and intend to carry  
22 through with the scheduled activities shown on

1 this slide through the remainder of the fiscal  
2 year.

3 MR. THURLOW: I just have one quick  
4 comment and thank you very much. I actually  
5 listened to the Board-side chat from February 3rd.  
6 It was very good. I want to make the comment with  
7 the corps here and Dana and yourself. And we have  
8 disagreement on this one point on PPAC so but to  
9 give you an example, the use of PGR going forward.  
10 You know, we've been asked to give a lot of  
11 feedback by Bruce and others of what we expect to  
12 see for filings, PGR.

13 So real interesting debate that we're  
14 having in PPAC and elsewhere is PGR going to be  
15 more of a quality review program or according to  
16 Judge Newman maybe more of a kind of a  
17 corresponding litigation for and validity. So one  
18 of the concerns, for example, this is how PGR may  
19 be used.

20 Now we're in the first even of the file  
21 system. If I file first, someone files second.  
22 The second person gets the patent. The only way

1 for me to knock it out really is through PGR. So  
2 that's something that according, as I was telling  
3 Dana yesterday, I don't think there should be --  
4 some believe estoppel should not be at issue in  
5 that case, or reasonably should have known.

6 The other situation is if a one-on-one  
7 case every issues again, that we can use the PGR  
8 to knock it out within that first nine months  
9 understanding that 80 percent of IPRs are in  
10 litigation. That may not be the case with PGR.  
11 We'll have to see how it plays out but there's  
12 much more value -- there's a lot of value in the  
13 patents in the marketplace not just in litigation.  
14 It's in the business community, too.

15 So I just kind of -- I'm interested in  
16 hearing that debate and we have to be careful with  
17 the examiners when they do that interference  
18 research especially for track one that they see  
19 cases that are not published yet but have an  
20 earlier date and the first thing under the file so  
21 for you three in particular to consider.

22 MR. BAOLICK: I agree it will be



1 interesting to see how the PGRs play out because  
2 we've only had a handful of the filings so far but  
3 as more of the patents issue under first inventor  
4 to file, we'll see how this unfolds. Yeah.

5 MS. KEPPLINGER: Okay, thank you. Any  
6 other comments or questions? Well, thank you,  
7 Judge Smith. That was an excellent presentation  
8 and you did a fabulous job of catching us up.  
9 Thank you.

10 MR. SMITH: Thank you.

11 MS. KEPPLINGER: Okay. So if we could  
12 be back here, everybody go and get your lunches  
13 and we can come back here and eat. Let's be back  
14 by 10 of. That just puts us five minutes behind  
15 and we can eat here and then, we'll have our  
16 executive session.

17 The public session will start again at  
18 roughly 1:30 or 1:35. Thank you.

19 (Recess)

20 MS. KEPPLINGER: So I think we've got --  
21 we're going to have a demonstration today of the  
22 PE2E and we look forward to hearing about it.

1 Thank you.

2 MR. LANDRITH: Thank you. We're always  
3 very excited to demonstrate patents and especially  
4 to you all since you've been with us since the  
5 beginning and through thick and thin. And the  
6 outset of PE2E, this was back when even before we  
7 were presenting the wire frames to you to explain  
8 the project requirements, there were a lot of  
9 people that felt like this project would suffer  
10 the fate of decades of efforts to replace legacy  
11 systems.

12 There are systems that were made for far  
13 smaller workforce with very different needs and we  
14 couldn't have accomplished this without the  
15 support of PPAC and POPA. And so, I want to thank  
16 you all for your involvement on an ongoing basis  
17 and your support.

18 What we're demonstrating today is what  
19 we call the docket and application viewer or DAVE  
20 for short. It is designed to be a replacement of  
21 the eDAN tool which shows the examiner docket as  
22 well as document viewing tools and case metadata

1 viewing tools.

2 It's been released to 340 users. What  
3 you're going to see today contains all the  
4 features that we're going to release in March  
5 except for one which is an OCR or on-demand  
6 technology that we are adding.

7 So this is almost feature complete and  
8 represents a huge achievement and I'm going to  
9 turn it over to Nadia Khoshnoodi to demonstrate.

10 MS. KHOSHNOODI: Good afternoon,  
11 everybody. My name is Nadia Khoshnoodi. I'm an  
12 examiner from TC2400 and today I'm going to go  
13 over the docket and application viewer. Let me go  
14 through. Through the features that I will be  
15 presenting today include navigating through the  
16 application viewer, accessing application contents  
17 and data related to the application, viewing the  
18 text documents, IFW images, adding notes to the  
19 application and also accessing various gadgets  
20 such as the IDS viewer, the document comparison  
21 tool, the references viewer and the planner as  
22 well. Oh, and also the continuity data map.

1 We'll see all of these in action.

2 Let me go live into the tool now at this  
3 point. So when I open up my docket in the Web  
4 browser in Chrome, this is what's going to load  
5 here and this is my docket. All of the  
6 applications that I have docketed to me are  
7 separated into different filters. There is a new  
8 filter which includes my continuing new and  
9 regular new applications that have been docketed  
10 to me.

11 The amendments will show any amendments  
12 that have come back. There's also a special new  
13 and special amended filter and the return and  
14 expedited tabs which, you know, for specific types  
15 of applications will be put under those.

16 We also have the ability to open up  
17 anybody else's docket in order to check on for  
18 supervisors or other people, anybody who needs to  
19 look into somebody else's docket, if you're  
20 helping a junior examiner, you'd also be able to  
21 access their docket.

22 This application viewer drop-down menu

1 shows you the list of recent applications and if I  
2 had any open it would show that as well right  
3 here. And I'll show you in a little bit. And the  
4 case list, this just shows you all the different  
5 tabs that will be populated right here along this  
6 bar right here in case you accidentally close one.

7           So I'm going to actually go into the  
8 different views. Right now, by default, it will  
9 open into the title, this title view where it's  
10 not -- the title is not wrapped. If you wanted  
11 the title to be wrapped in its cell to try and  
12 save some space on the screen, you would be able  
13 to put it in this multi-wrap view. There is also  
14 a title span view which will have the title  
15 spanning underneath all of these other columns  
16 that are available.

17           And finally, and the most exciting view  
18 would be the image view. In this view, you'll be  
19 able to view the thumbnail image of all of the  
20 drawings that are filed in each of these  
21 applications. And that actually helps us a lot.  
22 I'm sure it'll help design examiners but also in

1 my field it would help because if I was looking  
2 for a particular application I worked on in any of  
3 the tabs, I would be able to check this view for  
4 pertinent prior art. So this is -- it's great.  
5 You can go ahead and navigate through the images  
6 as well without actually opening the application.  
7 So that's really helpful.

8           And for now, I'll just go back to the  
9 regular title, the list view. Okay, additionally,  
10 you're able to add notes on each of these rows  
11 specific to each of these applications. As you  
12 can see, I already added a note indicating that  
13 this is the particular application that I would  
14 like to go over for this demonstration. So that  
15 actually helped me even for this.

16           So we have -- the other and let me  
17 actually -- once I open this application, you'll  
18 see that that's going to open into a new window  
19 but I want to draw attention to this color here,  
20 this orange color. If I minimize this, we'll see  
21 that color right here so that you can keep track  
22 of the cases that are open. And that color will

1 also be right here.

2           So it helps a lot in terms of keeping  
3 track of the open cases and kind of correlating  
4 which ones you're attempting to get back to. So  
5 if I open up a new application, it's going to be a  
6 different color and it will show that here as  
7 well.

8           So I'm going to go ahead and close that  
9 one since I've demonstrated that point. And the  
10 other thing is since it's a browser; you're also  
11 able to utilize the browser zoom functionality.  
12 So if the text was too small, you're able to  
13 utilize that functionality.

14           And also, there are columns with the CPC  
15 information since we've moved into that direction  
16 at this point. But basically all of these columns  
17 are pertinent to our examination and so it's very  
18 good. It's nicely presented for us to keep track  
19 of everything.

20           I'll go ahead and minimize that and  
21 then, actually go into the case that I had open so  
22 we can look into some more specifics. When you

1 first open this application or in any new  
2 application, you're going to notice that by  
3 default, the claims specification and drawings  
4 will be open. And if you wanted to close any of  
5 them you would be able to do so by just clicking  
6 the X.

7           For any text version of claims or we  
8 will have an automatically generated claim tree  
9 which helps us. Before I used to do it by hand so  
10 that's definitely nice to have that feature and  
11 you can also print it and there's also different  
12 views. So let me go ahead and show you the  
13 vertical view of it. Again, we have the option to  
14 zoom in and out as we please.

15           And go ahead and switch back to the  
16 indented view since it takes up a little bit less  
17 space. So moving to this application contents  
18 tab, that's going to show you all of the documents  
19 that have been filed. It's got all of the IFW  
20 images that have been filed for this particular  
21 application. You can sort by any of these columns  
22 and you can kind of look through and see the



1 prosecution as it's gone. It's kind of gone  
2 through some rounds here.

3 If you wanted to, you can filter by  
4 particular types of documents. For example, if I  
5 only wanted to see the IDS documents, I could go  
6 ahead and click that and see only those documents.

7 The application data tab includes  
8 information that we would use for search and just  
9 for understanding the general content of what's  
10 presented in the application, the specifics  
11 related to the case. So for example, you see the  
12 title. You see that it's been docketed to me and  
13 we have this in several instances that it's my  
14 docket that's open and whoever it's been docketed  
15 to is also listed here along with analytics.

16 We're also able to see the attorneys of  
17 record, the customer number would be loaded in  
18 here and if I wanted to view the lists of  
19 attorneys, it would pop up in this window here.  
20 So that's actually very helpful. So we don't have  
21 to go outside of this tool to access that list.  
22 And as you can see, the customer number loaded

1 here.

2           The other information that's down here,  
3 I won't go through every row or every category but  
4 all of this information is somewhat relevant to  
5 our examinations. So and there are certain areas  
6 where like the classification information was on  
7 the docket view. We also wanted to have that  
8 included once you have an open application to  
9 minimize going back and forth between the views.  
10 So I think that's very helpful that everything is  
11 kind of in more than one location. It's very  
12 helpful.

13           Relating to continuity, if I expand  
14 this, it will show me the applications and the  
15 continuity. And the cool feature here is family  
16 map will be presented in a visual form so that  
17 helps me see anything that's been either a  
18 continuation or a continuation in part and other  
19 types of even provisionals or any type of family  
20 will pop up here. If I wanted to see the report  
21 view, I could also see it in that manner.

22           So let me kind of show you based on --

1 and actually I'm going to zoom out of this a  
2 little bit. Okay. So once you have a text  
3 document available, you're able to include notes  
4 and I think that's a huge feature because usually  
5 prior to this I would include my notes on paper.  
6 So this has helped me be better organized in  
7 electronic format. So it's helped me greatly to  
8 kind of keep track. And I went ahead and added  
9 some notes here just for the purposes of this  
10 demonstration to give you an idea and I will also  
11 add one but I just want to describe these first.

12           So for example, if I had a reference for  
13 all of these features and I realized this is the  
14 one where I'm going to have to find another  
15 reference and I find something else for it. So I  
16 could tag that as, okay, this will make this a 103  
17 and I'll need whatever reference for this. It's  
18 basically customizable by the examiner. You can  
19 add whatever you want in free text.

20           If I felt like this was allowable, I  
21 would be able to highlight the allowable text.  
22 Again, this is for demonstration purposes only.

1 I'm not indicating anything at this moment. But  
2 just you're able to kind of see the notes that  
3 would have been added by an examiner.

4 So I'll show you if I wanted to actually  
5 add a note, it's as easy as just highlighting it  
6 and when you release the cursor, you can select  
7 adding a note. We have various tags here so all  
8 of those can be used, well, anything that the  
9 examiner would like. And for anything that's a  
10 112 first, 112 second, you can say that the claims  
11 will -- the dependent claims will inherit those  
12 rejections as well.

13 And it's always nice to have multiple  
14 colors because people like to color code things,  
15 right? So it's very helpful.

16 We have the option of private notes  
17 which would be private to the user or internal  
18 case notes which would be viewable by others. And  
19 I'm not going to actually add one since I've  
20 already previously added them.

21 In the specification -- oh, I'm sorry.  
22 Actually, let me show you. There is also an image

1 view available. For all of these documents that  
2 have been converted into text, there is also the  
3 image view and that's very helpful. In case after  
4 something's been amended, you just want to double  
5 check, that's available for you so. And  
6 annotations can be placed on anything that's in  
7 image view. So that's also very helpful. I mean  
8 the biggest thing for me that's helped me a lot is  
9 that you can add the notes and add your features,  
10 anything that you needed to add like you can  
11 localize it within the file so every time you go  
12 back to it, you'll be able to pull up all of the  
13 stuff that you added and this isn't actually even  
14 my computer.

15 So clearly, since it's Web browser  
16 based, it saves those. On any other computer, if  
17 you login as your own, with your own user  
18 information so that's a big plus.

19 Most of the specifications have also  
20 been converted into texts. And if I was looking  
21 for anything specific within the text, I could do  
22 a keyword search. So just since that's the second

1 word, I'll just do present and we'll see it should  
2 find, where is the highlight? I'm missing the  
3 highlight however --

4 MR. LANDRITH: I think it's just washed  
5 out on the screen.

6 MS. KHOSHNOODI: Yeah, I think so. So  
7 however it has helped me a lot in the past so  
8 we'll just go with that. And the specification is  
9 also again any text document will be viewable in  
10 the image format. So the drawings, these are only  
11 available in the image format which makes sense,  
12 right?

13 In terms of the gadgets that we have  
14 available, I really wanted to demonstrate the IDS  
15 viewer. This will show you all the IDS documents  
16 that have been or information disclosure  
17 statements that have been filed in reference to  
18 this application. So I could expand any of them  
19 or all of them.

20 The really cool thing about the  
21 different view is that we have that thumbnail view  
22 available here as well. So before this, when I

1 get a lot of information disclosure statements  
2 with hundreds of let's say and non-patent  
3 literature documents or foreign documents, they  
4 just scanned in under the code NPL or foreign  
5 patents or whatever. So for this it's very  
6 helpful so that you can kind of go through when  
7 you're considering, you can say okay I saw that  
8 one, I saw that one.

9           So this helps us a lot when we're  
10 bombarded with multiple references to consider.  
11 And you can also go through it and navigate  
12 through the images. So that's extremely helpful.

13           And we also, one of the bigger things  
14 that I wanted to note, so when you actually open  
15 the IDS, previously we would have to go outside of  
16 this tool to perform annotations and now, we have  
17 the annotations available within the tool. So  
18 that's definitely something that helps to just  
19 have everything localized and we would just be  
20 able to put it into a folder for us to import into  
21 our office action.

22           Let me and let's see. So the next

1 gadget I'd like to go over is the compare gadget.  
2 This is actually very helpful to us for example in  
3 instances of determining double patenting. So  
4 this is my application, my current application and  
5 I'm going to go ahead and select the claims that  
6 have most recently been filed and from what I saw  
7 in that continuity data, application 13972779 was  
8 in -- that was I think either a continuation or a  
9 continuation in part, I don't recall, of this  
10 application.

11 So I wanted to check to see if there was  
12 a double patenting issue, I would be able to  
13 compare these two documents to see if there is  
14 anything that I need to consider in terms of a  
15 double patenting rejection. So as you can see  
16 they look fairly different. Of course it takes  
17 very close attention by the examiner and the  
18 examiner will have to analyze this thoroughly but  
19 basically this tool will present the strikethrough  
20 and the underlines. And you can also choose which  
21 specific claims you'd want to compare.

22 So it's very customizable and if you



1 made a mistake and you wanted -- or if you just  
2 wanted to see them in the opposite form, you could  
3 kind of see that as well very easily. And let me  
4 actually close this one out. The references  
5 viewer is the next one that I wanted to go over.

6 I went ahead and added a reference  
7 before the demo just to save some time but  
8 basically you're able to use this add reference  
9 dropdown menu and you can choose either to enter a  
10 patent number which will pull in all of the data  
11 for that patent or you can choose to put in the  
12 foreign patent number and that, you will be able  
13 to verify certain ones of, you know, so. Or if  
14 you're not able to verify it since the system is  
15 not identifying it, you're still able to add it in  
16 there. So nothing precludes you from doing so and  
17 if you wanted to, you could also add an NPL and  
18 with the publication information and you can  
19 attach the document which is the biggest thing  
20 here, right?

21 Because when I go back, instead of now  
22 printing the document, I can just attach it in

1 here thinking oh, maybe I'll use in this future.  
2 Maybe I want to cite. It's very helpful at loc --  
3 it puts everything within the application and  
4 that's the biggest thing for me that's -- it's a  
5 huge improvement over what we have so. A lot of  
6 these things are enhancement and just they're very  
7 helpful to better organize everything in an  
8 electronic format.

9 I already do this stuff in a paper  
10 format currently so it's not it changes much there  
11 but in terms of being able to access it from  
12 anywhere, it's very helpful. And let's see, so I  
13 think I missed the planner. So let me go back to  
14 the docket view.

15 Oops, that's the same. So the planner  
16 is what we can access from the original view which  
17 is what's going to open when I login or with my --  
18 well, when I open the browser under my user login  
19 information. So this icon right here is called  
20 the planner. The other cool feature is that it's  
21 very customizable. You can open anything in any  
22 of these little blue areas that highlight as you

1 can see.

2                   So I'm going to go ahead and open it  
3 here and this is actually very cool because I can  
4 plan what I like to do this bi-week, right. I can  
5 say these applications need to be done and this is  
6 all just user customizable. It's for me to kind  
7 of put together a plan for myself for the bi-week.  
8 I can also do the same thing for next bi-week and  
9 this will also show applications which have been  
10 completed this bi- week and next bi-week.

11                   So for the most part, and this also has  
12 all the views, but for the most part those were  
13 the main features that I wanted to go over and I  
14 left some time in case there are any questions.  
15 So I don't know if anybody has any questions or I  
16 can --

17                   MR. GOODSON: I've got one. If I go  
18 online at home or the office to search patent  
19 database there's two different databases, 76  
20 forward and back.

21                   MS. KEPPLINGER: Mark, can you put on  
22 your --

1                   MR. GOODSON: I'm sorry. The 76  
2                   database forward and back. Is it -- and you may  
3                   not know the mechanics. You obviously can get to  
4                   both or is it being combined into one database?

5                   MS. KHOSHNOODI: In terms of searching  
6                   or in terms of --

7                   MR. GOODSON: Yeah.

8                   MS. KHOSHNOODI: So searching is another  
9                   aspect. That's going to be under another -- yeah,  
10                  you would maybe --

11                  MR. LANDRITH: Yeah, I can speak to  
12                  that. So this pulls it up by the patent  
13                  application number. Right now this focuses on the  
14                  active and the priority one non-active cases and  
15                  we're loading the back file kind of in the  
16                  background going along. But the search  
17                  capabilities are something that what she  
18                  demonstrated are kind of searching within a  
19                  document.

20                  The search capabilities in general, are  
21                  something that we're working on refining. One of  
22                  the challenges is the older documents are not as

1 easy to turn into text which makes them more  
2 difficult to search especially the old, old  
3 documents which contain human handwriting. That's  
4 not a problem with 76 but that is a problem that  
5 we're working on in a separate area of the  
6 examination tools and the public tools.

7 MR. GOODSON: Thank you.

8 MR. LANDRITH: You bet.

9 MR. THURLOW: So it seems like a great  
10 program. I wish I had this at work. I guess just  
11 a more general question. It just seems like as  
12 examiners you have to go through a lot of training  
13 I guess with the CPC training you had last year  
14 and you have this. How much -- is there an  
15 average amount of time that an examiner gets to go  
16 through training for this? It is a day? Two,  
17 three days, a week, two weeks?

18 MS. KHOSHNOODI: So they're currently  
19 putting together a training plan for this and they  
20 have their draft copy. I can't really speak to  
21 more than that just from I'm just -- I'm a  
22 detailee so I don't want to kind of speak out of

1 terms.

2 MR. FAILE: So I'll take the pressure  
3 off you. So, Peter, in general, this would be in  
4 our automation suite of training and it really  
5 depends on the actual program we're deploying and  
6 how different it is. Something like this, it's  
7 not going to be a two-day training but it'll  
8 probably be a few hours' worth of training. It'll  
9 probably be some practice time, et cetera. It  
10 kind of scales up by what tool we're rolling out.

11 This would be -- this is a big  
12 departure, I'll say, from our current tool, our  
13 eDAN tool docket viewer. So this would probably  
14 be on the side of the training where we're  
15 spending some more time making sure examiners are  
16 comfortable. This is a bread and butter tool  
17 they'll be using every day to look at their  
18 docket.

19 MS. KHOSHNOODI: The one thing I wanted  
20 to note is just that the interface, it's more user  
21 friendly however; a lot of this data is already in  
22 our current tool as well. So hopefully, again,



1 a couple of things that I think David alluded to  
2 earlier. First of all, in terms of placing this  
3 in the historical context, right? Some of the  
4 people who have participated in these meetings  
5 that we (inaudible) remember we saw a demo of an  
6 early version of this at the end of 2012, more  
7 than two years ago.

8           And then, that effort was put on hold  
9 during the sequester period and now we have to  
10 start it up again. And then, what we're seeing  
11 today is really not only a newer version of that  
12 tool that's about to rollout but also in many ways  
13 superior in terms of its functionality. So I know  
14 David thanked us for our support. We have been  
15 supporting it but thank you guys for sticking with  
16 this all this time in terms of getting this rolled  
17 out.

18           Second point of clarification is I know  
19 some of the people here aren't really familiar  
20 with the PE2E portfolio and this docket viewer is  
21 really the first of a series of tools within that  
22 portfolio that are being rolled out. And I know,



1 David, you'll talk more about this later but  
2 sometimes it gets confused because we'll say this  
3 is PE2E demo and it's really only a demo of the  
4 docket application viewer component and the search  
5 tool, the office engine, some of these others are  
6 still in the works.

7           And then, related to that, Nadia, you  
8 pointed out like a whole bunch of cool features  
9 and very useful features. And some of them you  
10 said, oh, this is great. I can see the same data  
11 at home that I would see here because it's browser  
12 based and all that. Now, a lot of us take that  
13 kind of thing for granted now because that's true  
14 of most of the applications we use. But in terms  
15 of the context here at the office because our  
16 infrastructure hasn't been modernized because of  
17 these various issues that we've had, many of them  
18 financial, that this is really a very new thing  
19 for the office to have an application like this  
20 that instead of being client server based, meaning  
21 built on technology from the 1980s, it's really  
22 built on technology from today.

1                   So it's from the bottom up. I know you  
2                   were probably going to say this anyway, David,  
3                   right? But from the bottom up. This is built,  
4                   you know, you're seeing the user point of view but  
5                   underneath that is a tool that's built using  
6                   current day technology which means we can  
7                   customize and integrate it with the other tools  
8                   and so forth.

9                   Okay, so that's my spiel in terms of how  
10                  this fits. In terms of one question I had, you  
11                  showed a lot of things, you'd say, okay, this  
12                  would help me do access, would help me do Y.  
13                  You're an examiner.

14                  MS. KHOSHNOODI: Yes.

15                  MR. JACOBS: In terms of how you go  
16                  about your daily work, can you just like highlight  
17                  again a couple of things that you could see making  
18                  a difference in terms of how the examiners go  
19                  about their work on a daily basis?

20                  MS. KHOSHNOODI: In terms of this new  
21                  tool? Okay. So yeah, I mean the biggest things I  
22                  would say would be the notes are extremely helpful

1 to be able to add those in and just customize them  
2 as I please and also, it's nice that there's an  
3 option for making it a private note so that I can  
4 -- if I'm just thinking like oh, this might be  
5 something I want to consider without actually  
6 making it an official thing because I still  
7 haven't completely figured out which way I'm  
8 going, it's nice for me to have that option  
9 without anybody else kind of looking into it being  
10 like what was she thinking? So that's very  
11 helpful.

12 The IDS viewer, that's a newer feature  
13 that we did not have previous to this and that  
14 actually was very helpful because it localizes  
15 everything within one document. Definitely, the  
16 thumbnail view, extremely helpful and I think,  
17 yeah, the references viewer. I mean, pretty much  
18 all of the comparison, the reference viewer, the  
19 patent family map, all of these features are  
20 extremely helpful in our day- to-day job because  
21 we are production-based. So we want to go through  
22 things just as we -- anywhere where we can

1       localize things within one tool it's a lot -- it's  
2       very helpful for us, let me put it that way.

3                   MR. BUDENS: I'm going to steal some of  
4       Dave's thunder, too, and save him a whole lot of  
5       talking because especially for the benefit of our  
6       three new members. What you're seeing here is a  
7       paradigm shift in software development at the EPO?  
8       No, at the USPTO. Where am I?

9                   And I think the results speak for  
10       themselves. I mean, prior to the advent of this  
11       development, basically, we had a group that would  
12       develop a program and then they'd give it to the  
13       examiners and say, this is what it does, figure  
14       out -- make it work for yourself. This one was  
15       designed from the ground up with total user input.  
16       We have right now, what over 300 people and we're  
17       expanding it even more of examiners, people from  
18       the corps. Nadia's from the corps. And she's  
19       from POPA, she represents POPA with the team that  
20       represents there and we have four other people  
21       from POPA who are working up there.

22                   And it's being used right now by over

1 300 examiners testing it out and constantly giving  
2 feedback, constantly giving what Dave would call  
3 agile development. I just call smart user  
4 development but I think the results will be seen  
5 as we roll this out to the corps; it's going to be  
6 positive.

7 MS. KEPPLINGER: Wayne?

8 MR. SOBON: Yeah, you may have shown  
9 this before, David, but I think the comments about  
10 where this fits in the overall architecture, I  
11 always love graphics. And so, if you could figure  
12 out some sort of high level architecture diagram  
13 of how all the pieces will fit together and what  
14 pieces are done and what pieces are remaining,  
15 that would be very helpful to just sort of, I  
16 think for the general public but also for me to  
17 play along so we know what things are in the works  
18 and where they fit in the architecture structure.

19 MR. LANDRITH: I'll take that as an  
20 action item for the next PPAC meeting.

21 MR. SOBON: Great.

22 MR. BUDENS: If it helps, Wayne, if

1       you're familiar with any of our existing tools, we  
2       have what's called eDAN which is what we currently  
3       use to pop around amongst the applications on our  
4       docket. This is basically the beginnings of the  
5       replacement for the eDAN tool.

6                 Right now, most of our tools are not  
7       integrated well together. So we have eDAN to look  
8       at dockets. We have OACs to write office actions.  
9       We have east and west to search with and what am I  
10      forgetting? It seems like I'm forgetting another  
11      major tool somewhere.

12                MS. KHOSHNOODI: PALM maybe?

13                MR. BUDENS: Huh?

14                MS. KHOSHNOODI: PALM.

15                MR. BUDENS: PALM, oh yeah. Our worst  
16      memory, PALM. You know, to keep track of  
17      everything behind the scenes. And so, this one is  
18      the tool that's going to -- is replacing eDAN to  
19      allow people, examiners, to get to our  
20      applications and get to the files.

21                MS. KEPPLINGER: Anybody else?

22      Comments, questions? Okay. We'll move on to the

1 next presentation.

2 MS. KHOSHNOODI: Okay, thank you very  
3 much for your time.

4 MS. KEPPLINGER: Yeah, thank you,  
5 examiner.

6 MR. CHILES: Good afternoon, everyone.  
7 I am Tony Chiles, Deputy CIO. I am sitting in for  
8 John Owens who apologizes. Says he was pulled  
9 away, short notice, to DOC for a briefing so I  
10 just wanted to take this moment to introduce  
11 myself for those who may not know me. And  
12 following the tangible progress that we've just  
13 witnessed on the docket and application viewer, we  
14 are going to now move to a more comprehensive  
15 overview of our progress across the patents and  
16 PTAB efforts.

17 And so, David will continue on with that  
18 now.

19 MR. LANDRITH: So we're starting off  
20 this presentation by talking about the PE2E  
21 accomplishments specifically relating to the tool  
22 that we just went over. As we wait for that to

1       come up, we at this point what you saw is the  
2       release product short of some defect fixes that  
3       we're going to be doing. Some which are planned,  
4       some of which we'll realize over the course of the  
5       next month or two with examiner usage in addition  
6       to the feature I mentioned about OCR on demand.

7                 So then, with patent classification, we  
8       had released the CPC tool in January of 2013.  
9       Since then, we've had a series of major feature  
10      upgrades and releases the latest of which goes --  
11      is from October of 2014. What we did was we  
12      integrated secure authentication with the EPO,  
13      with the USPTO examiners for the EPO's Web site as  
14      well as enhancements to the database conflict  
15      resolution engine.

16                These are the accomplishments I  
17      discussed before focusing mostly on the last  
18      rectangle. So just this last month, we completed  
19      the transfer assistant tool enhancements that we  
20      had slated as well as automation improvements for  
21      the revision and reclassification tools that we  
22      use in concert with the EPO. CPC is starting to



1 stabilize in terms of major features. What we  
2 have on track for March are further enhancements  
3 in the transfer search assistant and  
4 classification allocation tools as well as bug  
5 fixes.

6 So a global dossier, examiner access to  
7 foreign patent application which currently uses an  
8 outdated system called TriNet, it does not include  
9 Chinese data. Through the one portal dossier  
10 project, that has been implemented in the  
11 examination tool that Nadia demonstrated. The  
12 pilot release went forward in November of 2014 and  
13 after a series of revisions and enhancements, it's  
14 on track to be deployed to all examiners along  
15 with the deployment of the tool that she  
16 demonstrated.

17 Public access to foreign application  
18 documents dossiers was a project that was just  
19 initiated this past September. It has two main  
20 aspects. One is foreign users accessing U.S.  
21 Patent family members. That part is going to be  
22 completed in June or the initial release will be

1 in June and then, the second part is the inverse  
2 of that which is U.S. public users accessing the  
3 foreign patent family data, that will be  
4 implemented in November using an additional tab in  
5 the public pair application.

6 So I'm not going to go into the details  
7 of all these releases that we have listed here. I  
8 mentioned in the last PPAC meeting that it covered  
9 during a period that we were releasing at about a  
10 third of the production releases that we were  
11 doing. But this required integration and  
12 modification of almost every major tool and a lot  
13 of our minor tools. We've completed the pilot  
14 review for the Hague implementation. The State  
15 Department has signed the Hague agreement finally  
16 and that puts us on track for the production  
17 launch in May.

18 So the patent law treaty implementation  
19 and we, at the end of the first quarter in FY15,  
20 we're able to enhance the patent term adjustment  
21 calculator. It enhances visibility as well as the  
22 administration capabilities for administrators and

1 users. We already dealt with the Hague  
2 implementation.

3 With AIA phase three, we had to close  
4 that down in order to focus on the Hague. As you  
5 saw, that was a good deal of work. We resumed it  
6 in mid-December. We're on track for third quarter  
7 FY15 deployment which involves revision to eDAN,  
8 score, PALM and expo and then, we'll complete the  
9 AIA phase three at the end of this fiscal year.

10 All right, so we have the patents and  
11 the PTAB, the Patent Trial and Appeal Board  
12 end-to-end deployments that cover the American and  
13 Vensac proceedings. For the inter partes review,  
14 we plan to release that at the end of this fiscal  
15 year. For the covered business methods, that will  
16 be at the beginning of the next fiscal year as  
17 with the post-grant reviews. And then derivations  
18 are doing to be second quarter of the next fiscal  
19 year.

20 We also have slated new automated  
21 reporting for PTAB. The PTAB reporting right now  
22 is largely manual and involves a lot of manual

1 processing and post-processing. So the first step  
2 that we hope to have completed this quarter is to  
3 automate key legacy reports and an interface that  
4 allows for the fluid creation of new reports.

5 The second phase that we are going to  
6 kick off in third quarter and continue through the  
7 first quarter of FY16 is to create reports that  
8 are automated based off of the PTAB E2E  
9 deployments.

10 So assignment search, this has been an  
11 exciting project. This just started in October  
12 2014 and it was released in December of 2014. So  
13 that is a four-month project. That is the  
14 shortest project for any kind of material  
15 deliverable that I've seen and that anyone that  
16 I've talked to at the USPTO has seen. So this is  
17 a big success and it was able to leverage search  
18 tools that we deployed in GPSN.

19 So I've put the URL here because it's  
20 available to the public. I'd encourage you to  
21 take a look at it. It's very, very nice product.  
22 It has a substantially improved user interface

1 with vastly expanded functionality. That includes  
2 expanded search fields. As you see the  
3 correspondent name and address, the assignee  
4 address, the invention title as well as expanded  
5 search functionality. So you can search multiple  
6 fields simultaneously. You can filter the search  
7 results that you get. It provides wild card and  
8 Boolean searching capabilities.

9           And then, it also provides Fuzzy  
10 searching so that corporations that you commonly  
11 see as x-dot, y-dot, z-dot or x, y, z, or any  
12 combination of dots within them or xyz Inc. Get  
13 treated as equivalent. And that, I think is a  
14 huge step over what we have.

15           So we still have some stuff that we want  
16 to complete with assignment search. On track for  
17 this quarter is a quick look up of property  
18 numbers and real frame numbers that go directly to  
19 the abstract of the title or the assignment  
20 details as well as additional user improvements.  
21 On track for completion by the end of the year is  
22 trademark assignments, document images, data

1 export features as well as an API that allows for  
2 outside applications to access the data directly.

3 So pair bulk data is also based on the  
4 GPSN search technology. It's on track for a  
5 deployment next quarter. It'll provide  
6 application data search fields. It'll allow you  
7 to download the textual data from the search  
8 results. Right now, if you download data in pair,  
9 as you all probably know, you have to select an  
10 application, download it, select another  
11 application, download it. The idea here is to  
12 allow for the data to be downloaded in bulk from  
13 the search results that you get. It'll also allow  
14 for a programming interface so that applications  
15 that people decide to make in the private industry  
16 can access the data directly.

17 On track by the end of the year would be  
18 additional search fields, additional features in  
19 response to customer feedback and then, by the end  
20 of the next fiscal year, we hope to be able to  
21 include file wrapper images. Questions?

22 MS. KEPPLINGER: Paul?

1                   MR. JACOBS: I guess I'm going to make  
2                   some of my usual clarifications. Okay, so first  
3                   of all, you mentioned GPSN and the context of the  
4                   assignment system. Since we have new members and  
5                   maybe some people haven't been following. So GPSN  
6                   is the global patent search network, right? And  
7                   the search technology that's used in that is  
8                   actually the search technology that was developed  
9                   for PE2E, right, using open source technology east  
10                  and west which was the search systems currently  
11                  used by examiners which Robert had alluded to are  
12                  built on BRS search technology which is at least  
13                  from the '80s if not earlier, right?

14                 MR. LANDRITH: Right. And it's  
15                 increasingly expensive and difficult to find  
16                 resources that actually support it.

17                 MR. JACOBS: Right. Right. Then we  
18                 also -- Robert also mentioned OACs, right, which  
19                 is the office action tool currently used by  
20                 examiners and this isn't being affected really by  
21                 any of the stuff we discussed today. So I guess  
22                 just to set the context here, so we have at least

1       these three other major systems in the office,  
2       right? The office action system, the search  
3       system where in the case of search it's a little  
4       convoluted now because we've got the next  
5       generation search system being used for assignment  
6       and international, some of the Asian language  
7       searching, but the bulk of the searching in our  
8       own patents is currently down using the old  
9       system, right?

10                 We have office action, we have the  
11       search and we have PALM which is sort of the back  
12       end to all of this. Can you give us some context  
13       in terms of how we're progressing in terms of the  
14       overall migration and replacement of these legacy  
15       systems?

16                 MR. LANDRITH: Absolutely. So in terms  
17       of examiner tools, there are three main  
18       applications. Actually, I mean, there's -- Robert  
19       can tell you there's dozens of applications. But  
20       in terms of the corps day-in, day-out use, those  
21       are the eDAN application which we -- the  
22       functionality for that is covered by what we



1       showed in the demo and then, the second that we  
2       have mentioned several times is search. And then,  
3       the third is office actions which, you know, the  
4       official correspondences that come from the patent  
5       examiners.

6                So the office action project right now  
7       has been focusing on workflow items while we try  
8       to find an authoring tool that is suitable for the  
9       use within the framework that we're talking about  
10      of a Web-based design. We are within office  
11      action, there's three major components, the  
12      workflow, the authoring solution and the  
13      role-based access, what we call role-based access  
14      control which is how we know, for example, that a  
15      SPE is a SPE or a secondary examiner is a  
16      secondary examiner.

17               So we're focusing on workflow right now.  
18      The target for that is to have our first prototype  
19      of the workflow by April and then, to begin  
20      continuous work on that as we begin to integrate  
21      an authoring solution in the fall and then, begin  
22      to integrate the role-based access thereafter. So

1 the target for deploying the office action then is  
2 in December of 2016, quarter one of FY17.

3 Does that -- do you have any questions  
4 about that before I move on? Okay. So with  
5 search, what we have right now is a highly  
6 functional user interface that we could  
7 demonstrate for you. It works very well. It  
8 leapfrogs the current functionality. The  
9 challenge that we have is that it only  
10 incorporates U.S. patent grants and pre-grant  
11 pubs. So that's not sufficient to actually get a  
12 lot of traction with examiners.

13 So our next focus is going to be in  
14 addition to refining the user interface and making  
15 sure that we eliminate the defects that we've  
16 accumulated, is going to be on expanding the  
17 number of collections that we have. So we are  
18 hoping to have all of the collections that are  
19 currently used by east and west into the search  
20 system by the fall.

21 That will then allow us to provide a  
22 meaningful beta to the examiners and we hope then

1 to, after about a year of beta testing, be able to  
2 release that also in December of 2016, first  
3 quarter of FY16. So that's two major releases in  
4 the same month. Does that answer your question?

5 MR. JACOBS: Yeah, I think that's very  
6 helpful.

7 MR. LANDRITH: Okay.

8 MR. JACOBS: Because these things aren't  
9 currently on the schedule for rollout because  
10 they're still in the early stages of development  
11 and you have a year beta scheduled which takes us  
12 into the next fiscal year.

13 MR. LANDRITH: Exactly.

14 MR. JACOBS: Did you want to say  
15 anything about PALM?

16 MR. LANDRITH: I did. Thanks. So  
17 that's the fourth tool although it does have some  
18 user interface elements, its primary role is in  
19 the back end and so, it actually manifests itself  
20 in everything that the -- almost everything that  
21 the examiner touches.

22 So we are adopting a strategy to replace

1       it. The name of the system that we're adopting to  
2       replace it, it's a tentative name but it's CEDAR.  
3       It wasn't intentionally a pun on the tree theme  
4       but it ended up being that way and we'll -- the  
5       strategy for that is fairly textbook example of  
6       the use of services in order to migrate. What we  
7       want to do is put a layer of high level services  
8       in front of PALM and then use that to push  
9       something in its place over time.

10               And so, at this point, we're still  
11       working on a road map for that because that, you  
12       know, since as I mentioned that has tentacles that  
13       go into every aspect. It's something that's going  
14       to require a good deal of planning and a good deal  
15       of coordination in order to start biting things  
16       off.

17               And a good chunk of luck. I want to  
18       reiterate that because when Robert said it his  
19       microphone was off.

20               MS. KEPPLINGER: Any other comments or  
21       questions from anyone? Okay. Thank you, David.  
22       Thank you. We have a break on our schedule here.

1       Should we be back at 2:50? That gives us a  
2       15-minute break. And I apologize because I am  
3       going to have to leave a little early myself and  
4       Paul will take over the reins. Thank you.

5                               (Recess)

6               MR. JACOBS: Hi, welcome back everyone.  
7       I'm not Esther Kepplinger. Esther had to catch a  
8       plane. I'm not Marylee Jenkins either who's in  
9       New York. So I'm Paul Jacobs and I'm going to  
10      hold sway here for the next few minutes while we  
11      finish up the meeting.

12              So next on the agenda is Tony Scardino  
13      who's the Chief Financial Officer. Tony couldn't  
14      make it today either so Frank Murphy, the Deputy  
15      CFO, is going to take the reins for him.

16              MR. MURPHY: Thanks, Paul. Now, what  
17      we're going to cover today is really just a couple  
18      of things. We talked in prior PAC meetings of the  
19      fact that any given time we talk two or three-year  
20      budgets when you're talking about the federal  
21      government. I'm going to go through the '15  
22      budget, what we've been enacted, where we're at to

1 date, talk about the '16 budget and I'll have a  
2 bullet in there to address a little carryover from  
3 '14 as well.

4 In terms of our status, we were  
5 appropriated in the middle of December \$3.458 -  
6 Billion for FY15 and as of December -31st, our  
7 working estimate of our fees is \$3.14 Billion.  
8 And you see that broken out for Patents and  
9 Trademarks.

10 The second bullet actually talks about  
11 some of the carryover from FY14. One of the key  
12 tenets of the America Invents Act was the creation  
13 of the Patent and Trademark Fee Reserve Fund. And  
14 in FY14 we collected fees above what Congress had  
15 appropriated for us, and those monies  
16 automatically went into the Patent and Trademark  
17 Fee Reserve Fund for the sole and exclusive use of  
18 the United States Patent and Trademark Office the  
19 following year, the subsequent fiscal year. And  
20 it required a reprogramming request to Congress,  
21 which we submitted in the early part of the fiscal  
22 year and Congress approved that as well in

1 mid-December. And that was \$148 -Million that we  
2 got back from the Patent and Trademark Fee Reserve  
3 Fund.

4           So those monies are available in FY15.  
5 And just taking a look at where we're at today,  
6 you can see the chart shows for both the Patents  
7 and Trademark breakout what our fee collections  
8 have been to date, what our spending has been to  
9 date, and looking at our end of year projection of  
10 what our spending will be. And if you notice from  
11 the previous chart, our working estimate of fees  
12 is \$3.142 Billion. We are, in fact, going to use  
13 some of the money that's in the operating reserve  
14 to cover our projected spending for this year, and  
15 this will leave us with about \$408 Million for the  
16 operating reserve at the end of the year.

17           And these following items are point in  
18 time data points but as of the end of December, we  
19 had hired 91 of the 450 planned Patent Examiners  
20 and 12 of the 91 planned PTAB Judges. I know  
21 those numbers will be a moving target. They get  
22 updated frequently. I know we've progressed

1       beyond that I just don't have the current  
2       information for you.

3                 Our total IT spending is \$763 Million  
4       which is an increase of \$160 Million over what we  
5       had submitted in the FY15 president's budget. And  
6       that was a conscious decision that we've made both  
7       in relation to feedback we received from you, from  
8       our stakeholders indicating that we want to be  
9       more aggressive with our IT investments, and to  
10      actually use some of the monies that we have in  
11      the operating reserve to make those investments  
12      because our IT improvements are, in fact, a  
13      multi-year increase.

14                When you look at the FY16 budget, we  
15      submitted this and we've requested authority to  
16      spend \$3.2 Billion and we have, again, operating  
17      requirements of \$3.5 Billion. So we intend to  
18      continue to use the operating reserve for the  
19      purpose for which it was established -- to take  
20      care of the program changes and primarily our IT  
21      investments that we've made going forward.

22                The '16 budget will allow us to hire 250



1 Patent Examiners. These are attrition  
2 replacements. We're actually going to have our  
3 zenith, our high point of patent examination in  
4 FY15 and from this point forward we'll be  
5 progressing towards that soft landing that we've  
6 talked of in the past to match our capacity, our  
7 examination capacity with our operating inventory.

8 This Budget also continues on our  
9 efforts with enhancing the satellite office  
10 outreach programs, does some pro bono, pro se  
11 assistance efforts. We again are increasing the  
12 PTAB staff by 60 judges and some administrative  
13 support to go along with that and continue the  
14 investment in IT.

15 You'll see a decrease in patent IT  
16 spending from the operating plan and that is  
17 reflective of what you just heard earlier today,  
18 the patent's end-to-end deployment of the 1.0.  
19 And we are putting a renewed emphasis, special  
20 focus, on quality and training for the patent  
21 examiners.

22 We'll include hiring of 50, excuse me,

1 of additional full-time equivalents to assess and  
2 contribute to the quality of work that's done by  
3 the examiners. We'll be providing additional  
4 technical training and we'll make sure that  
5 they're well-versed in the information technology  
6 tools, all in an effort to enhance the quality of  
7 our patents.

8           And we're also underway with our  
9 biannual fee review. We're just kicking that  
10 process off now. We have ballpark, in fact,  
11 exactly 45 fee change proposals that have been  
12 submitted. This includes some of those that were  
13 submitted in your PPAC annual report, and we have  
14 a body that is in process right now of doing the  
15 preliminary assessment on the merits of each of  
16 these 45 proposals, weighing the impacts on USPTO  
17 operations, on the intellectual property system as  
18 a whole, and seeing what the impact would be for  
19 our revenues, what legal authorities we have and  
20 then, what things we should be publicly proposing  
21 to get additional comments on.

22           Not on the chart but just as a data

1 point as well, our satellite offices are  
2 progressing. We have the Detroit and Denver  
3 offices that have now opened. San Jose and  
4 Dallas, we're targeting for the fall of 2015. So  
5 we're making progress on that as well.

6 And that's a quick highlight for the  
7 budget process. I'll open it up to any questions  
8 you may have.

9 MR. JACOBS: Mike.

10 MR. WALKER: Thanks, Frank. Budgets,  
11 Pat knows budget is not my area of expertise so  
12 sorry if this is an unsophisticated question but  
13 is there a target around the operating reserves?  
14 I saw the 266 from the operating reserve for the  
15 2016 budget. Is there a target below which you  
16 would not want to go or is that not the case?

17 MR. MURPHY: It's actually not a naïve  
18 question. It's a very good question. We've  
19 recently established a financial advisory board to  
20 do precisely that, to look at what we'll call the  
21 rails. What's the high level that if an operating  
22 reserve reaches that that we'll need to do a

1       fundamental reassessment? Whether that be  
2       changes, enhancements that we'd want to make,  
3       additional enhancements to the IP system or  
4       reductions in fees, and also a low rail below  
5       which we don't want to go without again triggering  
6       an in-house review.

7                   Are there things that we need to be  
8       looking at for our revenue projections? Are there  
9       any tweaks that we need to make with that or at  
10      that point, take a look at the spending side of  
11      the equation to say we may need to defer some of  
12      this spending to a later year. So we are, in  
13      fact, looking at that.

14                   The target is a three-month level, a  
15      three-month operating reserve and we are not  
16      approaching that under the current budget.

17                   MR. WALKER: And just for my own  
18      benefit, what would that be that three-month  
19      operating?

20                   MR. MURPHY: It should be in the  
21      neighborhood of \$800 Million.

22                   MR. WALKER: 800, okay, all right.

1 Thank you.

2 MR. THURLOW: Frank, just a quick  
3 question. The concept proposals, is it fair to  
4 say a majority of them are probably going to be  
5 increases but I assume there's going to be some  
6 where you look at and maybe some decreases? And  
7 then, to the extent, one of the things in the  
8 statute that PPAC works on and we've done and  
9 you're familiar with is the fees.

10 It would be interesting to see them from  
11 a concept standpoint. I think in the past one of  
12 the criticisms of the financial model for the PTO  
13 has been its reliance on money from the  
14 maintenance fees. And to the extent that we can  
15 maybe use other approaches would be recommend.

16 MR. MURPHY: Yes, there's a number of  
17 things and, in fact, PPAC will be part of this  
18 process as we go forward. This is truly the  
19 preliminary stages. We're doing an assessment to  
20 see what the impacts are, what things we're  
21 actually going to have legal authority to do and  
22 we'll go through, once we have a preliminary scrub

1 of which of the 45, which things seem to have  
2 merit, we'll do a deeper dive into those. Some of  
3 these may not have any effect on raising fees. It  
4 could be tradeoff and it would have to be weighed  
5 as well with what we've just gone through a couple  
6 of years ago, that very massive first-time fee  
7 setting, as there were some key decisions that we  
8 made.

9           And part of the evaluation now is if we  
10 look at any proposal in isolation, we want to make  
11 sure that it still is in concert with the  
12 overarching approach that we all agreed to two  
13 years ago to see is it still meeting those goals.  
14 And if not, it doesn't mean that it's off the  
15 table but it's one of those decision points that  
16 we need to evaluate clearly and articulate clearly  
17 to say here's what the impact would be.

18           MR. JACOBS: So to follow up on Mike's  
19 question, to put this in context, right, you  
20 mentioned that the stakeholders strongly supported  
21 an increase in the IT budget to try to continue  
22 the modernization that has been long-delayed and

1 in this room we just saw some of the benefits of  
2 that in terms of the rollout of these new systems  
3 that are really going to hopefully change the way  
4 that the examiners and everyone else in the office  
5 does their business in a very positive way.

6 So that's very important and where we  
7 are now is because we had an operating reserve,  
8 fee reserve, that we could use from last year.  
9 We're using that to finance, to pay for some of  
10 these increase in the IT budget and that's planned  
11 continuing into FY2016. In other words, instead  
12 of continuing to deposit money into the fee  
13 reserve fund the way we did last year, now, we're  
14 drawing down on that but to Mike's point, how  
15 close are we going to get to that minimum level in  
16 FY16? Do we have any idea now in terms of how  
17 that's going to affect things?

18 MR. MURPHY: Yes, in fact, let me just  
19 go back to the chart. I think we have -- you see  
20 on the end of FY15, the projected operating  
21 reserve is \$488 Million. In '16 we are going to  
22 dip into that again and I believe off the top of

1 my head I want to say it's about \$260 million that  
2 we'll be dipping in.

3 So we still have the cushion at that  
4 point but one of the considerations that we have  
5 as well and part of what this executive body is  
6 looking at, we actually monitor the fee  
7 collections on a daily basis, report out on a  
8 monthly basis to see are we trending the way we  
9 had projected. And if not, if we're coming in  
10 lower, then do we need to reassess the IT spending  
11 or do we still have enough cushion in the  
12 operating reserve to continue with the IT  
13 investments?

14 Because that's a critical lever that we  
15 have, but one that we don't want to pull back  
16 prematurely. I'm not sure if they covered it, in  
17 the beginning of the meeting today, the fact that  
18 when we went a few years ago with sequestration we  
19 had to pull back about \$80 Million in our IT  
20 investment. It cost us a lot more than 80 Million  
21 to catch up and it cost us a lot more in time.

22 So we are very cautious with that but it



1 is one of the key variables that we look at to  
2 make sure that we have an adequate cushion in the  
3 operating reserve.

4 MR. JACOBS: Yeah, Robert?

5 MR. BUDENS: Just a question. I realize  
6 that we're projecting out for '16 but what kind of  
7 positions are we looking at to hire 80 additional  
8 staff dealing with quality of the work by  
9 examiners? That's obviously got a, like, strike a  
10 chord here as to what you guys are planning on  
11 doing with 80 additional people in that regard.

12 MR. MURPHY: I was going to defer to  
13 Patents for that.

14 MR. HIRSHFELD: So in preparation for  
15 the quality summit and what comes out of the  
16 quality summit, there's placeholders in there,  
17 right? So there's not any, right now there's not  
18 a correspondence of how those exact staff would be  
19 used and whether that's even the accurate number.  
20 It's really a placeholder for moving forward  
21 should those spaces be needed.

22 MR. JACOBS: I'm sorry. To follow up, I

1 thought those weren't actually necessarily  
2 additional head count, right? They could be --  
3 they could be shifted from other parts of the  
4 organization, isn't that correct?

5 MR. HIRSHFELD: It could be any and all  
6 of that, right? I mean --

7 MR. MURPHY: Right.

8 MR. HIRSHFELD: -- so it's placeholders  
9 but what typically happens is if you're hiring  
10 OPQA reviewers so to speak, oftentimes those  
11 reviewers come from examiners, right? They're  
12 examiners or supervisors who end up going to OPQA  
13 and then, you'd want to backfill those. So really  
14 it's placeholders just to move forward so that we  
15 have the flexibility to move, you know, to do  
16 whatever comes out of the summit and whatever we  
17 choose to do.

18 MR. KISLIUK: Right. And it also gets  
19 back to our modeling, right? We want to be  
20 looking forward if we know we're going to be  
21 adding resources to review in the area of quality,  
22 we want to project that now so we can plan if it's

1 going to cost us some examining resources, how  
2 that worked. You'd rather, at this point, maybe  
3 overestimate that than underestimate it.

4 MR. JACOBS: Other questions for Frank?  
5 All right, thank you very much. We now turn to  
6 Dana Colarulli with the legislative update.

7 MR. COLARULLI: Thanks, Paul. Good  
8 afternoon. So I stand between you and the closing  
9 remarks from my boss I think. So what I want to  
10 do is to do two things first, two or three things.  
11 First, acclimate the committee to the 114th  
12 Congress. Second, I'll talk a little bit about  
13 some of the other activities that my team has been  
14 engaging in, try to outreach to local officials.  
15 We have now new opportunities to do that with our  
16 satellite offices, and then, talk a bit about  
17 restarting the discussion on patent litigation  
18 reform.

19 Happy to answer questions on other  
20 issues as well. We expect trade secret  
21 legislation to move forward this Congress as well.  
22 Just today another hearing on copyright issues was

1 announced but I'm going to focus this presentation  
2 much more on restarting the patent litigation  
3 debate as we get to it.

4 But first, 114th Congress, I set folks'  
5 expectation I think at the last PPAC meeting that  
6 there was a flip, at least in the Senate. That's  
7 now taken place. The Committee is up and working  
8 and has held its first hearing, its first few  
9 hearings, including a nomination hearing on Deputy  
10 Director Lee. The House generally stays the same.  
11 The Subcommittee changed chairmanship with Howard  
12 Coble retiring.

13 Darrell Issa has already shifted now  
14 from his oversight role into the head of the  
15 Subcommittee that has oversight on PTO operations.  
16 Also oversight over any substantive IP issues.  
17 He's signaled that he wants to address both in  
18 hearings. There's already been, I said, one  
19 hearing on patent litigation reform. We expect at  
20 least one or two more at least.

21 And the Chairman himself has said, you  
22 know, they want to go through this process

1       deliberatively. I think the IPO daily news this  
2       morning quoted an article that said Chairman Issa  
3       said maybe four months or so to really do the work  
4       that he thought was needed to review the various  
5       proposals on patent litigation reviews.

6                 But he will likely move on probably  
7       springtime into other oversight issues, operations  
8       issues. We see that as an opportunity to talk  
9       about the good things we're doing here, talk about  
10      some of the good things hopefully Valencia has  
11      been doing as well with the Patent Quality Summit.

12                Senate as well, again, up and running.  
13      Focused right now on nominations but expect them  
14      to move to more substantive issues.

15                Now, I always focus with the Committee  
16      on the judiciary. That's our primary committees  
17      of jurisdiction on the House and the Senate. Of  
18      course, we've increasingly got many inquiries from  
19      other committees, the House Energy and Commerce  
20      and the Commerce Committee on the Senate side,  
21      certainly has some equities even in the patent  
22      litigation contexts, on demand letters in

1 particular, there was interest last Congress. We  
2 expect that to continue.

3           As we get into the international trade  
4 issues and even the treaty issues, there's a  
5 number of other committees that have interest in  
6 issues that are important to the IP community.  
7 And then, of course, just last week the CFO team  
8 and my team were up on the Hill presenting the  
9 2016 budget. Array of issues there some of which  
10 Frank just addressed. Others, they're also  
11 interested in operational issues and Frank did not  
12 mention but in the reports from our appropriations  
13 last year, there's a number of requirements for us  
14 to update the committees on issues surrounding  
15 telework.

16           There's even a requirement for the  
17 Department of Commerce to opine on the adequacy of  
18 trade secret law. So a number of requirements  
19 there, too, and a number of committees that are  
20 increasingly interested in our issues.

21           Key issues, this is a version of a  
22 recycled slide I had showed last PPAC meeting but

1 key issues continue to be patent litigation abuse,  
2 clearly, a series of hearings reviewing the  
3 copyright statute. Enforcement of trade secrets  
4 and as I mentioned, we expect legislation to move  
5 forward but perhaps on a parallel track with some  
6 of the patent litigation reform.

7 Trade promotion authority still a focus,  
8 at least for the beginning of this Congress to see  
9 if the Congress can move on providing the  
10 President with trade promotion authority. A  
11 couple of highlight hearings, second nomination  
12 hearing for Deputy Director Lee, the first hearing  
13 on patent litigation issues. I'll talk a little  
14 bit more about that.

15 I wanted to highlight this last one, the  
16 trade secrets protection symposium we held here at  
17 PTO. A day- long event, about five different  
18 panels, the last in that we were able to have some  
19 current professional staff hop over the river and  
20 join us here in Alexandria to talk about the  
21 likelihood of that legislation moving forward. I  
22 think there seems to be some consensus. It's a

1 matter of getting the language right. And we  
2 expect them to move forward, again, in the next  
3 few months.

4 So let me talk about restarting the  
5 patent litigation abuse dialogue here in the 114th  
6 Congress. In way of review, there was a lot of  
7 activity both from the Executive Branch up in  
8 Congress and then, specifically here at the PTO  
9 that affects all of the issues that were discussed  
10 last Congress. Expect that to continue to be a  
11 theme as we get into the legislative discussion.

12 Whether you look at developments in the  
13 courts, you look at developments here at the  
14 Agency, in a number of areas but including, and I  
15 think the Congressional staff are focused, what  
16 can we derive from the implementation of  
17 post-grant review proceedings in total? So IPR,  
18 CBM and now, the PGR proceedings as well. So I  
19 think that will be a dominant theme as the  
20 committees are moving forward in addition to an  
21 eye towards any information you can derive from  
22 statistics about the litigation and impacts on



1 litigation more generally.

2 But I think one of the things that we  
3 have focused and Director Lee has asked me to  
4 focus on is helping to educate the Congressional  
5 staff on our implementation of the AIA. You heard  
6 from the Chief Judge, the different federal  
7 register notices that are likely to come out this  
8 year, making changes here. I think that is very  
9 instructive to Hill staff as they are trying to  
10 understand how these proceedings impact what  
11 they're looking at in legislation.

12 So procedurally, Chairman Goodlatte with  
13 about 19 cosponsors, about 20 now, as of today  
14 reintroduced his patent litigation of the  
15 Innovation Act, HR9 here the 114th Congress. It  
16 is a bill that's identical to the bill introduced  
17 -- bill passed by the House last Congress. It is  
18 a starting point, certainly, and the Chairman said  
19 that it's a starting point. And that they will  
20 hold hearings to try to evaluate the impact of  
21 changes and evaluate whether they should change  
22 these provisions.

1           I think the staff are very aware that  
2           there is about five months of discussion in the  
3           Senate. They want to see if there is improvements  
4           there but they also realize that they were able to  
5           pass a bill with a very high margin out of the  
6           House last Congress and they hope to continue to  
7           reintroduce that discussion, restart that  
8           discussion and move forward.

9           So this slide is very similar to the  
10          slide I had last year on HR3309 and the House  
11          passed a bill that I generally refer to as a  
12          comprehensive reform, trying to address most of  
13          the issues that have been discussed. I think  
14          there was certainly more discussion on some areas  
15          like demand letters in the Senate and that, again,  
16          may be reflected as the bill moves through the  
17          process and amendments are offered.

18          I mentioned the cosponsors. We're up to  
19          including the Chairman sponsor of the bill.

20          It's interesting to note the split.  
21          Again, I think that's by design. The sponsors,  
22          lead sponsors of this legislation want to make

1       sure that folks know that it's a bipartisan bill.  
2       It's also interesting to me that not all those  
3       folks are coming from the judiciary committee but  
4       they're from a variety of committees including  
5       energy commerce, including those who have a local  
6       stake in some of these issues representing the  
7       Silicon Valley area and other hubs of innovation  
8       around the country.

9                 With that, I'm going to stop and open it  
10       for questions. I had a time limit. I knew we  
11       were behind as well so, Paul, I leave it to you to  
12       facilitate questions.

13                MR. JACOBS: Thank you, Dana. Questions  
14       for Dana?

15                MR. THURLOW: So, Dana, in light of our  
16       conversations the last couple of days about some  
17       of the activities that we never expected to happen  
18       on the PTAB side, a little bit of a joke but not  
19       really a joke that the whole abuse of patent  
20       litigation may be actually abuse of PTAB and  
21       patent litigation. So I'm looking for the article  
22       from the New York Times to give to Michelle but I

1       can't find it so she'll appreciate that once she  
2       sees that so.

3                   MR. COLARULLI: That may be and I should  
4       mention that as part of our own due diligence,  
5       we've been trying to reach out to the stakeholder  
6       community, understand where their views are as  
7       well so that we can inform our own review.  
8       Certainly heard some of those concerns from the  
9       biotech and the pharma industries.

10                   MR. THURLOW: And just want to follow  
11       up, Drew had a presentation this morning on 101.  
12       We've had a lot of discussions on 101 the last two  
13       days. Just to be clear and not to put you on the  
14       spot or on the record but there's in the last year  
15       or so we focused on our federal register notices  
16       the interim guidelines. We all watched the  
17       Supreme Court and what's going on in the courts in  
18       general but in the last few months there's been  
19       more discussion, at least, in our area on  
20       legislative changes to 101.

21                   I haven't seen that percolate up to  
22       Congress or any bills. And my understanding that

1 is not going to be in that and I just say that if  
2 you can provide a comment on that from your  
3 perspective what you see in 101?

4 MR. COLARULLI: Yeah, Peter, that's my  
5 understanding as well and I've heard conversation  
6 certainly the last few months and even before  
7 whether a legislative change to 101 would clarify  
8 the statute.

9 We have certainly taken a position, I  
10 think, Drew's presentation this morning reflects a  
11 lot of change. Folks are trying to assimilate to  
12 the -- or get used to guidance or make decisions  
13 based on the guidance.

14 I think Congressional staff generally  
15 are not looking to, and we've heard this from  
16 staff, not looking to broaden the scope of the  
17 different issues that they're trying to address  
18 right now. And in a healthy way, I hope they  
19 would let the conversation play itself out in the  
20 IP community and then make a decision whether to  
21 legislate in this area.

22 But certainly haven't seen interest from

1 staff jumping at, oh, yeah, this is the solution.  
2 I think that's probably healthy at this point. I  
3 got no hard question from Wayne Sobon. I was  
4 expecting. Thanks.

5 MR. JACOBS: All right, thanks. Thanks,  
6 again.

7 MR. COLARULLI: Absolutely.

8 MR. JACOBS: All right. It's my great  
9 pleasure to introduce Deputy Director Michelle Lee  
10 who will make some closing remarks.

11 MS. LEE: Thanks so much, Paul, and good  
12 afternoon, everyone. It's a real pleasure to be  
13 with you to close today's first Patent Public  
14 Advisory Committee for the year. And I'd like to  
15 thank all the committee members for your efforts  
16 over the last year. Your suggestions and your  
17 insights are invaluable and are always welcomed.  
18 I also want to acknowledge some recent  
19 appointments and achievements. I know Esther has  
20 had to leave but congratulations to her for her  
21 assumption of the role as head of PPAC, the Chair  
22 of PPAC.

1                   And to Marylee Jenkins who I understand  
2                   is on the phone, for her role as Vice Chair on  
3                   PPAC. Both of you have contributed so much in the  
4                   past to our success and I look forward to working  
5                   with you in the year ahead.

6                   I also want to welcome our new PPAC  
7                   members and that includes Mark Goodson, Dan Lang  
8                   and Mike Walker. And I know you'll bring valuable  
9                   insights to the Committee's work and I look  
10                  forward to working with all of you. So thank you.

11                  And I'd like to congratulate Christal  
12                  Sheppard, a former PPAC member, who was selected  
13                  last month to be the first Director of the USPTO's  
14                  Detroit satellite office. Christal has proven  
15                  herself to be an incredibly intelligent and driven  
16                  person and I'm confident that she will take those  
17                  traits to the Detroit office where she'll provide  
18                  exceptional leadership of our talented staff  
19                  there.

20                  Recently, I had the honor of speaking to  
21                  the -- or at the Brookings Institution where I was  
22                  proud to publicly announce that one of our best

1 and brightest, Ms. Valencia Martin-Wallace, was  
2 selected to be the first Deputy Commissioner of  
3 Patent Quality and Valencia is doing an  
4 outstanding job. She's hit the ground running and  
5 I have every confidence that she'll help the PTO  
6 keep its eye on the ball when it comes to patent  
7 quality.

8           And as I said at Brookings and at also  
9 the Technology Policy Institute, patent quality is  
10 one of my top priorities this year. And I know  
11 it's Commissioner Focarino's as well.  
12 Commissioner Focarino has done a phenomenal job in  
13 leading our efforts on patent quality and she has  
14 actually -- she's the reason why we are in the  
15 position where we are where we're able to turn in  
16 a concerted manner to patent quality. It's due to  
17 her efforts and her team's efforts in reducing the  
18 backlog and pendencies to the point where we can  
19 really focus now on improving quality in a very  
20 concerted manner.

21           So thanks to the team for that. And as  
22 Deputy Director, hopefully, fingers crossed, soon



1 to be confirmed as Director, I'll continue to do  
2 everything that I can in my power to ensure that  
3 she and her outstanding team have what they need  
4 to succeed in this important effort.

5           You've already heard about our enhanced  
6 patent quality initiative and its three pillars,  
7 the excellence in prosecution services, customer  
8 service and measurement of patent quality. And I  
9 just want to emphasize that stakeholder engagement  
10 is going to be key to the success of this effort.

11           So for all of you on PPAC, all of you  
12 who are listening in the audience, please join in  
13 at every stage that you can. We've got the  
14 Quality Summit coming up on the 25th and 26th and  
15 I mean a wide range of stakeholders. I'd like  
16 patent prosecutors there. I'd like patent  
17 defendants in litigation. I'd like patent  
18 licensees. Everybody who has a perspective on  
19 this ought to be participating because this is the  
20 time where we can have the ability to put forth  
21 your ideas and we can consider it and we can  
22 follow up on the ones that make sense.

1                   So anyway, let me turn to the next  
2                   topic. Our founding fathers passed the first  
3                   patent act in April 10th, 1790. We'll be marking  
4                   our 225th anniversary with an event here at the  
5                   USPTO. More details are forthcoming but if you  
6                   are able to be in town and attend, we'd love to  
7                   have you join us. And of course, our patent law  
8                   has changed a lot since 1790. The original  
9                   statute was amended three years later with another  
10                  patent act that made significant improvements to  
11                  the first and there have been many more changes  
12                  since then.

13                  So that same spirit of improvement  
14                  guides us now as we ensure that our patent system  
15                  keeps us up-to-date and able to keep pace with the  
16                  rapid pace of innovation that is occurring  
17                  domestically and around the world. Part of that  
18                  effort means ensuring that American companies have  
19                  strong and cost-effective IP protections overseas  
20                  and in an increasingly global economy such as  
21                  ours, that American companies need to and can  
22                  export their products overseas with the confidence

1 that their innovations will be protected.

2 U.S. exports in 2014 set a record for  
3 the fifth consecutive year reaching \$2.3 trillion  
4 and in 2013 alone, that accounted for 113 million  
5 jobs in this country that were export-related. So  
6 increased trade in exports are good for American  
7 businesses, they're good for American innovators  
8 and they're good for American jobs. And that's  
9 one of the many reasons why it's important that we  
10 continue to work closely with our countries on  
11 patent law harmonization and also on increased  
12 work-sharing efforts between our patent offices.

13 And as co-chair with the U.S. trade  
14 representative on the IP working group for the  
15 Joint Commission between U.S. and China on  
16 Commerce and Trade, I'll continue to work with the  
17 Chinese government to ensure that the IP rights  
18 for American businesses are protected in that  
19 growing market.

20 Finally, we will continue to improve  
21 operational excellence here at the USPTO. That  
22 includes ensuring continued reduction in the

1 backlog of unexamined patent applications which is  
2 now below 600,000 while also reducing pendency.  
3 Strengthening and improving our telework program  
4 which has and will continue to be a key component  
5 to the Agency's success and updating and improving  
6 our IT system so that our examiners have the tools  
7 that they need to efficiently and effectively do  
8 the work so that they can best serve the public  
9 need.

10           And of course, something near and dear  
11 to my heart, fully standing up all of our  
12 satellite offices by opening permanent satellite  
13 offices in Dallas and the Silicon Valley. We  
14 already have the Detroit and Denver offices up and  
15 running. So in all of these efforts I hope that  
16 our PPAC committee members will continue to  
17 provide your unique talents, abilities and  
18 suggestions. This significance of your  
19 contribution to the success of our efforts cannot  
20 be overstated and thank you very much.

21           MR. JACOBS: Thank you, Director Lee,  
22 and thank you to everyone who tuned in and for

1 those who braved the cold weather to come in  
2 person. This was probably goes on record as being  
3 the coldest day of a PPAC meeting although last  
4 year at this time we got iced out. So we're  
5 better off than we were then. So with that, wish  
6 you all safe travels and we'll close the meetings.

7 (Whereupon, at 3:25 p.m. the  
8 PROCEEDINGS were adjourned.)

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## 1 CERTIFICATE OF NOTARY PUBLIC

## 2 COMMONWEALTH OF VIRGINIA

3 I, Stephen K. Garland, notary public in  
4 and for the Commonwealth of Virginia, do hereby  
5 certify that the forgoing PROCEEDING was duly  
6 recorded and thereafter reduced to print under my  
7 direction; that the witnesses were sworn to tell  
8 the truth under penalty of perjury; that said  
9 transcript is a true record of the testimony given  
10 by witnesses; that I am neither counsel for,  
11 related to, nor employed by any of the parties to  
12 the action in which this proceeding was called;  
13 and, furthermore, that I am not a relative or  
14 employee of any attorney or counsel employed by the  
15 parties hereto, nor financially or otherwise  
16 interested in the outcome of this action.

17

18 (Signature and Seal on File)

19 Notary Public, in and for the Commonwealth of  
20 Virginia

21 My Commission Expires: July 31, 2015

22 Notary Public Number 258192

