

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Thursday, November 3, 2016

PARTICIPANTS:

PPAC Members:

ESTHER M. KEPPLINGER, CHAIR

MARYLEE JENKINS, ESQUIRE, VICE CHAIR

JENNIFER A. CAMACHO

MARK E. GOODSON, PE

DAN H. LANG, ESQUIRE

JULIE MAR-SPINOLA, ESQUIRE

WAYNE P. SOBON

PETER G. THURLOW, ESQUIRE

P. MICHAEL WALKER, ESQUIRE

USPTO:

ROBERT BAHR, Deputy Commissioner for Patent
Examination Policy

VALENCIA MARTIN-WALLACE, Deputy Commissioner
for Patent Quality

JACQUELINE STONE, Deputy Commissioner
for Patent Operations

DANA COLARULLI, Director, Office of
Governmental Affairs

ROBIN EVANS, Technology Center 2800
Group Director

ANDREW FAILE, Deputy Commissioner for Patent
Operations

KARIN FERRITER, Acting Deputy Chief Policy
Officer

PARTICIPANTS (CONT'D)

DON HAJEC, Assistant Deputy Commissioner for
Patent Operations

SARAH HARRIS, USPTO's General Counsel

JESUS HERNANDEZ, Patent Attorney, USPTO's
Office of Policy and International Affairs

DREW HIRSHFELD, Commissioner for Patents

DAVID LANDRITH, PE2E Portfolio Manager

JERRY LORENZO, Technology Center 1600 Group
Director

FRANK MURPHY, Deputy Chief Financial Officer

JOHN OWENS, Chief Information Officer

SHIRA PERLMUTTER, Chief Policy Officer and
Director for International Affairs

MARK POWELL, Deputy Commissioner for
International Patent Cooperation

MARTIN RADER, Acting Director for OPQA

RICHARD SEIDEL, Acting Deputy Commissioner for
Patent Administration

PAMELA SCHWARTZ, Vice President of Patent
Office

HOPE SHIMABUKU, Director, Texas Regional
Office

RUSSELL SLIFER, Deputy Under Secretary and
Deputy Director of the USPTO

DEBBIE STEPHENS, Associate Commissioner for
Patent Information Management

PARTICIPANTS (CONT'D):

GREG VIDOVICH, Associate Commissioner for
Patent Quality

DAVID WILEY, Technology Center 2100 Group
Director

PTAB:

DAVID RUSCHKE, Chief Judge, PTAB

SCOTT BOALICK, Deputy Chief Judge, PTAB

UNION MEMBER:

CATHY FAINT, VICE PRESIDENT OF NTU245

* * * * *

P R O C E E D I N G S

(9:02 a.m.)

MS. KEPPLINGER: Okay. Good morning, everyone. Welcome, and thank you for attending the PPAC Meeting today; and welcome anyone who is online, and our people that have attended here in person. It's a pleasure for us to be here. Actually my last PPAC Meeting, so it's especially great.

We have a rich agenda today, so I think we have -- Valencia Martin-Wallace is not here today. And so we have, is it Don, Don Hajec is taking this?

MR. HAJEC: Vidovich --

MS. KEPPLINGER: Oh, yes. Right, Greg Vidovich, exactly. Okay. So, Greg?

MR. VIDOVICH: I was looking for a button on the bottom, sorry. Thanks, guys.

MS. KEPPLINGER: You are in second. Actually, yes. Marylee reminds me that we should just go around the table and introduce everyone. So, maybe we'll start --

MR. HAJEC: Okay. Good morning. I'm Don Hajec. I'm an Assistant Deputy Commissioner

for Patent Operations.

MR. VIDOVICH: Good morning. I'm Greg Vidovich. I'm Associate Commissioner for Patent Quality.

MR. POWELL: Mark Powell, Deputy Commissioner for International Patent Cooperation.

MR. SEIDEL: Rick Seidel, Deputy Commissioner for Patent Administration.

MR. LANG: Dan Lang, PPAC.

MR. THURLOW: Pete Thurlow, PPAC.

MR. BAHR: Bob Bahr, I'm Deputy Commissioner for Patent Examination Policy.

MS. KEPPLINGER: Esther Kepplinger, PPAC.

MR. HIRSHFELD: Drew Hirshfeld, Commissioner for Patents.

MS. JENKINS: Marylee Jenkins, PPAC.

MR. SOBON: Wayne Sobon, PPAC.

MR. WALKER: Mike Walker, PPAC.

MS. MAR-SPINOLA: Julie Mar-Spinola, PPAC.

MR. GOODSON: Mark Goodson, PPAC.

MS. CAMACHO: Jennifer Camacho, PPAC.

MS. SCHWARTZ: Pamela Schwartz, PPAC, and President of the Patent Office Professional Association.

MS. KEPPLINGER: Okay. Thank you, everyone. Okay, Greg?

MR. VIDOVICH: Okay. Thank you. First off as Esther mentioned, Valencia could not make it today. She regrets not being here. She really enjoys talking to folks and getting feedback, and so forth. But I'm happy to be here in her place. Before we go on, I want to thank PPAC, yesterday at the Sub-Committee Meeting also at the joint meeting with the examiners; I thought that discussion was very good. Both back and forth dialogue and I appreciate PPAC Members for doing that, I think that was great.

Real quick, I want to talk -- what Valencia wanted me to talk about is the Patent Quality Forum Series, that's on the screen. We are going to do a road show, a pretty robust road show over the next few weeks going across the country, and we start in D.C., tonight we are going to a D.C. Bar event tonight, then we start traveling to a variety of locations in Milwaukee,

Kansas City, Baton Rouge, and also Portland, Oregon. You know, we are going to be going out discussing a lot of our EPQI Events and how successful or how things are moving with each of those initiatives, and we are going to be talking and getting feedback from each of those groups in those regions.

I also want to mention on December 13th, it's not on the flyer there, but we are also having a fairly large event. It's on the PTO Campus; it's in cooperation with Santa Clara in Duke Law Schools. We are going to have a very robust agenda on that, where we'll be looking at, it's an all-day event. Ray Chen, Federal Circuit Judge, is supposed to be there, and a variety of speakers, internationally. We've got someone from EPO coming out, speaking on the international topics and the impacts on quality.

We are going to be publishing the agenda very soon. We have, it's on our website, I believe, the place order but we are going to, hopefully, post the agenda on that shortly, but it's going to be a very good event. I'm very excited about the events on that day. So that's

it. There's a lot, like Esther mentioned, there's a lot on the agenda today, so I'm going to move right into my topic, dealing with patent quality metrics.

So again, at a high-level we've been measuring quality in the office for many years, as many of you know, even back to 1983, I have to think for a second how many years ago that was, it's been 30-something years ago. We've been reviewing long since being in the office, the OPQA, you fast forward to 2011, again, we'll be continuing to do many reviews in the office and process reviews, and also allowances, and we also had a Quality Composite Score Index, doing about seven different categories, looking at a variety of metrics going through a composite score.

So, where are we today? Again, in 2011 through '15, we had four different review sheets, as you can see in the blue, from final disposition and process, first action and search review. And these were all different, distinct forms being used within the office. We also had a quality index report, which looks at a lot of process measures in the office via our PALM System goes

through and gets a very robust look at how cases are moving through the office.

We also do external and internal quality surveys, and we had this composite score. So we went out and talked to you guys and a lot of people in the public, and overwhelmingly a lot of folks said, get rid of the composite score, they don't understand it. They didn't think it was working correctly. So what we've done we looked through, what I look at as the P3, I don't want to take the P3 thing, but it's a product indicator, process indicators and perception indicators, and we are going to talk about these three on the next three slides. And you can see we got rid of the composite score going forward.

The first up is the product indicator and we've created what's called a Master Review Form. Essentially, we kind of combined all four of those forms together; we added questions, more robust question dealing with not only correctness but clarity. We've been measuring correctness and clarity in the office, but this form is a more robust, a more deeper-dive-look at how we review work in the office. And we are going to get into

that on the next slide.

What this is. What this allows us to do on the previous forms, it was very difficult to really get in and do analytics on that, because there were four forms, four different ways of capturing data. It was very difficult to do that, so with this form we are looking to do a lot more consistency in review product, and how we measure quality. And it's going to be a more robust single data warehouse that will allow us to capture data in a more efficient manner, and allow us to be more responsive on the data.

This again, this will keep giving you an idea how many reviews we are looking at this year. We are looking at over 18,000 reviews done by MRF, in the office, and MRF is the Master Review Form, and it's going to be captured -- we are hoping that at this level we can capture data at the TC level and give feedback on specific -- on TCs going forward, and more to follow. You can where we were just couple years ago we were at 7,900, we are going to ramp it up substantially to 18,500. And it's going to be mostly by OPQA reviewers, and also supervisors in the TC will be

doing random reviews also, slot reviews in the TCs.

What we are changing? Our correctness metrics will --

MR. THURLOW: Hey, Greg.

MR. VIDOVICH: Yes.

MR. THURLOW: Could I ask you a quick question?

MR. VIDOVICH: Sure.

MR. THURLOW: So, just a general comment about the Master Review Form. I know it's something that the PTO has placed a lot of focus on, probably out in the patent community we hear about it, but we are not as focused on it. So, my Office action on the (inaudible) Review, do I have any indication or knowledge that it's being reviewed, this Master Review Form, or by a different group?

MR. VIDOVICH: That's a good question, and the blunt answer is, no. We don't put those in the file wrapper, because there's a -- for lack of a better phrase -- if it's in the record people may think it's a stronger patent, or it may be advantageous. So we try to avoid any

communication of such in the record of that application. We don't notify the applicant with any malinger in the record at all on that.

MR. THURLOW: Okay.

MR. HIRSHFELD: If I can jump in there. Peter, one point about the Master Review Form is it shouldn't change and does not change the way anybody -- the substance of the review that our reviewers do, rather it's a way to data capture. Now, to the extent that it might alter substance, and I'm carefully choosing the words here, I don't want you to think we are changing it to -- You know, we are not saying there's a new standard on 101, 112, et cetera, but what it does is it steps everybody through all of the points that they should be look at when reviewing a case.

So, these are review points that our reviewers should have been doing anyway, we just didn't have a way to capture an aggregate everything altogether. But we do have, historically, we don't share our review data which goes to people's performances, et cetera, with the public; that's all for our internal: how do we get better, how do we use the data for

ourselves?

MR. THURLOW: Great.

MR. VIDOVICH: Thank you. Yes?

MS. KEPPLINGER: Greg, the 18,500 that you expect to do this year, does that include the several reviews that a SPE is expected to do for their primary examiner during the year?

MR. VIDOVICH: Yes. But a large majority of that would be from OPQA.

MS. KEPPLINGER: So, because you are using the master form, the Master Review Form, you are also capturing what was happening in the TCs just ordinarily as part of the normal review, but also using the same form and capturing that in this data base?

MR. VIDOVICH: Yes. That's some (crosstalk), yeah.

MR. HIRSHFELD: If I can just add one thing. Peter, you mentioned also that the public might not be that familiar. You can see the form right on our website, and for those of you that haven't seen it, I think it would be great for you to go in and take a look at it, it's a very extensive form, and again, it shows the

complexity of patent prosecution in general, and what our supervisors and our examiners need to do in application, but we would love for everyone to be able to take a look at the form and give us feedback, and we have source of the feedback.

MR. VIDOVICH: Yeah. Just to echo off that. It's a robust form that's pushing 30 pages on that, but we also provide the training -- also training the reviewers step-by-step on how to interpret the form and how they analyze the form.

MS. CAMACHO: Greg, I'm sorry. Did you say at what point process is the review done? I'm curious whether, for example, is it after the Office action has already been sent, or is it before, or is there an opportunity there, if there's a noncompliance, to revisit that before the Office action goes out?

MR. VIDOVICH: Yes. We hear that feedback, right now the reviews are done after they've been completed by the examiner, and typically mailed out to the applicant at that point. But we do get that feedback and we'll take as far as -- but right now the way we review it is after it's been completed.

So, moving forward, the way we are going to look at the metrics this year is compliance, and it's the way we are going to measure that rate is through reviews less the noncompliant reviews equal over the total. So, as I was explaining yesterday, how we are looking at that, is every application we look at is going to fall in the denominator as an example. So, if we are looking at -- the example you just said was 101, for looking at fish hooks. You know, that won't be necessarily 101, but it's still going to count in the denominator because it was compliance.

The compliant action, the examiner didn't do a 101 that's compliant. So that's why it so on the bottom there, we are trying to emphasize the total number of reviews will be consistent across all the different statutes where we are going to be putting the metric on. We are also looking to develop clarity metrics this year, again with the form, we are hoping that the data we get is going to allow us to eventually go on stream and look at metrics for clarity. We are continually updating the MRF based on feedback, and also training the appropriate

people as needed.

And the more important thing is the MRF is going to give us a lot of robust dataset, really, that we haven't had in the past; that we can go and analyze, and look at, and try to move -- and look at quality trends as they are happening, and try to move it forward. So for clarity standards, talking about it quickly, the way that your peer reviewers are being trained are looking at clarity as an average, below average or above average. And right there is the definition of average and how we'll define that. It's basically where the great majority of examiners should be on clarity. And so the reviewers again have been trained and given standards on what the expectations are in reviewing the Office actions. Next we get into processing the -- Yes?

MS. MAR-SPINOLA: Greg, excuse me. Can you give us an example of a clarity question, or example that you would rate it on the scale that you just mentioned?

MR. VIDOVICH: That's a good question, but the clarity it looks at -- it's whether the

Office action could be correct, what's the level of clarity and that explaining how well -- For example, use of the 112(f), for example, the analysis may be correct under 112(f), but the examiner may not have done a proper job identifying limitations that are not really being clear, if they raise a 112(b) on that, then maybe weren't clear on the 112(b) and why it's 112(b), in the light of 112(f); if that makes. So in that situation we may look at it as average or below average on the explanation.

MS. MAR-SPINOLA: So, would it be part articulation, part comprehensiveness?

MR. VIDOVICH: What's the second? I didn't hear.

MS. MAR-SPINOLA: Comprehensiveness.

MR. VIDOVICH: Both, I think it's both, yes. Comprehensive, you know, I don't think you need to do a thesis to get clarity. We see that sometimes that too much is -- less is clarity, so we'll to try find the happy medium to where a little too much may -- it's we are trying to find the happy medium going forward.

MS. MAR-SPINOLA: Okay.

MR. VIDOVICH: And Robin is going to talk about the clarity pilot, and I think we are going to explain some of that.

MS. MAR-SPINOLA: Perfect. Thank you.

MR. VIDOVICH: Next up are process indicators. And again, we are looking more towards -- we've always used process indicators, in the office we are looking more at transactional QIR, particularly dealing with reopening prevention, rework and consistency. I just want to emphasize on the reopening. Sometimes reopening is a good thing for folks. You know, sometimes examiners do make a mistake, and we are trying -- we are not looking for a metric where we are trying to minimize or get rid of rework, we want to give examiners an opportunity if a mistake is made, to reopen, so, not necessarily doing that.

I think in the past we've looked at it as a bunch of engineers and scientists, we were looking at it, trying to minimize a number of that, sometimes rework is a good thing going forward, particularly -- the example I like to use

is on -- if you file a brief, you know, I'd rather the examiner, if it's not good, either allow the case to reopen instead of waiting three years at the Board to get that answer.

So we are looking at that metric. We are also looking at rework and consistency of decision-making. What that deals with is more looking at allowance rates in similar arts, in seeing what the differential is between folks, and to see if folks are being consistent. Again, just looking; we are not -- as I was saying we are not trying to set metrics on that, but we are looking at just, we take a look, we see if there's outliers within there, if there are outliers, we see if there is an issue for example, and if there is we just try to train, provide some other additional feedback to the examiner.

Like I mentioned, it's still under the QIR, it's a very robust system, it looks at a lot of processes in the office, and simply it's looking at outliers, and I'm being cautious on outliers because sometimes, you know, it doesn't mean it's bad, we are just looking at it, we are just going to take a deeper dive and see if there's

something we can do to help, if there is a remedy, and what the remedy is.

This is an example talking about the rework. It gives you a distribution, and I don't want to focus on this, but this is really at a high level. It looks at folks at the bottom X axis, looking at the data, it shows the number of number of rework items, and the left axis is the number of examiners. So this one just as example, we have about 1,300 examiners, and we've had one piece of rework in fiscal year '15.

And on the right axis it looks at the percentage. So if you look at 80 percent, scale over to the left, you are looking at about 80 percent of the examiners had approximately 7 pieces of rework, that's how it's intended to be read. Yes?

MS. KEPPLINGER: One thing I would note is that the dilemma is that you get what you incentivize, of course, and the challenge for us is that we would rather have a second action on final than a final with the new rejection and new art, which then forces us to go to an RCE, which it makes it cost a lot more and take a lot more

time. And so I think there's a fine balance between making sure we don't, you know, really press the examiners that they don't think they can do a second action on final.

MR. VIDOVICH: Right.

MS. KEPPLINGER: I mean, obviously, we don't want them all the time, but that's actually, I think, often a preferred outcome.

MR. VIDOVICH: Yep, true.

MR. HIRSHFELD: You know, thank you for that comment, Esther, that's something we've been talking about a great deal among us as we've been deciding what to do with these particular issues. The rework, the reopening of prosecution we are all -- we went down this path based on comments from the public and hearing that these are issues that we need to look at. But what I think Greg is trying to point out in, say, this example is that what we did is plotted everybody to get a feeling of -- an understanding of the instances in this example we have of rework. And what we plan to do is look at the outliers to see if that's okay, and I think we could all recognize, as you do, that an instance of a second non-final, if

there's a mistake being made, we don't want to disincentivize the examiner from correcting that. Actually it's the opposite; we want to incentivize them to correct that. So we would want the rework, and we know all of you would in the final that the example you gave is the same thing.

But when you look at the graph that Greg has put up you'll see a way on the right side, we have instances of examples in a given period of time of rework. That may or may not be okay, we don't know from the stats alone, we'd have to look at the data, but there's a difference between an examiner doing this three, four times during the course of a year, and 25 times during the course of a year. And I also note there's a difference if somebody potentially not ever doing it, we need to look at that as well.

So, we intentionally did it this way to address the corner that you raise and where we are going to focus this on the outliers to look at that information and not try to drive towards a number. We felt, as we just said, as an agency we want to drive towards a number, we would create the

concern that you are raising.

MR. VIDOVICH: Thank you. And last up is the perception indicators, and we continue to do this, we go to about 3,000 applicants for information on what they perceive quality under a variety of different questions, and I'll show you an example on the next slide, and we go out to examiners also and get feedback from them on how they feel, what they feel about quality.

But this one, this more recent slide, it's been updated for recent data. You can see for this we are training up on zombie, the gorilla in the room, obviously a lot of folks see that the downturn on the pink one, = is the 101 stuff. It's a perception indicator, and we appreciate the feedback, we are continuing to train on that. We've been doing a lot of training the past two, three years, and I've been heavily involved with the 101 stuff and 112, in that, so I'll be more than happy to answer any questions at the break.

But this is an example of what we are collecting from the outside. We are also collecting information from examiners and we are going to be sharing that, all that information

very soon on the updated information.

The next steps we are looking to publish clarity targets, and we are looking at, again, at a statute level 101, 112, 102 and 103, we look to publish that, hopefully in the very near future. Clarity metrics, that's going to be a work in progress, as we get more data from the MRF moving forward, and again we are using all the indicators, so hopefully they'll try to push the envelope and try to clarity and quality. We are doing very well I think now, I think we are just trying to work and try to move that needle forward. I think we can continue to move forward. Any questions before we move on?

MS. JENKINS: Hi. Just a quick, I guess, observation. I did look online while you were talking, and I think found the review form, it's 25 pages long. Is that right?

MR. VIDOVICH: Yes.

MS. JENKINS: Yes. It's quite detailed if you have a chance to look at it. I guess one thing I struggle with, and I think based on the examiner's forum yesterday, too, it became very readily apparent, to me at least, is that

examiner's need an outside perspective. I feel often at times it's us versus them. And it's really about "we" in trying to create a good patent, a good quality patent, we do a good job sometimes, and sometimes we don't, and I think training, obviously, I commend the office, the training has just been incredible since I've been on the committee and learn more.

But I do feel that this information is helpful but if you don't train them also about what the process is outside, I think they get a very myopic view of what the whole process is for an applicant. So, somehow you have to -- clarity is not just the record, clarity is their understanding. At least that's my opinion.

MR. VIDOVICH: Okay. That's good feedback. Don't whispering in my ear; we've been trying to do that, recently in Capstone messaging we did 112, while trying to stress the importance for an external stakeholder. Gave a message, a video message on why clarity is important on the record for them, not only in the prosecution but downstream. So we hear that feedback and I think we are trying to incorporate that in some of the

trainings we are moving forward with. More in the Capstone and the importance once it leaves the office. Thank you for the feedback.

MR. HIRSHFELD: Sorry, Greg. I keep jumping in on you here. I'd like to add something to that, because I agree with you Marylee, and it's actually something we have tried to address in a variety of different ways to make sure that we at the office are getting the public perspective. I'll just note that one of the ways we try to address is at the PPAC examiner forum that we did yesterday, and we had about 1,000 examiners join that.

We've also done more of bringing in inventors and what occurs after a patent leaves our door to our employees, we've tried to work in training more about litigation. Not to say that we've succeeded yet in this endeavor, I think there's much more that we need to do, but we also recognize the same issue that you do. And I will tell you, looking at myself, you know, I was an attorney on the outside before I came to PTO, and I still did not recognize the full extent to what impact we have as a PTO and the Examining Staff,

and I've learned that throughout my career, especially in the later years. So, it's something that I've tried to bring to our Examining Corps.

MS. JENKINS: I just wanted to say that I thought the form was great. I thought they asked -- it was fascinating to hear the questions, and I can understand why they were saying what they were saying, but it was great to hear our responses, I thought they definitely put us on the spot a couple of times. One thing that I try to do, and I think it's the role of PPAC, is to get the message out to the community that it's not a black box here. There are examiners who need to understand what their process is, so one of the things that I try to do, personally, is to explain to applicants, to stakeholders, of what the process is here.

So I think it's not only -- It's two-way, it's not only just the examiners understanding us, it's us better understanding your processes too. And I think this is great, and the fact that you put it on the website.

MR. VIDOVICH: Yes. One more thing

before I move on. We've developed a new program called STEP, it's the Stakeholder Examiner Practice and Procedure, how we train the examiners who are going out, and training external folks on how we train examiners. I don't have a slide with me, but we created one recently, rave feedback, great reviews from the folks taking it. We are in Dallas this month, I believe, and then we have four more at each regional site coming up this fiscal year. And as soon as we put the registration up, they fill up quickly, so I think that's a good step in trying to explain how we do things in the office, and folks are giving us some really great feedback on that.

MR. THURLOW: Before you move one generic, since I was on the panel yesterday for the quality. And again, I echo what everyone is saying, I thought it was really great. And I really appreciate that the comments from the examiners. I think as we look out a year or two or a couple of years, the next step or evolution in this process is to revisit what applicants can do. There may be a lot of concerns with the

applicant community in that.

As Drew knows all too well, several years ago the Patent Office released the Federal Registry Notice about some things to consider or at least start to the date. It was not received well by the patent community, but because anytime there's a request for applicants to change things, there's concern with the budget about \$50,000 patent applications, and so on, and all these burdens being too onerous.

But I think this whole quality review that's been going on has been exceptional, but I think there's going to be a natural transgression or progression to considering what more can the applicant, because garbage in garbage out, or garbage in, nothing out, so there's going to have to be eventual step on that, in my opinion.

MR. WALKER: Just, if I can make one comment. I was going to hold for the clarity of the record pilot, but Drew what you said about training. One thing that struck me about this session yesterday, is training, not just about what happens in the real world in terms litigation, but in terms of new product

development and new product take out. Because when you think of some questions, especially at 112, you know, I think it would be helpful for the examiners to see, maybe, a real-life mock discussion about decisions that business people have to make, and when there's a clear record, and when there's an unclear record in the patent. And how that can -- an unclear record can really impede innovation. But, you know, just a mockup of the discussion I think, if you haven't done that, would just be a suggestion.

MS. KEPPLINGER: That's a really good point. And actually I've given a couple of talks to the SPEs through SPECO and talked about sort of interviews and some of what we have to do on our side to prepare for interviews. The challenges of commercializing things even once you get the patent, and the implications on the business decisions that stem from the decisions that the examiner makes; and so that whole education process.

The SPES were really surprised at how much time we might spend in preparing for an interview. I mean, I think they just think we

come in and talk or something, and really -- So, all of that kind of education is good, and also the STEP Program, I think is invaluable, because I find that attorneys, even the more experienced ones, still have a hard time understanding, you know, VRI, and how broadly an examiner might look at a claim, because they get so focused in their own view of what it means. So, you know, more education like that is very valuable.

MR. VIDOVICH: With that said, I'm going to try to keep things moving here a little bit. We have a Robin Evans, who is the Director in TC2800, who is leading the Clarity of the Record Pilot. Ms. Evans? And also Marty Rader is going to be assisting, he's Action Director for OPQA.

MS. EVANS: Great. Good morning, everyone. As Greg said, I'm Robin Evans, Director of TC2800. I think the last time that I was here speaking to you all we had just started or was about to start the Clarity of the Record Pilot. As you may remember, a goal of the pilot was to develop and refine best practices about putting clarity in an Office action. We all

understand that clarity has always been a critical aspect of the examiner's job, but we also know that clarity is sometimes objective, and what is clear to me may not be clear to you.

So, we wanted to develop some best practices, or some things when placed on the record, that would clear up what the examiner was thinking when they made the decision that they made on whether to reject the claim, or whether to allow that claim. And then also to study the impact of when we did these things what would that involve. Resources, time, that the examiner spent when examining the application.

Please remember that clarity, this pilot it did not change the way the examiner analyzed the application, the way they made their decisions, it was just really recording their thinking and their analysis on paper. And we had examiners that we know are already doing this, but this was about finding ways that we could enhance the clarity, and making sure that that Office action was enhanced. And that clarity that Greg talked about in that metric was, hopefully, above average.

So, the goals, as I said, were to find some best practices but also find that balance of how much to put on the record, so that we weren't confusing the issue. As Greg mentioned, we are not writing a thesis, that we find the correct balance. And the feedback from this program, we wanted to use the questions to refine the MRF.

So, when we were reviewing the cases on the clarity pilot we used the MRF form, and we added some additional questions to the areas that we looked at to see which questions should we look at to see if that record was improved. And then also to use this data to reevaluate examination time, so how much time was spent enhancing the record, how much of that examiner's analysis should go on paper, and what time did that take them -- if any more.

So, we focused on four areas of the examination record, we collaborated with the examiners, if you remember the pilot ran for approximately six months, it started in March and ran through August 20th. We couldn't focus on everything in the record. We chose these four areas.

I'll start at the bottom. More precise reasons for allowance, so adding to the record, not only which claims were allowable, but why the examiner felt those claims were allowable, more detailed interview summaries, and then a pre-search interview, and that was at the examiners' option.

And then the fourth area was the area of claim interpretation, and we picked several areas of claim interpretation when we thought, if we gave the examiners some training and some guidance of what to put into the record, and for them to think about what they needed to put on the record, and their explanation, that would provide us a good impact in moving that needle of clarity.

So, some of the things we chose were optional language, intended use, non-functional descriptive material, special definition of claim terms. So we focused on these areas, provided training to the examiners and gave them some guidance on enhancing their record.

MS. MAR-SPINOLA: Excuse me, Robin.

MS. EVANS: Yes.

MS. MAR-SPINOLA: Julie here.

MS. EVANS: Hi, Julie.

MS. MAR-SPINOLA: Good morning. You know, yesterday's forum that we had was very informative I think for both sides. And one of the things that occurred to me in seeing the areas of focus that you just went through is that there are still some things on the front end, I think, that might improve the clarity, or make it easier to identify the things that you want to focus. In sitting in the audience yesterday and hearing the exchange between the examiners and the panel, and I was very pleasantly surprised about the exercise, right; because it's very revealing and it's something that I would encourage Patent Office to continue to do.

But what the examiners were asking, seem to be the overarching issue that they seem to have, is that they didn't quite understand why applicants did what they did, or why they didn't do something that they thought they should have done, right. Like defining their terms, things like that, and if there is a way to identify a point in the frontend, to get that information so that when the examiner really starts to dig in to

reviewing all those issues, that they actually have a perspective.

And I would even encourage the examiners to ask for an interview if the applicant doesn't ask for it first. In my own practice we try to have as many interviews as possible, and now that we have resources, including the regional offices, I think it would be worth the Patent Office encouraging that type of exchange very early on in the process.

MS. EVANS: Thank you for that comment. And in actuality, that was one of the areas that we had in the pilot, we called it the pre-search interview, and it was at the examiner's discretion because of that reason. If the examiner felt that they didn't understand the inventive concept, or if they needed and explanation of the claim terminology, or just some other definition of which way to go so that they made sure they got the best prior art in the record before they started; that's why that option was there.

MR. GOODSON: Robin?

MS. EVANS: Mm-hmm.

MR. GOODSON: Peter and I -- I hate to put you on the spot but even I don't -- We've been corresponding. Is there a need within the office for a dictionary of standard terms? Because there are some standard terms depending upon the examiner, they have different concepts of what the idea means.

MS. EVANS: I'll let Drew jump in, but I will say that there's really no standard, but we do, in examination say what is that known definition in your art, because in different art technology a word means different things. Right? So there's no standard that you can go look to, but examiners can certainly search that term in their art to see what known use or definition that has.

MR. HIRSHFELD: We are all putting other people on the spot. I could pass this over to Bob. No, just kidding.

(Laughter) So, we've actually looked at that issue and I know years ago, IEEE was discussing this with us, and we've taken a different approach with clarity of the record than we have with trying to have a, say, as standard set of

definitions for terms, because of a variety of reasons, including that applicants can be their own lexicographer.

And so what we've tried to do is make sure that the key terms in application are clearly defined in that patent and they are made clear on the record, how they are interpreted by the examiner, and what we believe them to be at the USPTO. To have a defined set of terms and definitions, we just felt was -- I know many people have tried that over the years, and it always seems to end in not a good progress forward because it's too hard to define terms in the abstract without context to the rest of, say, in an application.

MR. THURLOW: I just had a quick comment. Having been on PPAC for several years now, in our own practice when I have attorneys work for me, we've gone through this, on new applications, we've looked at the claims and try to make sure they are clearly defined. And I actually may take the surprising approach where we tried to be our lexicographer more and put definitions in there, but we found that we were

haggling with the examiners over the definitions, were they appropriate. So, if anything we may be stepping back and saying that a person of ordinary skill in the art would understand, and to me what the word is, and maybe not defined as much so.

I think that was more problematic when we tried to do that, and more limiting, so maybe that goes against the clarity of the record, but I think you can get carried away with this, where you just can't, maybe, choose or justify or characterize it correctly. You can't define every claim, it just wouldn't be feasible.

MS. EVANS: Right.

MR. HIRSHFELD: We also found, Peter, and I wasn't directly involved in all of these, so I recognize I don't have the full perspective, but if I recall correctly, it wasn't the highly technical terms that were at issue, it would be the more legal terms that would be the issue, and that in applications, you know, the examiner and the applicant might be having a greater discussion on what, say, device means, as opposed to something much more technical that everyone can grab onto. And so that created another

challenge with definitions.

MS. EVANS: But as a part of this pilot, if they did recognize that you've had a special definition in your claim terminology, they were required to put that on the record and then point back into the specification where you made the definition. So then it was clear to everyone that, yes, I recognize you have a special definition, and I've used it in my interpretation of your claim.

So, we had 125 participants in the pilot, or a 125 examiners, they ranged from GS-11 to GS-15, or GS-14, and they had to have at least two years of experience in the office, in examining applications in the office. And they were randomly selected, so we didn't pick them, we sent out an invitation for those that met the qualifications, and the examiners were invited to participate, and they had to say yes to participation. We also had 45 managers in the program that helped us with the analysis.

For the examiners, they were required to attend all training, and the quality enhancement meetings, and if you haven't heard

what those are, those are examiner peer- led meetings where they talk about enhancing quality. So, maybe it's a particular issue, not a particular application, but a particular issue of examination, of clarity, of what they think is a best practice, what they want to put on the record, and they discuss those issues at the QEMs.

They were also required to put that training in their Office actions in those selected Office actions for review, and then to record that amount of time. And while we are on QEMs, I'll just mention, we also had what we call all-hands QEMs, where we brought in other folks from the office, like PTAB, to discuss how their Office action once it leaves them, and how that record affects outside the Examining Corps.

And then also they were supposed to record the amount of time that they spent enhancing the record. And these were the duties of the supervisors, they just managed the QEMs and captured any best practices that came out of those sessions, captured anything that they thought -- areas that needed more training or more feedback to the examiners. They also provided

individual assistance to the examiners where needed, and reviewed the Office actions using the Master Review Form.

So for the evaluation -- and I said this ran, the program ran for about six months -- For the evaluation, and we have Marty here, who led that portion of the pilot, we reviewed about 2,600 applications, and for the 125 examiners on the pilot, we reviewed cases in three different groups. So we reviewed what we called pre-pilot cases, and those were cases that examiners did before the start of the pilot. So the before that March time period, the Office of Patent Quality and Assurance reviewed cases. Just to get a gage of what they were doing, what the clarity looked like there.

Then they reviewed pilot cases, and these were cases that were selected for treatment. Here are the cases you have to do, put the requirements in, put the enhancements in and we reviewed those. And then also non- treated cases, so cases that were not selected for the pilot. And then there were cases reviewed from a control group, and that was just a group that

were like examiners who were not part of the pilot.

From the evaluation we gathered best practices, and those practices came from the pilot training, and so we gave them some guidelines of what we thought they should put in, but then also from QEMs that were held at least monthly. So, here is what we thought. What did you think? Did these help you? What other things helped you? What did you think were best practices, and also from focus sessions from the pilot space?

Here are some of the results that we have from the analysis that we had and one of the areas was interview summaries. And so what we found is that there were -- I believe we asked 22 questions on the MRF, for the interview summary: Was the record clear and complete? Did the examiners state their position on the record? Did they state applicant's position on the record? And here were three identified best practices that we found that were also key drivers in improving the clarity of that record.

And those were adding the substance of

the examiner's position, providing the details of the agreement reached, and including a description of the next steps that will follow the interview. The examiners felt when they put at least these three things on the record, that interview summary was more clear than what they previously did. When you pick up the next communication everybody understood why that happened. If it were an allowance, you know, that was on the record, so they understood why that happened and who was going to do the next step. Whether the applicant was waiting for the examiner to do something, or whether the examiner was waiting for a response from the applicant.

MR. SOBSON: Robin?

MS. EVANS: Mm-hmm.

MR. SOBSON: One thing we've discussed in the past with regard to the clarity of the record efforts, which is, this all sounds great, is concerns about being over- inclusive, or over-verbose, or from the patentee standpoint that the record could become cloudy, and it can have the effect at times like any kind of negotiation of impeding free flow of

possibilities before something gets locked in. And so from a patentee standpoint that's always a concern. Can you add some color commentary from the data you got: Was there any concerns about that, or did people pretty much stated pretty crisp in these comments, and is there any further training on that score?

MS. EVANS: So, yes. To answer your last question, our recommendation was to provide further training, but what we heard from examiners, of course in the beginning, was the balance. How much? Does it have to be verbatim? And our response was, capture the essence, the substance of the interview. You don't have to put a book in the record. But what was your basis, why was the, you know, 103 on the record? So they were pretty succinct in their responses. I think it required some discussion with the applicant because of course, as you said, some applicants or applicants' representatives don't want too much on the record.

So that was our conversation, and that's why they agreed for these three things. If they just put these three things succinctly on

the record, that would clarify the record, and I think the most important was, what's going to happen next after this interview?

MR. SOBSON: I don't know if it's true or not. Did you solicit feedback from applicants as far as this process in the pilot too, or not?

MS. EVANS: No. We did not. One of our next steps and you'll see that at the end of this slide is, we are in the process of discussing having a quality chat, a private quality chat with some of those applicants, but we haven't yet figure out just how we'll do that. We don't want to identify certain applications for those reasons that Greg mentioned. But we want to invite applicants, share some of these best practices with them, and get their feedback on what do you think. You know, what is too much. What is the right balance, and how much it is, so that is one of our next steps.

MR. LANG: As we've discussed already. I see this initiative to improve interview summaries as very important for later people who have to interpret the patent, in litigation, or in giving business advice. And I see it as a

first step --

MS. EVANS: Yes.

MR. LANG: -- in driving that improvement, but I would imagine it's going to take a while before we see the results of it in the patents issued out of the patent office at large. Do you have any timetable or long-term vision about when you could expect this to play out over a basically a larger body of prosecution work? So are there metrics to track it by, or a specific timetable on the whole?

MR. HIRSHFELD: A difficult question to answer. I think there will be many avenues that we are going to want to pursue after the Clarity of the Record Pilot, and through getting feedback, and a better understanding through the EPQI as a whole. I believe that these will fall into many buckets, things that we can immediately train on, which are not, say, significant changes for examiners. We are asking them to do something entirely new, and I think the timeline for those as quickly as we can train. I think the public will start to see changes. I think we'll also have potential changes that will fall in the

bucket of being something that we want to ask examiners to do, which we haven't done in the past. And that, to me, will bleed into our examination time analysis, and will be a much longer timeframe.

So, difficult to answer; I think, you know, on the interview summary, I would think that would be something we can do on the much quicker side. I don't see that being a new ask of anybody. That might just be refining what we are doing, and being more concise and complete at the same time. Anyway, not a real specific answer for you, but I think we are still in the process of peeling that through and understanding what we are going to want to do differently.

MS. KEPPLINGER: Just a time check. We have only more minutes in this session, and we still have to finish this one, and one more, and this is great information, and if we need more time that's fine, but we do need to move along a little more quickly.

MS. EVANS: So, I will try to walk through this quickly, Esther. Here are some best practices from our data collection of the 112(f)

portion of the pilot. The examiners felt that when they put the presumptions on the record -- And the data also supported this, I should say. When they put the presumptions of 112(f) on the record, and identify when 112(f) was invoked, identifying back in the specification the structure that met that means, and then also using the form paragraph, they thought that cleared up the record. We've done a lot of training on 112(f), examiners were encouraged to use the form paragraph that says, you know, we've invoked in here, is where it is.

But they found on the pilot they were required to use that form, and when they were required and did use that form paragraph that helped them clear up the Office action. So, for the 102 and 103 rejections, here were some things that the examiners thought improved the clarity of their Office action. When they grouped claims together in a single rejection, 102 rejections, so claims 1 through 5 are rejected by Smith, pointing out the limitations are clearly addressing all of the limitations that needed to be addressed in that rejection, cleared up the

102.

And then in 103 rejections, identifying the intended use and the nonfunctional descriptive material limitations, and explaining how they were interpreting that intended use on the record, and how they rejected it, or allowed it. But also, we found that when we did do 102 and 103 rejections, there were things that, when placed on the record, added to the clarity of the Office action, but also detracted from the clarity of the Office action.

And so one of our next steps is to figure out how to add these things into the record where they added to the clarity without detracting. And one of those things was to figure out what the balance is, and figure out if that is the reason the Office action became cloudy or confused. And a couple of the items are listed here. So in the 102 rejections they were required, where they were using a statement of inherency, to explain that statement.

And so, while we think that is a good thing to put on the record, the data showed that it added as well as detracted from the clarity of

the Office action. And so that is our recommendation.

MR. HIRSHFELD: So Esther just said to me, she doesn't understand that, and I was going to say, I think this actually addresses Wayne's question. Anyway I was going to take Wayne's question, but since you mentioned that to me, what our reviewers found in certain categories was that when examiners took steps that we were teaching them, the clarity was enhanced greatly in some situations, and then other times they felt that actually detracted from the clarity. And to me that tells me that these are potential key drivers that we need to be very careful about how we proceed with, that we need to make sure we train properly, and examiners know exactly what is expected of them.

The reason why I said it answers your question, because I do think this indicates there's a situation that you could potentially add to the record where you are not helping, and we want to make sure when you are adding to the record, you are having clarity. So, if it's something like inherency, our reviewers, for

example, some of them felt, yes, that was great, and it really improved the Office action, yet other situations where people --the reviewers got more confused by the attempted clarity of what inherency was. So that's something that we need to proceed very cautiously with. Did that better explain it, Esther?

MS. KEPPLINGER: Not completely, and the next one puzzles me too. You know, 103, annotating or pinpointing to the claim limitation -- So this is the claim limitation as opposed to the -- I mean usually you point in the reference what -- Is that the opposite of this?

MS. EVANS: Where the claim limitation is met in the reference, so one of our next steps, Esther, is to meet with the examiners, and we have some focus sessions coming up, to try and figure out what they did, why they did it and how that detracted from the clarity. We all have our guesses of why this is, but we figured we would go to the examiners. And I think that it's just the combination in adding the combination, and trying to put their thoughts on paper, and finding the right balance, and finding the right way to

do it.

So that's why we want to ask, how did you do it? What did you do? And find even more ways to define the best practices of how to do it, so that we don't get this from the data that we pull.

MS. KEPPLINGER: Because from my perspective, it's very helpful if we know that an examiner has taken a position that a certain aspect is inherent and what they think is inherent in that reference, how they are interpreting our claim, and saying that, hey, it's in this reference. Or on the second one, we want to know what part of the reference they are pointing to with respect to our claim, so maybe it wasn't done in the right way, but those just seem like they would have helped.

MS. EVANS: And they did. But they also detracted, and so that's what we want to get to the bottom, because we want them to only add and not detract.

MR. HIRSHFELD: Oh, go ahead -- No, I was going to say, and to your point, Esther, we also totally agree with you that those should

helpful steps that examiners take. But we found in the reviews that often they were, and sometimes they weren't, which tells me the way they were done was not right, which means we have to be more careful in how we train and how we rollout to make sure that people are -- examiners are doing correctly what we are asking them to do here.

So, to me, it was very interesting. I didn't expect to have -- You know, I expected to have key drivers that enhance clarity, didn't necessarily to have drivers where we saw both enhanced and both hindered quality -- clarity -- excuse me, and so that was a very interesting point it still is the right avenue to pursue, and we should absolutely pursue issues like inherency and element matching. We just have to make sure that it's done correctly.

MR. SOBSON: So following up on that, I don't know if you did it during the pilot, I'm assuming this gets baked into training with, like, examples of, this is good clarity, for that same issue, this is a sample that would not be helpful or can veer into problems for examiners. It might be a very useful thing, I would think,

I'm going off the PPAC, so I'm just giving you guys work, like you don't any to do, but it might be a useful thing for PPAC if you had that training to involved PPAC as an external user community representatives to give the patentee and competitor sides of looking at those examples, too, may be very, very helpful.

MS. MAR-SPINOLA: I just have one question before you move on, a little bit, Robin. Am I correct in understanding that the confusion or the detracting information is not the definition of inherency itself, which I would presume is the standard definition provided by the Patent Office, but instead how the examiner describes the inherency; is that right?

MS. EVANS: Absolutely! Absolutely!

MS. MAR-SPINOLA: Okay. Thank you.

MS. EVANS: And so it's about finding that right balance. I'm going to come back to reasons for allowance, because I want to touch on this slide since we are on rejections and clarity. The data also show there were a couple of items that, when analyzed, didn't really impact or move the needle on clarity, but we think they are good

to have in an Office action. One of the reasons could be that they were already doing this well, and so in the pilot it didn't move clarity that much, but providing an explanation for the patent or given to the preamble.

Relative terminology is another thing that the data didn't show a big impact or a lot of movement in providing clarity to the Office action; and then the 112(b) rejection for the purposes of applying prior art rejection in the 112. So, these were things that show -- the data show that they didn't really impact clarity, or move the needle as much as others, but we think that they are important in clarifying the record. So I just wanted to share that with you before I go back to --

MS. MAR-SPINOLA: Can I?

MS. EVANS: Yes.

MS. MAR-SPINOLA: I'm sorry. I know we are running out of time, but I just wanted to mention, my impression of the first bullet point, is that that may not show up as an issue until there's litigation; right? So I kind of worry about providing an explanation on the weight

related to a preamble. So that is one that I actually would think about whether or not that should be recommended as a practice, even if it doesn't change the needle now, in clarity, but it may change the needle later in enforcement.

MS. EVANS: So, jumping back to reasons for allowance, these were several things listed here where examiners bought that providing in the reasons for allowance improved clarity. And addressing each independent claim separately on how that was allowable, indicating why it was allowed, not just merely that it was allowed, and if the allowance depended on something that happened previously in prosecution at the time of allowance, to give that summary and point back to whether that was a specific argument that applicant made, or if it was something that the examiner put on the record in a previous Office action to point back to that at the time of the allowance, so that the record is clear on why these claims are allowed.

MS. KEPPLINGER: This one is the one that is most troubling to me, and of course we've had this discussion about reasons for allowance

on the committee for some time. But specifying the applicants' persuasive arguments, the real difficulty is that it's so complicated, there are so many factors that go into what made that case allowable, and what I have found is that you can be -- you know, you believe that you are already allowable, but the examiner wants you to change one word, and you do that, and if the examiner says that that's what was persuasive, when it really has nothing whatsoever, no court would have thought that that was what made the claim patentable, all the other limitations that had been put in.

So it really could be, in litigation, tremendously damaging when they rely on something that really wasn't, and then you get into this back and forth after they've put that in there, and you say, no, no, that's not really what it was, it's all of these things, so that would -- really has a huge impact on what happens to that patent down the road. And I think it could open an awful lot of strife even after the allowance, that there's going to be more back and forth. Depending on what the examiner says.

MS. EVANS: Duly noted, and so hopefully we will work on that because, again, it's finding the right balance of the record.

MS. MAR-SPINOLA: I think especially if it doesn't move the needle one way or another on clarity; that it may be better to reevaluate whether that's something you want to recommend. Right?

MS. EVANS: So those items did move, and reasons for allowance, Julie, they did move out of -- On reasons for allowance they did move the needle on clarity.

MS. MAR-SPINOLA: Oh, I'm sorry. Then I misread the title.

MS. KEPPLINGER: In your view?

MS. EVANS: Yes. Yes.

MS. KEPPLINGER: In your view, and that doesn't take into consideration anything that might have happened in that record subsequently, which is huge.

MS. EVANS: Right. And this was from the perspective of the examiner, and that's one of the reasons why we want to share this in the clarity check to get the outside view before we

move further. So, I talked about earlier the hours and that the examiner was to record the amount of hours they spent on enhancing the record, and as it turned out, the examiners, on average, use less than four hours per week of nonproduction time. We also looked at, if there was a difference between primaries and junior examiners, and there was no difference to the amount of time that they used in enhancing the record.

We mentioned pre-search interviews, and unfortunately in this pilot there were no pre-search interviews done. When the examiners attempted to do them they could not readily identify an attorney of record. So a lot of the times it was maybe a customer service number that listed a number of attorneys and no one was assigned, or some of them said when they called they were told that there was not an attorney assigned.

MR. THURLLOW: So, we are running out of time, I think. But in short, this came up yesterday, and that just -- I don't know, who called what or -- but that's just, we would

disagree with that. I mean, and the way law firms work, is a partner is assigned to each application, I have associates that work with me, and if the Patent Office ever calls, you know, the information is there. So I find this one real troubling, and something we can maybe help with.

MS. EVANS: Okay. Great. And so we plan on -- That was the information we got from examiners, and remember that it was at the examiners' discretion when they felt they needed. So it wasn't every case, it was where they thought --

MR. THURLOW: The basic point is we like when examiners call us.

MS. EVANS: And want to help?

MR. THURLOW: Yeah. Saying good morning, and thank you very much.

MS. JENKINS: I need to comment on this. I find this statement incredible, incredulous. You have to sign every application; there is clearly someone who has a Reg number who is signing that application. There is a responsibility, it's a responsibility on our side as being admitted to practice before

the Patent Office. I commend, and Kathy always knows I do this, the trademarks out of the house for their efforts for reach out, they do a great job of reaching out, because I do both, patent and trademark, everybody knows that. But they do a great job of reaching out. I have had examiners email me, I have had examiners call me, the patent side, with all due respect, needs to step up, and this is not something that's acceptable.

MS. KEPPLINGER: This one, we were united completely that there's no application that isn't assigned, so we found this extremely perplexing that they could have called someone and it was said to not be assigned to anyone. I mean, every application in a docket has somebody's name on it, and anybody that has cases has (inaudible).

MS. EVANS: A place to look into further.

MS. MAR-SPINOLA: And if I can make a suggestion, and that is that, if there isn't already a form, one of the things that we do in our practice is that we immediately, when a new matter is open we have a contact sheet, and that's

right at the beginning of the file, and to make it easier. So whatever the reason is, and obviously we are scratching our head about how can that be true, but if it's just difficult to access that information and sometimes going online is not the easiest, is just to have another form that stays on the top of the file or online, electronically you have a tab for it with the contact information, and that can be done very easily, and quickly. That would be my suggestion.

MR. HIRSHFELD: So, just a very quick note, because I know we are running out of time, and thanks to PPAC for this feedback, we can only tell you this is feedback we got from a number of examiners on the pilot. What we'll do is we will dive in and try to get to the bottom of this, obviously there's some kind of disconnect going on, and it would be helpful for us all to understand what that is. So we'll get to the bottom of it.

MS. EVANS: And here are the next steps I think I mentioned most of these already, that we are going to have quality checks on clarity to

talk about the aspects of the pilot, and to share and discuss the best practices, what works, what doesn't, the balance where planning focus session with the pilot examiners, and also to do surveys.

And then going forward we are going to continue to monitor the pilot-treated cases, to see if the examiners are still doing that which was required on the pilot. Did it stick? How did they feel about the best practices further down the road? And then to look at the average time of disposal of the pilot cases compared to the pre-pilot cases.

MR. WALKER: I now we are out of time, but everyone keep saying that, but I'll keep making us further out of time, so we are completely lost.

MS. EVANS: It's okay, it's an important --

MR. WALKER: But you have to hear my pet peeve, Robin. I just wanted to ask you a question about the scope, because you said in the very beginning that you couldn't cover everything.

MS. EVANS: Yeah.

MR. WALKER: But in the area that I

practice the chemical biotech, the issue of claim support for amendments was critical. You know, in terms of ranges for components. Now I did not see, maybe I missed it, but was support for claim amendments part of what was looked for clarity? And if not, I would suggest that that's an area that's ripe for consideration.

MS. EVANS: We'll do that. And that is all I have.

MS. KEPPLINGER: I think this was excellent. It's really valuable information. I did see there that you have the -- that you are going to have it in a quality chat. I think it is important to share this with the public in a number of avenues. Just to get some feedback. I think on the whole that they are very positive and most practitioners would agree with them. The only one that I think might raise eyebrows that are good reasons for allowance, that you might get that same split between prosecutors and litigators, where litigators want you to define, hey, it was just this one item, so I can just find that one item and your patent is gone. So that's an area.

You know, I don't know if there are any other besides the quality chats, I don't how many people call in to those, but however you can this out in the public I think it's valuable.

MS. EVANS: And I will note that our first quality chat on clarity will be next week on November 8th.

MS. KEPPLINGER: And I'm guilty of taking up too much time, too, but one question I had in terms of these best practices, right, which ties back to Greg's discussion, and the questions that were raised about, well, how are you going to evaluate quality. So do these best practices fall in average? Where are these going to fall when you are evaluating Office actions for clarity?

MS. EVANS: So, we are going to leave that to the quality shop because that falls in line with the MRF, but I can tell you that in reviewing the cases on the pilot, when they added these things in, they rose to the level, in most cases, above average. And again, remember that based on how much the examiner put in the particular Office action, but I'm assuming

that -- I'll let Greg or Marty jump on that on the quality side.

MS. KEPPLINGER: Okay. That might be okay. Although generally, we've been hoping to have at least some of this in a normal Office action, so you may have a disconnect with the outside of what's average and what's above.

MS. EVANS: Average and what's -- Right.

MS. KEPPLINGER: All right. Great.

MS. EVANS: Thank you.

MS. KEPPLINGER: I did have one question, Greg, from someone that's online, Eric Sutton. "Are there any patent quality metrics that are maintained to help examiners as opposed to just review their work, rather than review their work? For example, metrics that auto-detect likely problems in patent documents?" I'm not totally sure I understand the question either, in terms of like "auto- detect likely problems."

MR. THURLOW: This software, these companies that come to us and say, before you submit an application, you know, you measure it

for claims, you have support and specification, so a lot of companies -- you need this kind of thing, so.

MR. VIDOVICH: I'll be super quick on this. Nothing right now, but we are looking at possible tools in the new system to help with claim 3s, and miss possible -- miss things coming through our books, so we are looking at some IT Development in the future.

MS. KEPPLINGER: Thank you, Robin.
So, Jerry Lorengo?

MR. LORENZO: All right. I talk fast, I'm really good at it, and I'll make some time up really quick. This is more of an update to give you kind of a high-level down on where we are in data, so I'm just going to go on forward.

I do have one off-script thing here. My name is there, but really, it was a team effort, Dan Sullivan, Angie Sykes, Tariq Hafiz; our EPQI colleagues, Jerry Ewald, Kathy Duda and Joy Woytak. They were fundamental in getting this done and building it up, and then all the SPEs and the TCs would actually do all the work here. There's one name here, but it is not

representative of the effort of the effort as a whole.

Really quick, P3 was advanced under EPQI, under Pillar 3, which is Excellence in Customer Service. We really wanted to see if we could test the impact on enhancing patent practice in the period exactly right after final rejection, and before the filing of those appeal. What we did is we kind of looked at the two programs we have now pre-appeal in the AFCP 2.0, and we tried to look and see, okay, what works well with those, and what doesn't work well with those, and then kind of get of the chaff and bring up both aspects.

So we decided to pull in the five pages of arguments after final applicants could optionally provide non-running claim amendments. And they would have the opportunity to present their arguments to a panel of examiners. And then after that they would actually get a document that would give more context as to why the application was going to move in a certain direction; either a final rejection, and allowance for a reopening. This is just based

feedback we got, in Pre-Appeal, the form that you would often get was three boxes, you got three options, proceed, reopen, allow, that's all you got.

That's not very informative when you are making big decisions, what you want to do with the application next. So we changed that with the forms. Also, people like the fact that there is another person that's not the examiner involved in the Pre-Appeal. So, the kind of new set of perspectives on what actually is going on in prosecution. And lastly, you know, we try to see once you are at appeal, you pay the appeal fee, and you are kind of down the road. What if we do this very close after final, does that change people's behaviors or their perceptions of what is valuable to them? Does it build better collaboration?

So we began in July, 11, 2016, we are about two-thirds of the way through time-wise. It's going to run a total of six months or upon receipt of 1,600 compliant requests, and we are limiting to 200 per technology center. Of course the formal comments are still available on the FR

Notice to send one out, so please submit those. And also you can always email to the box office or our website.

And lastly, if you have participated in a P3 yourself, or you have a colleague who has, or you're going to be a participant in a P3, we have a survey for you to fill up, please do that. That is going to be essential for us to understand: what you perceive as the value, and did this make a difference. What worked, what didn't work, and what you do to make it better? So, we really need to get your comments on the survey, so please take some time and do that.

So, let's go through some statistics. This is a week-old data, we are at 1,222 filed, 1,023 are approved, 113 were defective; and right now about 614 have actually gone through the conference. So, you'll see a pretty linear progression here, it's about 100, 150 a week we are getting right now. And, if anybody wants to stop me at any time, totally cool; okay.

This is submissions by TC, 3,600, 3,700, as of yesterday they've already topped out at 200, and the other ones are coming up at that

level, the lowest to 1,600, and I'm sure you are all wondering, why is 1,600 so low, but the truth is, is there is a set population of final rejections that would be available for someone to have a P3 on. And it's a function of RSP, how many examiners, how many are actually available. 1,600 only has 650 examiners; 3,700 has over 1,000 examiners. So they put out more work, and there's more available.

MR. THURLOW: Jerry, just a quick point?

MR. LORENZO: Yeah.

MR. THURLOW: So, since you are getting close to the 300 number for certain group of audience, I don't think the public is aware of that, so there may be certain people working on the 3,700 unit on a P3 that they will get surprise after they've submitted.

MR. LORENZO: Well, I'm glad you mentioned that because our external-facing website has a counter for each technology center, and it says what the level is, and it's very fresh data, one or two days. If you look on it today you'll see 3,600 and 3,700, say, 200, and we are

putting descriptive language there, so what that means to the outside, the limit has been reached, no more will be accepted. If you read the FR Notice, and there's a lot of information, if you really went into it, you'd understand that, but attorneys are busy, and sometimes they might not understand all the limits so, so we are trying to be very transparent and clear on what information they get on that external website.

MS. JENKINS: I'm looking at the counter and it doesn't give a hint at that.

MR. LORENZO: Exactly, because we are having language put behind the 200, 200 means no more.

MS. JENKINS: Yeah. It doesn't say that.

MR. LORENZO: Yeah, it doesn't, but that's -- We just actually had that email put in today.

MS. JENKINS: Okay.

MR. LORENZO: I thought you might have that problem. So this is the conference outcome, we've so far, and I'm just going to go to mine so I can keep looking at the microphone -- sorry -- We

are sitting at about 335 final rejections maintained 93 opened and 108 allowed. The reopening is an allowance is really about 37 percent of all of the outcomes so far.

MS. KEPPLINGER: So, just to put this in context, this is about 7.5 percent higher than it is just in the Pre- Appeal brief conferences.

MR. LORENZO: Right.

MS. KEPPLINGER: And I think the percentage are flipped, that you get more reopening than allowances in the other program if my (crosstalk).

MR. LORENZO: Yeah. And that's a correlation a lot of people key on right away, and all I would say is be careful that P3 and per-appeal live in different kind of environments. Pre-appeals are always after appeal, and those are different things going on. But I mean, there is that correlation, but make sure it's just a correlation. We are still diving in data to really figure out, what things make sense, what story is this telling us, because you know there is, when you have a lot of data like we do, it's very easy to make spurious

correlations, and sometimes they self- form, and you've really got to be careful.

MR. THURLOW: But just looking at that number that's pretty significant.

MR. LORENZO: Yes.

MR. THURLOW: I mean, what it tells us from the outside is that you are reopening and allowing almost 40 percent of the case, that's pretty significant. So going back to Greg's presentation, when we hear all the statistics about 90-95 percent quality review and stuff, you know, this is the number, as Esther said, in the Pre-Appeal numbers that probably mean more than any other numbers I see at the office. If your own office numbers say you are opening and allowing 30 to 40 percent of the cases that's pretty significant to me.

MR. LORENZO: And it is significant but, you know, always realize we are talking about 536 cases over four months and being a representative sample of the 700,000 we get filed every year, we prosecute every year. So, the really interesting data that will come out of this pilot, that will have to wait to see what it comes

to, is what happens to the case after this? Did it get filed as an RC? Did it go to appeal? What happened to that application; the kind of long-term tail that will really tell the story about how this was effective?

So, you know, we have lots of short-term metrics, we can cut this data anyway you like, and we have some medium term data, to see, you know, what it did through surveys, you know, did the examiner find it helpful for closing prosecution? Did the attorneys feel that they were able to build a collaborative relationship? And then the long-term stuff is really where it's going to matter to you, your clients, any litigation, the PTAB, the AIA proceedings. How has it impacted that? So, it will be interesting to follow this data through, but always keep in mind that it is a small amount of data, so we want to be careful not to, you know, put too much on it.

Okay, this is just conference outcome by TC, and the blue is final maintained, dark-blue is allow, and gray is reopened. The TC is kind of average, right among the average we had there and, you know, when we see any deviation from that

average we'll go back and say, okay, how did this TC do the panels? Remember it had to be the examiner of record, the SPE, and a third primary examiner. So how did they -- You know, who did they pick as the third primary examiner? We said it should be someone with legal and technical expertise in the subject matter at hand. How did that work out? Was there, you know -- Were they easy to coordinate, were they easy to schedule? Many questions and those survey and focus sessions we'll have after this will give us information on that.

MS. JENKINS: I'm sorry.

MR. LORENZO: Sure.

MS. JENKINS: A point that I don't know. How is the third person picked technically?

MR. LORENZO: Okay. So, remember it has to be a third primary examiner, and we call it primary examiner because that's inclusive of a lot of people. It could SPEs, it could be QSIs, it could be other primaries. They should have legal and technical expertise on the subject matter at hand, and the SPE and the examiner work

together to find someone that they think could fill that role. We've generally had no issues on those two findings, someone that works well with that.

It's not someone involved in the prosecution. It's not necessarily someone that's even within the art unit, but someone that knows the broad, technological issues, or perhaps, this is a real, you know, kind of legal issue that they are an expert in, say, affidavits. Or, you know, priority documentation. So, that's how we try to pick them. So it's relatively open, the reason being is we want this to happen quickly because the SPE has to coordinate a meeting between himself, his examiner, the third primary, plus the attorney and anybody else the attorney might want to bring to the conference. So, we kind of have to have some flexibility there, so we can try and get everybody in the same room relatively quickly afterwards.

MS. JENKINS: I get that, I appreciate that. Thank you. I mean, I'm just thinking, you are having difficulty with the examiner, and

we've all been in that position.

MR. LORENZO: Sure.

MS. JENKINS: You know, sometimes having really someone who is outside, is not necessarily picked by the examiner in the SPE, would be a little bit more of an outside thought, voice.

MR. LORENZO: Right.

MS. JENKINS: I don't know what that means, but I just said it. And so I somewhat challenge you on that third person, to not necessarily be someone who is picked by the examiner.

MR. LORENZO: And when we were building this and working on this pilot; how should it look, you know, negotiating with the union. These were options we looked at. Should it be someone from the CRU? Can we get someone from the PTAB to serve as a third person? But when you realize that the volume of the case is in a short amount of time, the more limited you are on that, it kind of throws impacts in to the system on pendency of trying to get these things through. Nonetheless, that is one of the considerations we

will utilize when we finish the pilot. Would it have been better if this person had this role, from this organization, and had this information? These are all options, and that's something when you or your colleagues participating in a P3, there is room in that survey to give us just that exact feedback, and we really need to hear from you.

Improper request, and I always make the joke, it's that it seems right now people can't count, it's really not that simple. That more than five pages was a limitation, and often it's because, you know, people are bleeding over from into the sixth page and having substantive matter there. Putting them in the claim in the middle of arguments, the FR Notice is pretty clear on, the amendments had to separate from arguments, so it is a certain percentage, but it's not really a whole lot.

I think, as you go through this through time, people really start to get the idea of, you know, what is the proper way to do it, what's the improper way of doing it. But I've gotten feedback that really, maybe we should have said,

you know, if you are going to just submit one of these, here is what a really good one looks like, and here's what a really bad one looks like. Try to be more like this. And that will help people understand what they need to do in context of the P3, and the requirements, and really the timeline that we are trying to hit here. You know, I think we'll probably get some feedback from the external people on how they thought, what are the instructions on what 5 pages of arguments really looks like, and if that's helpful.

MS. KEPPLINGER: That's really where the outside is not -- You know, does the signature page count? Does the front page count?

MR. LORENZO: Exactly.

MS. KEPPLINGER: So I think that's where, and maybe when they had it on their computer it looked like five pages, and suddenly when it gets printed out on other -- as a different document the substance bleeds over, but --

MR. LORENZO: Right. And I think people are trying to do the right thing, I mean, we do see some creative use of font size and margins, but I think one thing to actually glean

is, we've had this five page requirement in Pre-Appeal, and generally those are validated through the appeal centre. So, I'd like to go back to them, and see, given all the ones you've gotten, what do you see as a percentage when they are going this limit? What are the things that you were doing to make sure that people stayed within it? So, we have other sources of information to pull as informative into this process to help inform us better too.

So, now, this is a correlation table, I hesitate even to show this, but it's just kind of a snapshot, and the only reason I did it is because P3 is kind of the child of Pre-Appeal in the AFCP 2.0. And what this relatively shows is; blue is finally maintained, red is reopened, and green is allowed. I'm not going to speak too much to what this might tell you, it's very personal, I'm sure. And I would hate to kind of load on what I think it means.

If anything you can see that reopening happens far more often in pre-appeal and P3. So, I would offer this possibly as a rebuttal to the worry that we are frontloading our argument by

picking someone who is going to agree with us in the first place. The examiner of that third primary is just to agree with this being the examiner. I don't think that's necessarily always true, but I think really what this tells you is that when you bring people together as a group, and they talk collaboratively, they become more open-minded.

If an examiner is, their experts in their technical area, they know their applications, they know how to prosecute as an examiner, and generally they do things independently, and therefore there's no opportunity for other opinions, reviews, on what they are doing. And it's not that what they are doing is right or wrong, but that it opens them up to possibilities.

And I think having a third person, and a SPE, all talking together with an attorney in the room, it lets them kind of open up to, how am I weighing this evidence? How I'm seeing this case, is that reasonable in view of the record, and what the practices and procedures are? So I think that's a great thing. How we end up working

this or, you know, what the data on the survey is telling us on the backend is going to be really important.

MS. KEPPLINGER: So, this is great data. The PPAC has been recommending this for quite a long time, and now have written it into a lot of reports. It doesn't have all the features that we hoped, and one thing I would say, is they don't get to talk collaboratively, and that's one of the drawbacks. I mean, you've said several times just now, but that isn't how they occur.

MR. LORENZO: No. I meant collaborative to the panelists. I'm sorry.

MS. KEPPLINGER: Okay. You get to present, and then they talk. So the thing is, even as formulated, this is an improvement. So, that's great. And hopefully you'll continue refining, because I think the most effective one is where you do get that collaborative discussion --

MR. LORENZO: True two-way between them.

MS. KEPPLINGER: Because that's the

beauty of interviews.

MR. LORENZO: So, you know, we had a lot of feedback from this as we went through and, you know, a lot of times we had -- It's a relatively new process, so the attorneys weren't sure how it was supposed to go, and the examiners weren't sure how this was supposed to work. I mean, we had situations and many of them where the attorney would make their presentations, smile and say, thank you very much, and then they would be like crickets. Thank you very much, your 20 minutes are done.

We had some where the attorney came in and, you know, he said, so are you ready to start your presentation? They said, oh, I thought you were making the presentation. So, we have confusion there, but I think we went through training, we started giving the panel saying an introductory paragraph of, this is what this is worth, this is how it's how it's going to go, and here is what we expect to come out of it. The panel is free to ask questions, and really to start asking those questions, I think we've got training in for about a month now, it will capture

a large portion of these, and so it will kind of start to be that conversation.

Now when we finish this and we go forward, should this be made permanent? You know, the feedback we get from the external customers is going to be really important. I mean, if the external customers are saying, this will be great, and it will be three times awesome if we had a real interview in the middle of this, that would be true. Now we, when we talk to our Union partners, we absolutely said, let's you know -- we went really back and forth on the law with this.

The examiners don't want to be put on the spot, but we want to make it an effective experience for the attorneys, and there is a kind of a middle ground. This is the point we arrived at for this pilot, and all that thinking is still there, and believe me, a large proportion of people, you know, specifically, on our side of the fence, really thought that, you know, it really should be an interview, because examiners know how to do an interview. Why take that capability away from them? And we'll see what that does.

You know, how does that impact the amount of time, the amount of preparation? Does it do something else, and do we have to make room in the process to capture those capabilities, so we'll see.

MS. KEPPLINGER: Fair enough. And I will say that we've talked, we talked when we were writing our report, and Pam is open to additional things, and had some ideas, even in our discussion. So I'm hopeful that you'll be able to find additional refinements. Thanks.

MR. THURLOW: So, very quickly, because I sent out and I got feedback from at least three different folks that I spoke to about the program, that were involved in it; and the yearly feedback was there was a lot of growing pains at the office and the practitioners didn't know what to do. So a lot follows what you said, Jerry.

MR. LORENZO: Yes.

MR. THURLOW: The other feedback was interesting with the talk of -- and the earlier ones that were done, when you did the presentation and you stopped. And in the more recent ones, my understanding is it was more of a talkative, traditional interview. So we looked at that as

a positive. And there was some issues with claim amendments and how to handle them, but overall I think growing pains for sure, but generally, as Esther said, a step in the right direction.

MR. LORENZO: And I would encourage you, you know, please reach back to those colleagues and say, by the way, there's a survey online, please fill it out. That will be awesome. You know, we get a lot of anecdotes on this for that, and just getting the information where we can actually start to parse it, and match it up, it will be so helpful.

And again, I'm going to head on with this again. We are going to consider at the end of this the internal and external survey results to come as we get from the FR Notice. You know, your feedback about the program from other sources, and we really need to decide should we go forward or continue this program in a permanent manner. How does it live in this microcosm of after-final programs we already have? What makes the most sense? So, again, our examiners have been giving us a lot of feedback, and we are starting to collect that. We want to hear the

external feedback; especially things you think could make it better. What works, what doesn't? And, you know, where we should be looking in the future. Thank you.

MS. KEPPLINGER: In terms of making it permanent, I mean I think you only need to look at the statistics to see that you are resolving more cases to the satisfaction of both sides. So, then you are in some of the other programs, and so at least, you know, moving forward with this, and looking where the additional refinements would be a good thing.

Okay. We are actually more than a half-an-hour behind, but I think these were very good discussions, but it's worth it. We'll catch up. We next have Hope Shimabuku, who is going to give us an update on her Regional Office. So Hope, welcome.

MS. SHIMABUKU: Hi. Can you guys hear me?

MS. KEPPLINGER: Yes.

MS. SHIMABUKU: Okay. Thank you very much for the opportunity to come to talk to you a little bit about what's going on in the regional

offices, and specifically my office. What I'm going to share with you is some of the things that are going on over at our offices, and I believe you've met the other regional directors in the past. I channel this by D2SV, it kind of sounds like a rock band, but D2, being Detroit and Denver and Silicon Valley is the SV, and so when we are added in there, the Texas Regional Office, is D2SV, and so these are the different regional directors. And we are very collaborative, and we speak on a very regular basis, mostly more than once a week we are talking to each other about various things going on in the offices.

The next slide, please? As you know we have divided up United States among our headquarters and the four regional offices, each of the regional offices is shown in a different color as well as headquarters on this map, and the map is divided up based on outreach. So, Silicon Valley is reflected in orange, and the Rocky Mountain is in purple, Detroit is in blue, and the Eastern Seaboard is covered by Headquarters, and then my office covers the Southern Central section in green.

The next slide, please? So each of the offices, we work together on a number of different fronts, amplifying a lot of the activities that are going on in the Headquarters, but also we have very consistent programming across the board. For Silicon Valley, they are now one year's old, they are about to celebrate their one-year anniversary. They are celebrating it a little late, but they have right now about 125 employees.

And they have actually reached about half-a- million people across the region -- not half -- Yeah, half- a-million, and they've been at a number of very large events including the consumer, electronic show, and then the hardware show, and they've also had a booth at the Super Bowl. And so with that, and with the President of the USPTO, and the store fronts entry that they have, they've been able to reach a number of different stakeholders.

The next slide, please. So, Denver, they've reached about 18,000 people as well, and what you see here is the different stakeholders they've reached and the percentage of the events or types of stakeholders that they've reached.

They actually celebrated the two-year anniversary of the office, opening over the summer. And so this is just some of the different things that they have going.

The next slide, please. Denver has had a number of major events including releasing the Temple Gradin inventor trading card, and Temple Gradin is actually from the Colorado area, and so they had a big opening ceremony for the release of the Temple Gradin inventor card, and they were able to reach a lot of children, especially children with autism, given a role model as an inventor for Temple Gradin. As I mentioned, they celebrated their 2nd anniversary, and they also, in September, held the first all-Spanish IP Basic Seminar, something that the Texas Regional Office will also be holding in the November timeframe.

The next slide, please. Denver has been operational since -- excuse me -- Detroit has been operational since July 2012. They've had 144 examiners go through, and they have 12 judges associated with the office right now. They've held a number of different events there as well. They have monthly programming that has its

templates including Trademark Tuesday, Patent Wednesday, on an IT basis. And they had a big celebration at The Henry Ford Museum, on September 5th -- 15th for the AIA Anniversary.

The next slide, please. So, the Texas Regional Office is actually located across from Dealey Plaza. We are coming up on our one-year anniversary as well, we will be one-year-old on November 9th, but we actually celebrated our one year anniversary a couple weeks ago, so it was a little bit early. The Texas Regional Office, pictured here, we actually have a number of different federal agencies in our building as well. We have the EEOC, we have a child development center, and we also have a military recruitment center.

Next year, my understanding is that we will also be getting an FBI Crime Lab into our office as well. This building is a very historic building, and it was built in the 1930s, and originally it was a post office, and it was the state-of-the-art post office that was built in the country at the time. It was built -- I shared a few weeks ago at the opening ceremony, it was

built intending to have three storeys, and then have additional storeys added to it, including a prison, now that was supposed to be included in here at that time, but obviously they didn't add the prison, and we actually occupy the first and the fifth floors; so, the fifth floor being the top of the building.

Next slide, please. We have currently about 110 total employees. Eventually the plan is for us to have 140 to 150 employees as well, we currently have 80 patent examiners on site, 72 brand new patent examiners, and 8 transfer or experienced patent examiners on site. We are in the process of training our third class of brand new examiners, our first class team in January, and like all the other offices, our examiners train for four months. And so this class came in, in September, and they will be completing their training at the end of December, and then our last and final class will be starting in January.

We've had great success in hiring in our office. Hiring has -- Working at the Texas Regional Office has been very popular, and for our first two classes, for 50 slots we had around 800

applicants; for our third class, the current class that's here, for 25 slots we had 1,250 applicants apply to be an examiner in our office. And so we are in the process of hiring our fourth class, I don't have the numbers on the number of people who have applied, but it wouldn't surprise me if we had a lot of interest in those positions as well.

We currently have 13 PTAB judges associated with our office, and we currently -- I'm sorry -- have 3 external judges, we also have 3 external judges over the summer; and

people who are supporting our office. What you see here are pictures of our office. If you look at the top picture is a picture of our lobby area, and specifically all the pictures in our office are Texas inventions by Texas inventors. And so this is some of the artwork that is displayed around the office including in our lobby area. Like all the other regional offices we have a public search facility. I think we have the largest one, in which we have 8 computer terminals for the public

to come in and use our work stations, or eat some Western cheese. On that, so we have 8 terminals and there is usually at least one, if not more, people using the various terminals in our office.

The next slide, please. Like the other regional offices, we have a hearing room, the nice thing about our hearing room which is different than the Denver Office, for example, is we don't have a big pole in the middle of our hearing room, so it makes it a lot easier to see everyone in the hearing room. The picture below the hearing room is our examiner interview room, and that is used very regularly as well for attorneys to come in and speak face-to-face to the examiners, or use the video conferencing capability to do that. And then on the bottom right-hand picture if you look towards the back we have -- that features some of our most famous trademarks in the DFW area are on display there.

The next slide, please. So, when I'm looking at the Texas Regional Office, and the space that we cover, what you see here, this is the most recent data from the latest PAR that was out there. What is shown, is the states that are

associated with my office. Across my region, last year, we had received about 27,000 patent applications and granted about 14,400. On the trademark side we received about 40,000 applications and issued about 22,500 trademark registrations.

As you can see here, Texas has the lion share of patent applications and trademark applications as far as registrations as well. We actually have the second-most number of patent applied for and granted out of any state in the country, California being number one. The rest of the region has some activity as well, but not as significant as Texas.

The next slide, please. When we are looking at the technology that is associated with the patents that are being granted, this is a snapshot, first of all, of the nationwide utility patents that have been granted between 1963 and 2014. These are for the green, and the bigger the box the more patents are associated with it. If you look at this from the snapshot standpoint, nationwide drug and bio has the most number of patents that have been granted with organic

compounds. Following that are second, synthetic resins as number three.

If we look at Texas -- The next slide please -- If we look at Texas, and I only chose Texas, and I'm not going to go through each of the states, but if you look at Texas, the largest number of patents as well, and not surprising, we outdid oil and gas states, and so lots of oil and gas, and there are a number of other states, like Louisiana and Oklahoma, in which wells is also the highest number of granted patents from a technology standpoint. Synthetic resins and natural rubbers which are byproducts of the oil and gas industry, that is number two. So again, not a big surprise, and number three actually semiconductor devices, and Texas is huge on semiconductors with companies like TI, Intel, AMB Applied Materials all having a presence in the Texas area, so this is something that is really big in the area.

And with the number of different companies moving into the Texas area, specifically Dallas, for example, Toyota, and it's moving to Texas, I suspect that in the future

the number of patents in the technology area we may see a shift in that coming up.

The next slide, please. When we are looking at the innovation ecosystem, we see that these are the groups of people that we are trying to hit, and so there are six different stakeholders that we look at in our office as well as all the other regional offices that we are trying to touch.

Specifically -- Next slide please -- So, our office actually in fiscal year '16 has hit every bucket of the stakeholders. We actually have also hit every state in my region. Now the lion share of the outreach activities are obviously in Texas, but we've been able to touch stakeholders in each of the different states within my region.

We've held 245 outreach events in fiscal year '16, and understand as well that this is over a 10-month snapshot because we were not opened until November of the fiscal year '16, but we've reached 17,800 stakeholders during that timeframe.

The next slide, please. And what I

wanted to show you was just some of the different things that are happening across the region as well as in our office. So, our office, we do a number of different things for employees only, and so those are reflected in blue. But then we have a number of different outreach events that we hold around the region which are in black.

So we do have to monthly meet the patent expert and meet the trademark experts, but one of the things that we are holding next week is open season health care in which we'll have different health care companies like Blue Cross, Blue Shield, the insurance companies. From the setup of this in our office space, and we opened this opportunity up to everyone within the building, where they come and talk to the various health insurance companies, as open season is coming up. We also have flu shots, cholesterol screening, and then holiday party coming up; so, just a number of different things that are happening in the office.

The next slide, please. And so that is all I have. Any questions?

MR. WALKER: Hope, this is Mike Walker

from PPAC here. Thank you, for that presentation, very comprehensive. Maybe you could say a word about a topic that the Human Capital Outreach Sub-Committee has talked about before, and that is the coordination of OID, and what they do, and your activities in your Regional Office. How do you coordinate how priorities are set? That type of thing.

MS. SHIMABUKU: That's great, that's a great question. So OID has a number of what I would call large programs, and nationwide programs, like women's conferences, and a number of different conferences that they themselves put on. And so when that program is in our region, then we will help support OID, and being able to put on that particular program. On the flip side, if there are programs in our office, and that we are putting on in our region, and we are not able to support it, we don't have the resource or the expertise within our office, you know, to support that, then OID will send support resources to our region.

So, for example, in my office, especially when I was starting in the first month,

we were trying to start up patent, and then our trademark seminars, this is something that is done at the other regional offices, but since I was new, and it was the first time that we were doing it in our region, (Inaudible) and the members of her team came to our office to help support and set out our first patent seminar. Likewise as we went on, I guess I would call it a road show. We've held similar events in San Antonio, and in El Paso, and some of the other cities within my region, and she was able to send support from her office to able to do presentations to support or program.

So, we do do a number of different interactions. There have been times in which OI has covered for our office when there was an important event, so it it's happening in our region and we didn't have the resources to be able to go to that event, OI was able to send people to support that event. And likewise, on the reverse side, we've been able to send people to help support them as well. For example, the SPIR and SPTP Road Shows, if those were happening not necessarily in our region, but it was more

economical for us to send our folks to go, or for someone from OID, then we would also send our folks to support those events.

MR. THURLOW: Hope, this is Peter Thurlow. Hello. You were kind enough to give me a tour of the Dallas, in the office, several months ago. So, thank you very much, it's nice to hear your voice again.

MS. SHIMABUKU: Okay.

MR. THURLOW: I'm going to be going to the Detroit Office next month, and I look forward to that as well.

MS. SHIMABUKU: That's fine.

MR. THURLOW: One of the things that we see in New York particularly is a lot of focus working with universities. So can you give me a specific example of universities that you are working with; because we see so many startups and others going through universities for assistance with IP programs?

MS. SHIMABUKU: Oh, yeah.

Absolutely! We have a number of different universities that I have visited and I have been working with. The University of Texas actually

next week, I'm going to be making a visit down there to go and talk to the faculty as well as their students about patents and IT. They are also having an innovation celebration, and at which I'm going to be speaking at as well, for the University of Texas.

But locally, within the DFW area we have a very strong academic studying with SMU, as well UTD, UNTA, UTA, we have a lot of different universities there, and so we've been able to go there and work with them, talk to their professors, talk to them about patent, and the importance of filing, giving them not only the basics but helping them how to navigate the system as well. But we are also helping to support their tech transfer offices and ask some questions about: What is stopping you from filing more? What are some of the different hindrances? What are the different questions that you have?

A lot of it builds around 101 and subject matter eligibility, which is a huge topic, I think, just in general, in the legal community. But we have been able to work with them. I've also presented two students in their

classes, in their law school classes, as well as, for example, Texas A&M, they have startup aggie land, and I was able to present to them just basic presentation on IP 101, and just let them know what IP really is, and give them an overview of what they need to do to protect their ideas. So, that is a lot of our interactions with the universities.

MS. JENKINS: Esther, I know we are behind. But I guess, you know, I'm a strong, strong support of outreach. I think it's great what the office has been doing over the past several years. I know when I first started many moons ago, the office did very little, and I highly commend the office. The thing I struggle with though, and I appreciate Hope listing out all the different things they are doing in the next two months, and I appreciate Mike's comment.

I just wonder, you know, how is this all organized and coordinated across the office? I mean, I'm sitting here, I've gotten emails from the office for programming, while we've been sitting here. So, and everyone -- I hear budget, oh, that comes out of this budget, that comes out

of that budget. I would strongly encourage, and the office has heard me say this, but I'm going to say it again, to really look very hard about how all of this programming is done. For budget reasons, for confusion by stakeholders, I want to attend a lot of things -- So I'll just put that comment up there.

MS. SHIMABUKU: And I can appreciate that. And absolutely, I mean, I think that we at -- not all the regional offices are up and going. We are really looking to make our outreach be as coordinated as possible. We do have gaps, and I'm not going to say that we don't have gaps in trying to figure out what's going on in our regions, and who is the most appropriate person to develop for cost reasons, or was that really an event that we really needed to go to.

So, those are questions that we are all evaluating right now, and I know that we have biweekly calls with all the outreach representatives, across all the business units. So we are trying to get more coordinated, and trying to understand that whatever we are doing that we are getting the biggest bang for our buck,

and also that we are making the most impact across the board and making sure we have the right resources. I appreciate that feedback.

MR. SOBSON: I would be remiss, as I'm leaving, for another parting comment, which I mentioned before, but I really think that there's nothing sacred about having these quarterly PPAC Meetings always now at main Headquarters, and I think finding ways, planning it far enough ahead, at least maybe once a year, having one quarterly meeting at one of the regional offices is a great way to bring other audience members to the thing, and it can be structured in a way that has a variety of synergistic effects. And I think it would be a great use of this forum, connected with the regional offices for exactly that sort of sensitive coordinated outreach. So I would just encourage both the office and the PPAC this coming year, to look at that.

MS. KEPPLINGER: And I think Marylee is looking -- she's exploring ways to do that. But one of the challenges of course is expense, and the advantage of being here is that we can intersect with all these people, but there is also

the other side of it, which I think will be addressed.

Thank you very much, Hope. Okay. So we are at a little bit after 11:00. I'd like to take about 10 minutes. So let's be back here ready to start by 11:15. Thank you so much.

(Recess)

MS. KEPPLINGER: Okay. Thank you. Everybody got back here. I appreciate that. I think as we were just saying, I think probably a few of us are maybe a little sleep deprived. I don't know about all of you, but many of us stayed up to watch the end of that exciting game. Go Cubs.

So, okay, we will start again with the PTAB update and David Ruschke, welcome. Thank you.

MR. RUSCHKE: Thanks. It's great to be here again. I just want to acknowledge a number of people that have put these slides together not just myself. Obviously, my deputy Scott Follick, but also our new vice chief for engagement, Janet Gongola, as well as Christa Flanagan, and there a lot of other people that

have had their hands in this. So I'm the lucky one that gets to present.

Let's move quickly to -- I know you're behind a little bit on time, but, again, if there's any questions, please make sure you interrupt.

Just a quick update on management. Right now we have this structure, essentially, in the Office of the Chief Judge for PTAB. As I mentioned, Janet has come on as Permanent Vice Chief, specifically, for Engagement. We have made offers to four vice chief judges for Operations. We cannot tell you exactly who they are at this point. They're going through the approval process, but at next PPAC at the latest we will be announcing who they are.

This stems from the mandate that the director gave me when I started to look at the organizational structure of the Board and make sure that we have all of the necessary people in place to operate, as we have grown explosively over the last four or five years, and into a new phase really with the Board in a much more stable fashion.

Also say within the Office of the Chief Judge is our Board Operations Division, which handles all of the administrative HR, Finance, Space issues. That position is presently open, and we are now searching for an acting or a permanent member for that position.

I'll turn it over to Scott to talk about patent end to end.

MR. BOALICK: Thank you, David. We have a couple of slides on our new IT system, PTAB end to end. We have had a deployment in July for IPRs, PGRs, and CBMs that took over that trial functionality from the prior legacy system, PRPS, which, as you know, was deployed in the one year between the passage of the AIA and when the trials went live.

We are now proceeding to get Derivations online in PTAB End to End. That's scheduled for December. When Derivations go live, we can finally retire the PRPS system because right now Derivations are currently hosted in PRPS.

But the goal, as in the name, is to have everything PTAB does included under this system,

and so right now it looks like we will be able to deploy the appeals and, interferences functionality sometime around fiscal year 2018.

But in the meantime, we have incremental deployments to take care of defects and address any feedback items. We have a list of known issues that we have on our website. We've also added a new feature to the PTAB website that aggregates what's been mailed twice a day.

There have been some reports that we only mail decisions twice a day. That's incorrect. We actually mail decisions throughout the day and sometimes late into the evening, but this website aggregates whatever has been mailed since the last update, and shows you what's been mailed the current business day and prior business day.

For those who are looking to get data from anything before that, we have the new USPTO data portal where you can access decisions and other data from prior to the previous business day.

So we also have a lot of materials up on our website. Here in the slide we have links,

user manuals, FAQs, quick reference guides. We have a customer support line for questions.

Also, if there are comments, feedback, suggestions, the email address that's posted here is monitored and we do take suggestions and note those and put them into a priority list for deployment.

So that's where we stand with PTAB End-to-End.

MR. THURLOW: This is to Scott. Just a brief comment. I mean, the feedback I get of Bar Association meetings and other events is just generally positive with the upgrades in the IT system, and something the office talked about going back several years ago, and (inaudible) in effect and so on. So seems to be all good.

MR. BOALICK: Okay. Thank you Peter. I wanted to mention a few things on PTAB outreach efforts. As I mentioned, Janet has come onto the PTAB essentially reprising her role that she played up in the front office for the last few years. And we are going to be reinvigorating our board site chats which we were doing every other month. We're going to start those up in January.

We have a number of list of topics. They were very well received prior to a little bit of a hiatus this fall.

We also sort of in line with what we did about two years ago where we were taking, in conjunction with TTAB. PTAB and TTAB were doing what we call stadium tours throughout the country.

It was a very concerted effort. A lot of work went into it. What we're going to do is again reinvigorate those for this upcoming calendar year. Our goal is to have stadium tours in association with law schools as we did before in the regional office area. So focus in on our outreach within the regional office and leverage the regional offices.

So, hopefully, within any bi-year period, we will cover all four regional offices. So we're planning one for the spring and one for the fall.

So, hopefully, that's going to happen fairly soon, but we need to start planning well in advance of those because they are a heavy lift for us.

Did want to mention, also, the last bullet point. We did have in terms of outreach a very nice turnout for the live hearing at AIPLA last Friday morning. We had the entire Thurgood Marshall Ballroom was packed. It was certainly the largest public hearing that we've had with probably over 500 in attendance.

I think it was very, very well received. That's also a very, very heavy lift for us, but I think it was well worthwhile, and we really appreciated being invited to do that.

Also, just I wanted to point out again our PTAB bench and bar. We've had that twice in a row, and now we're, we're still planning on doing that in June of 2017. June seems like a good time frame for us.

It's a wonderful event that Janet has planned for us twice so far, and we get approximately 150 judges here on site which is a really great opportunity to meet the judges.

I'll quickly turn to some statistics, as we always do. I'll start off with appeals, as I always do in any of my talks. Even they want to hear about AIA, I always talk about appeals.

I'm going to move on to this slide, which is our ex parte fiscal year end slide. I should mention that the slide deck that you all have is an abbreviated version from what we have on our website which gives the full PTAB statistics. So please look there. If there's something that you've seen in previous slide decks that is not in here, we were trying to streamline this deck given the time frame.

I think the most important thing, obviously, that we're looking at is the bottom, the far right two columns from FY 15 to FY 16. We have an approximate 27, 28 percent year-over-year decrease from 21,000 to less than just about 15,500 pending appeals in our inventory year-over-year. Very happy with the decrease, and, obviously, that's a significant reduction year-over-year.

Wanted to mention on the next slide, this is our pendency slide and we're trying to make these as clear and consistent as possible. This is by technology center. You can see it does vary to some extent anywhere between 24 maybe up to around 30 months, generally.

And again, essentially, this is our end of fiscal year data, and these are decided appeals again. So that's how this pendency slide looks. So when we had these decided during the year, this is how long they had been pending up at the Board.

I also want to mention, which is not on this slide, we had an informal effort within the Board to essentially rid ourselves of, quote/unquote, the old cases. And we made a very, very strong push by the end of the fiscal year to get rid of all cases that had been pending longer than FY 13 and before that.

And other certain heard cases that are actually happening this month, I think we were very, very successful and we have virtually eliminated any case that has been filed prior to FY 13.

MR. THURLOW: David, I will only add just so everyone understands that one, the 3900 units of CRU, and that's why if someone is appealing from a re-exam up to the Board, it's much different than is the regular (inaudible) unit, so to the extent that can clarify.

MR. RUSCHKE: Yes, that's a good point,

Pete. I don't think we actually specifically identify that, but, again, that's typical for us to have essentially a six-month pendency for the re-exams.

I wanted to show on the next slide, this is intake by technology center. Again, it varies significantly. Not sure there's much to say on this slide other than it's, again, some data that we have and focusing definitely on and making sure that we have the right resources with the technical backgrounds to support our ex parte efforts for each of those centers.

This next slide is on that we had put out last year, or last time with PPAC which was a fairly new site. This was our outcomes in FY 16. This is actually very constant year-over-year.

Essentially, the blue is affirming at a 57 since we're 60 percent rate. We reverse at around 30 percent, and we affirm in part at around 12 to 13 percent. And, again, this is fairly constant year-over-year.

There's no questions on the appeal statistics? Again, I think that's quite good

news. I had actually hoped that it would be one less. I was trying to get my first opinion on ex parte appeals out in last fiscal year. I was unsuccessful, so that, unfortunately, will be hitting this quarter. So stay tuned.

MR. THURLOW: The general comment is that great the numbers keep on coming down. They're dramatic. This number, as I mentioned to you before, and as Esther has mentioned, is probably one of the most important numbers, that and other numbers that Jerry gave at the initial results from the P3 program, and at least 30 percent of the cases are being reverse, so that number from a quality perspective is bigger than probably any other number we look at.

MR. RUSCHKE: Yeah, I think this is a good piece of data. That feedback is good. There's something that we hadn't reported until the last meeting. So that's good. I'm glad that it's good data for you.

MS. KEPPLINGER: One thing I would say here with respect to your comment. You know, the reversals here aren't necessarily that there was anything wrong quality wise with this application

because the office would be remiss if they only sent up absolute, slam-dunk cases. So sometimes there are gray issues and a reversal is appropriate and it's not any reflection on the quality of the work.

MR. RUSCHKE: Absolutely. I mean, these are the tough cases, right, that are coming up.

MR. THURLOW: Yes, of law changes as well which plays a factor, especially recently.

MS. JENKINS: I think it would be helpful. The numbers speak for themselves, but could you could just give one or two points of why you're able to decrease the backlog on the appeals? I think the public would, it would be helpful for the public to know that.

MR. RUSCHKE: That's a great question. Part of it is just an emphasis by the management of the Board to emphasize the need to get the backlog down. And, again, I think then the concomitant piece to that is with the, we'll see this in the next slide, as the AIA trial intake over the last few years has stabilized, and we've gotten better at handling the AIA incoming

caseload, the judges are instead of just focusing in on AIA going back and filling their dockets with ex parte work. And I think that actually helps enormously to bring the backlog down.

I should mention that, again, if you extrapolate from that graph, one might suggest that we're going to go down to zero. That's not the case. We actually are looking at our workload, and as I said I think at the last PPAC, we are not hiring any additional judges at this point from the outside, so we have made modeling determinations that are workload, both our ex parte and AIA, can be accomplished with the existing complement of judges.

And, again, our goal the pendency is still fairly high, but we're trying to get a pendency of around 12 months when it comes to ex parte appeals.

So what we're looking for is somewhat I would call a soft landing, so that incredible decrease is not going to go to zero. It's going to come down and it's going to flatten hopefully with the pendency of around 12 months. Whatever inventory that translates into is about -- we

essentially get about a thousand cases a month in. And so if we can turn those around within a year, you can do the math as to how many that inventory should be.

Does that help? Move to the AIA trial statistics. And, again, these are, I should say that, again, as I mentioned the last time, the slides are undergoing some changes. You'll see some of the similar slides. We've recognized that statistics are incredibly important to the stakeholder community. The bloggers in particular love to get our data and make up their own slide statistic presentations. We are aware of that.

Scott and I have taken it to heart. We're forming, we have actually already formed within the administrative branch a strong effort to re-look at the slides to make sure that we're presenting the data as cleanly and as fairly and as openly as we possibly can.

This first slide, of course, just gives you the overall petitions filed since the inception. We are over 5,600 petitions to date, and the vast majority, of course, are IPR

petitions.

This gives us a little bit of a breakdown between IPR, CBM, and PGRs. So this is the first year now that we've seen, as opposed to the exponential increase we've seen up until FY 15, we had a slight decrease year-over-year of approximately 11 percent total petitions from FY 15 to FY 16, dropping, essentially. If you add those numbers up, it's 1897 from FY 15 to around 1683 in FY 16, about 11 percent decrease.

Is that going to continue? We're not sure, but it does seem to, if you look at it on a month-to-month basis, the data seems to indicate of about 140, to 150, to 160 petitions at any give month, a little bit higher here, a little bit lower there, but similar to the institution rate we seem to be stabilizing at a fairly -- I would imagine that we're going to be somewhere in this range going forward in the upcoming fiscal years. That's our model.

The other trends to see here as well is that we do see a decrease in CBMs now year-over-year for the last two fiscal years. As that program winds through its process, of

course, we anticipate that that will probably go down somewhat.

The other trend, although it's small, in the red are PGRs, so we actually had over a doubling of PGRs from 11 to 24, obviously, very, very small numbers. But we hope that with the acceptance of PGRs, and with the U.S. community getting their hands and heads around that process that those numbers will also be increasing.

MR. THURLOW: Julie, do you have a question?

MS. MAR-SPINOLA: Yes, I do. Thank you. David, let me ask you in counting up the number of petitions, are joinders included in that, or is it just the direct petition?

MR. RUSCHKE: This is just the direct petitions. We actually did have a slide on the website which I believe is still there that will break out the joinder.

MS. MAR-SPINOLA: Okay. Thank you.

MR. RUSCHKE: The joinder number.

MR. THURLOW: And, David, we discussed this. The real interesting thing if you look out two years is what going to happen with the PGRs,

because as you're well aware percent of the IPRs are related to patents involved in parallel litigation.

So with the nine-month window for the PGRs, it's very interesting to me whether the applicant community is going to use them from a quality perspective blogging, and I know we've gone back and forth, but as you do the road shows, and you go out on your outreach, I would ask the basic question how do you envision using because I've heard different feedback, and I know real quick you have a lot of experience in the EPR position practice.

One of the things I did hear is I believe for the opposition practice the filing fees are zero. And then the procedure itself is much less expensive as compared to here where people unless it's in litigation they get two bits at the apple, are less willing to spend what may be several hundred thousand dollars to invalidate pat net may not get

(inaudible). So just a thought.

MR. RUSCHKE: No, no, I think that's really well taken. There is certainly a

difference in filing fees. I guess one of the things that I was always looking at this before coming to the agency was using it as a substitute for freedom to operate, a substitute for willfulness, potentially. And, again, if you do the math, depending on the products that you're launching, and the opinions, your sort of internal processes on a corporate perspective, the cost may not be that significantly different.

If you actually think about the cost savings that you would have from putting together a freedom to operate full opinion versus having a PGR to resolve it up front, and, again, my message always is on PGR, I think your clients would be very excited about having a real answer soon underneath the AIA statutory deadlines rather than having a willfulness opinion that sits on the shelf that would have to be updated and caveated to death until you finally may or may not get litigation down the road.

MR. THURLOW: I don't know. The numbers from FTO are much lower than a full proceeding, so there's a big difference.

MR. RUSCHKE: Sure.

MR. THURLOW: Yeah, yeah.

MR. RUSCHKE: Yeah. But I do mention PGRs quite a bit, and I do think it has potential. I am instituting within the Board now. We're looking at these sort of not just EPO, but also JPO, KIPO, those sorts of things, to look at their procedures to see where we stand within sort of the whole global IP community.

MR. THURLOW: David. No, Mike Walker over here.

MR. WALKER: So following up on our discussion about EPO yesterday, just after our touching on that topic, I reflected it on a little bit last night just to give you some feedback because there was quite a few EPO oppositions, but also a lot of European litigation.

And my reflect was this. That a lot of EPO oppositions because the litigation in a lot of countries in Europe other than the U.K. and Germany is so uncertain that people feel that it's worth taking that central bite at the apple up front early. Whereas, here in the U.S., we have a lot of courts, and have a lot of experience, and we have a common civil procedure that doesn't

require learning for every different country and people perceive as fair could be an explanation.

So I was just thinking about that, just giving you that feedback because I wondered why two PGRs aren't as popular as EPR oppositions. But then I thought some of the litigation we had in front of courts were very unsophisticated in terms of patent cases or technology, and that would drive more EPR positions.

But maybe others have some more feedback --

MR. RUSCHKE: I think that's great feedback, Mike. And, again, I take Pete's comments to heart. What I'm trying to encourage, you know, AIPLA, IPR are great for us to get out there and talk, but I have found that some of those 20 to 40 attendee conferences where you actually can get down in the audience and during the break hash through some things are probably the most effective for us. And so that's what I'm encouraging me and also the entire team and the judges as they go out to really hone in and ask these kinds of questions directly to get that -- it anecdotal, but I think it builds up over

time.

MR. LANG: The estoppel provisions are also a concern in PGR and I think are a deterrent to using the procedure. And with no litigation necessarily at hand, making a decision about the filing of PGR means being foreclosed from further lines of argument. If there is a litigation in the future that's a significant deterrent.

MR. RUSCHKE: And I understand that. I always took it to be you're going to make the choice, and we do this when we were doing EPO litigation. I want to have the highest amount of confidence that I'm going to get an answer soon, and it's going to be accurate, and I felt that that could be in a EPO as opposed to a potential future litigation. My client wanted the answer now. It didn't want to have a potential litigation later.

So I hear what you're saying on estoppel, but I do think it's a mindset that the U.S. attorneys need to move through and adjust to in this new regime underneath the AIA. There is certainly a risk aversion always wanting to keep something in your back pocket just in case there

is some litigation, but I actually commend all of the in-house counsel and their outside counsel to ask their clients and say would you rather have an answer one way or the other now, or would you rather have a threat of litigation over your head for the next ten years?

MR. LANG: I hope that the estoppel issue will be fixed eventually. That wasn't the way it was intended to be in the AIA, and I think it will be corrected at one point, and then we'll be able to see the effect.

MR. RUSCHKE: No, I agree. I think we have a long way to go, but that estoppel piece is actually I think an impediment to using the --

MR. THURLOW: Right. So that's one of the things we discussed with Dana very quickly, and a very basic question that we get is because the estoppel is much broader 101, 112, 102, 103, and so on, if we bring a 101 in a PGR is everything is stopped subsequently.

And I've heard different answers on that. I don't know if you have a perspective, but that's the concern because the estoppel is much broader. Are you then just in litigation about

the infringement and not all the other issues?

MR. RUSCHKE: Right. And what I've heard, actually I was down at the Eastern District of Texas bench and bar, and, again, I think the estoppel provisions are being, starting to work through the courts. We'll see where they all end up. Their take on it was, essentially, that a lot of the estoppel is not going to have the bite as broadly as they thought it was going to be.

So a number of the speakers there were actually calling it estoppel lite basing it on just a few district court cases that are out there. So it's an evolutionary process is what I'm saying. I don't know where we're going to end up on the estoppel.

MR. THURLOW: It's a big concern. As we give presentations to boards and senior executive. That comes up every time.

MR. RUSCHKE: I understand, and rightfully so. Let's move to this slide, which is -- and again, we're running a little over, so we'll try to move through these last few slides again.

This is a slide that we put just based

on technology. The main takeaway here again is that by far and away electrical and computer, which is in the lower left-hand side, the blue, is over half of all of the petitions filed underneath AIA. The red, mechanical business methods, and a smaller percentage of biopharma in the purple on the right-hand side of about 13 percent.

I did want to mention something that we talked about last time, which was essentially the effect of our new rules that we launched in May of this past year. In particular, the one where we were allowed new testimonial evidence in the preliminary patent owner's response. Early data, not a lot of numbers, but we are seeing approximately

percent of patent owners preliminary responses where they have included new testimonial evidence. Fairly high number.

I will mention that there has been an article not from the agency but out there from other folks that have taken some of these numbers and parsed them down case-by-case. I think it's nice that the 40 percent is actually showing up,

but we'll see where these numbers go. They're still quite early, but I wanted to give you a little preview that we are tracking that data.

Also, on this slide, this is a fairly new slide that we have. We've had it in different formats, and, again, this is an effort for us to try to show trends, and to make it a little bit clearer.

This is our institution rate per fiscal year, obviously, in the very early stages when we had the full set of data in FY 13. We were very high at around 87 percent, but I think the point here is that on the overall basis, one-third of our petitions are not instituted at all and that seems to be stabilizing quite well over the last two fiscal years in that 69 to 67 percent.

And I would also highlight it's a little bit buried in the narrative, but that 67 percent from last fiscal year and all of this data includes institutions in part. So the actual number if you did it by a claim-by-claim basis which we have had in previous data would be significantly, well, would be lower than that number.

But that 67 percent, essentially, is the outlier or the outer limit. One-third of all petitions are not instituted 100 percent.

MS. MAR-SPINOLA: David, is there a breakdown, another chart that breaks down IPR, PGR, and CBM?

MR. RUSCHKE: Not in this format, Julie, but we have it in, in the slide deck that's up on the website --

MS. MAR-SPINOLA: Okay.

MR. RUSCHKE: -- we have our old data which you can kind of parse through it, and that goes into, it's more of a bar graph, but it's not in this sort of graph year-over-year.

MS. MAR-SPINOLA: Would there --

MR. RUSCHKE: But I'll take --

MS. MAR-SPINOLA: Would there --

MR. RUSCHKE: -- I'm sorry.

MS. MAR-SPINOLA: -- would there be any objection to doing that as a breakdown?

MR. RUSCHKE: I think that's something we definitely, we should we should do.

MS. MAR-SPINOLA: Okay. I think it would be useful for the stakeholders, actually,

to have that broken down.

MR. RUSCHKE: And if you feel, if you like this format, we will definitely break that down in other ways because, again, I'm just trying to -- some of the data that we give, and, again, the data that we've had on our website for years, again, the effort was to get as much data in its pure form out to you as quickly as possible.

MS. MAR-SPINOLA: Right.

MR. RUSCHKE: Now, we're taking a look at it and saying is this the data that's the most helpful to you because it has caused, I think, some confusion out there in the stakeholder groups, and so if this is working for you, we can do anything we need to help, you know, give additional information.

MS. MAR-SPINOLA: I think I can survey or canvass the PPAC on this, but my immediate reaction is this is helpful if you have the collective graph as you have here, but also to break it down in the same chart so we can see really what the trends per proceeding is. And in that way, I think -- you know, for two reasons.

One, I think, depending on the

stakeholder, they may be more involved on a specific proceeding more frequently such as an IPR than others. And then the other thing is the expectation that PGRs will probably increase. It'd be nice to break that out so that you can see what is really impacting the overall graph.

MR. RUSCHKE: Good. We'll take that as a definite note.

MS. MAR-SPINOLA: Thank you.

MR. RUSCHKE: Yes, Wayne.

MR. SOBON: Along those lines, I mean, you could break it out also by technology --

MR. RUSCHKE: Technology.

MR. SOBON: -- in the same way to see what trends are, and also even for those instituted all claims or some claims did not, just show those trends lines, I think, is very helpful to see where you're headed, because this is obviously, you've moved beyond the death squad year which I think people focused on the agency at which time it was like a very strong, a stark number.

This actually looks much more like it's approaching a normalized steady state. So,

helpful.

MR. RUSCHKE: And that's exactly the point of doing that, so I'm glad that point's getting across. So that's great feedback. Thanks.

Very quickly because I know we're running over our minutes by far, this is again, percent of petitions instituted by technology. Again, fairly constant over the technology areas, little bit over 70 percent with the exception of biopharma at the bottom of around 60 percent.

Again, I'm going to apologize somewhat. This is the stepping stone slide that we have put out for many, many years. This is under construction for sort of a new way of looking at it.

Again, I'm not going to go into necessarily the specific numbers because there's a lot of information here. But, again, this, again, takes it from the very front end of the process and walks you through every single disposition all the way through final decisions whether they're instituted or not.

Again, this data is on completed

petitions only. So that's, I want to be very, very clear on that. We can pull out a lot of our data here, but, again, we recognize that this is a little dense, and it's hard to read, and it's hard to get the trends. And, again, this is a snapshot of completed decisions.

But to Julie's point, we did break down, we've had breaking these down on IPRs, then on the next slide it's CBMs. So I'm not going to go into any of the data. It's there. And just please understand that this is sort of a rework as we move forward.

I do want to put down this last slide here again. Trial outcomes for instituted claims by technology. I always think this is very interesting a breakdown.

Again, I'll point to the fact that the lower line on the and biotech and pharma line is somewhat of a little bit of a difference compared to the chemical, and the electrical, and mechanical with essentially the yellow or the orange being the claims found unpatentable, and final written decisions being less for the biotech pharma than comparatively to the other

technology areas.

And with that, I just remind everybody the full set of slides is up on the PTAB website, and will contain all of the fiscal year data that we had, FY 16.

MS. JENKINS: Coming with this role is the positive and the negative. People say nice things and people also complain. And I find lately people complain a lot to me.

So an interesting scenario and something to consider. The complaint was the makeup of the Board. In particular one of the judges was a former partner at a law firm that was appearing before it in the proceeding.

Now, I know the rules for conflicts for the office are quite broad in a sense. I'll give an example. For WIPO, being a domain name panelist myself, I am not allowed to take any proceeding that the firm has represented or is adverse in any topic. So even if it's a real estate matter, and it's a domain name, and we've represented or been adverse to that entity, I am not allowed to take that proceeding. WIPO takes a very hard line on conflicts.

I was surprised to hear from this individual that that's not the position for PTAB judges, and I do think they bring up a valid point that if you are a judge and someone from your firm is arguing before you for a case that you strongly consider not, that person should recuse themselves. I do think that brought up a good point.

So I don't know if anyone else has complained, but they complain to me.

MR. RUSCHKE: I appreciate that comment. I've heard that too, and I'm not sure if it's one situation, or if it has happened over and over again. This actually did come up at one of our internal meetings. We reiterated, obviously, strict adherence to all of the ethical rules associated with conflicts that the agency puts out there, and we encourage the judges on an individual basis to make sure, just as the federal circuit judges do, if they feel uncomfortable and in any way biased, they are going to recuse themselves.

So that's a message that I've sent to the Judge Corps. In this specific instance,

again, I'm not sure if it's one, or if it's many. I don't think it's a lot, but it's certainly something that we have raised internally.

MS. JENKINS: I think counsel was very surprised to learn that after the fact, and the panel had already been constituted and did not feel that it was then appropriate to complain about it because then if the judge did not recuse him or herself, then you've now made an angry judge.

MR. RUSCHKE: Fair point.

MR. KEPPLINGER: Just for what it's worth, where that employee is no longer employed at that law firm, it may be ethically, you know, not violate the strict letter of the ethics, but I would argue that that's an appearance of a conflict which should definitely be taken into consideration. And so I don't know. Something that you should look at.

MR. RUSCHKE: I appreciate that. And I think the last thing we need is to have something like this get out there in the stakeholder community and they're worried about raising this issue. That is particularly troubling.

But, again, I think that's -- I hope I can assure you that that is something that we have discussed internally, and we will continue discussing in light of this discussion today.

MS. KEPPLINGER: Thank you very much --

MR. RUSCHKE: Thank you.

MS. KEPPLINGER: -- David and Scott. Very helpful.

MR. THURLOW: Thank you very much.

MS. KEPPLINGER: Okay. Moving along, I think we have got now patent operations update, and we have Don Hajec and David Wiley. Don, Assistant Deputy Commissioner for Patent Operations. Andy Faile was not able to be here today. So, thanks, Don.

MR. HAJEC: Thank you, Esther, and we're about ten minutes away from saying good afternoon. As Esther mentioned, Andy unexpectedly couldn't make it today. He gives his regrets.

So this morning, I'm going to go over a few of our updates with respect to some of our filing information, and our pendency numbers, keeping in mind that all of this and more is on

our Data Visualization Center on the USPTO website.

Okay. So first slide shows our filings from Fiscal Year 10 through 16. I think the important points to note is last year in Fiscal Year 16 was the first year we exceeded 600,000 filings. And you can see from that obviously a large percent are the serialized filings, but RCEs continue to grow as well.

The overall growth rate last year was 5.1 percent which exceeded our original projections quite significantly. Serialized bonds were up 1.6 percent, and RCEs a whopping 13.6 percent.

But despite that the growth was higher than we anticipated, we were still able to make some inroads to reducing our application inventory. We finished the year at 537,000 applications, and you can see the RCE inventory on this slide as well.

You can see last year it did touch, go back up to 40,000 briefly, but at the end of the year we were able to make good progress in bringing down that inventory as well, and it

wrapped up the year at under 30,000, at 27,000 RCE applications in the inventory.

MR. THURLOW: So, Don, just a real quick point on that. So one of the troubling things are the challenges. As much as the Patent Office has done on the after final practice is that sometimes when we get to the final office action, we have to submit new declarations, new evidence, and so. So we find the need, and some recent cases I had, we'll just file an RCE to make sure that stuff gets entered.

So that's just a general comment to that, because the numbers are a concern. From a practical standpoint, we have no choice. Even with the increase in the after final programs, we have to go to RCE to get some new declarations, you know.

And then maybe just a very quick questions that Esther and I have talked about in the past, and this goes more to petitions so I'm not sure if you can answer it. If we considered an after, a final rejection status as not fair, I think years ago we could submit a petition questioning it within two months.

I don't think that was ever fruitful, so I'm not sure of anyone doing it. But is there an approach that we can take just for you or for anybody else here that if we question the -- Bob, you want to take that?

MR. BAHR: Sure, I'll take that since (inaudible) mentioned petition

There's two things. One, if you think that the finality is improper, that the action was made final and improperly, you can challenge. It's a petition under Rule 181, and that would be, at the first level, it would be reviewed by the Technology Center Director.

Also, if you submitted amendment after file when it gets denied entry and you think that's improper, you could also petition that, and that too will be decided by the Technology Center Director.

MS. KEPPLINGER: I would note, and we had this conversation, the difficulty there is that the guidelines are really rather vague so that's a difficult petition to win in many cases, or difficult to get it granted. So that's one more challenge.

Or especially RCEs, as you noted, the number is troubling. And what was even more troubling to several of us, the examiner forum yesterday was excellent, but we intersected with some examiners in some discussions, and they view the RCEs as really a part of how they're making their goals, and that they really want all these RCEs and are pushing us to file them.

It comes very clearly through, so it's something that I think needs to be looked at because it is more expensive for applicants. It takes away their time. And it really is not, it's a real problem for applicants.

MR. HAJEC: And we've heard that too. And, quite frankly I've heard examiners express that sentiment too. Obviously, there's a wide range of reasons why RCEs might get filed. Dave, in a few minutes, is going to touch on our examination (inaudible) time analysis which might mitigate or address that as well.

So the next slide shows our first action pendency and total pendency. So you can see the first action pendency last year ended up at 16.2, a little bit of a plateau through the latter

months of the fiscal year. Our total pendency continues to move downward, and we wound up for the fiscal year at 25.3 months.

And here we show the pendency from RCE filing to next action, you can see that continues to move down, and we're very close to where we were back in 2010 when we implemented the CSI, the Count System Initiative effort.

MS. KEPPLINGER: I would argue that's not exactly true because you are on the counting dependency here when it occurs, and so the ones that are sitting on the shelf won't get counted. Now maybe if it continues to keep going down, as you put the older ones in, it's going to be an average. But, I mean, you had to do them within two months, so you wouldn't have had as many that went over when they run the amended docket. Now, there's more flexibility.

MR. HAJEC: There are programs in place to incentivize examiners move the older ones.

And this shows our examiner attrition rate. It did trend down last year which obviously is a very good thing. We did hire 275 new examiners in Fiscal Year 16. This year

coming up in Fiscal Year 17, the plan is to hire 375 examiners.

Next I'll show some design data. So this is the design filings. They experienced a 7.1 percent growth last fiscal year, and as a result you can see the design inventory creeping up, and we are trying to counteract that with hires into the design group.

This slide represents the design action pendency and total pendency. You can see the total pendency is trending down, but the first action pendency, and that's driven by the large number of filings, is ticking upwards.

And next I'll touch on track one filings. It's interesting to note last year was the first year we hit the 10,000 cap, and you can see it actually peaked over 10,000 at 10,011. I was told that those 11 applications did get examined.

MS. KEPPLINGER: Thank you.

MR. HAJEC: And here's the Track One pendency data. Pretty much the time frames have remained constant over the last four years. For your interest, the time from petition grant. To

first actions is 2.1 months, and the average time from petition grant to final disposition is 6.5.

This next slide shows a cumulative look at the track one results. One thing to note here is since we measure Track Ones until the times of the final disposition, and that could be a final rejection, and that's how it's depicted here. The final disposition being abandonment, allowance on a rejection, or notice of appeal.

MS. KEPPLINGER: I would just encourage you to put a footnote, and then I think it's not clear. It may be a little bit more clearer, but if you get a final rejection, then the allowances are counted only in those applications that did not receive a final rejection.

MR. HAJEC: Right. Because the final rejection is considered a final disposition at which point it exits the program.

MS. KEPPLINGER: But it's different than you do when you are talking about any other allowance right, so --

MR. HAJEC: We'll make note of that. So if no other questions, I'd like to introduce

Dave Wylie, who's a Group Director in Technology Center 2100, who's going to now speak about our examination time analysis.

MR. WYLIE: Thanks, Don. As Don said, I'm here to talk about the examination time analysis initiative. Why are we doing an examination time analysis? As the strategic plan says, one of our goals is to establish optimal pendency and quality levels to allow us to operate effectively and efficiently while considering the expectations of the IP community. So that's the high level of why we're doing it.

Why are we doing it now is we're trying to properly calibrate the examination time. As it said in the goal, it's critical to establish optimal pendency and quality levels.

Another reason why is there's been a lot of substantial changes that's happened to patent, to the office in the last few decades. We have new technologies and increased complexities. We have exponential growth in the availability of our, the available prior art. Our transition to CPC has caused a lot of changes. Our increased use of electronic tools, and changes in policies

and legal interpretations have also led to this.

One of the main reasons why is it's been since the 1970s when we did a comprehensive look at the examination time for the offices and established the times that we have now. We've tweaked a little bit over the years, but before that it's been since the seventies, and we've established the hours for the technologies that we currently have.

And also, the recent reports by a oversight body such as GAO and the IG have all recommended that we do some sort of reevaluation of our examination time.

This very bright blue flow chart kind of shows a little bit of the paths, the high level chart of the paths that we're taking to a final implementation. You can see that the top box basically defines the three other boxes. The major items affecting examination time, the differing technologies, the using of data, and some of our quality enhancements and expectations, the path on the left being our technology and data where we're trying to organize technologies using CPC, and also using

some of our historical data to try to reevaluate the time that we're given for each technology.

The middle track, which is the main reason why we're here is our stakeholder outreach. We're going to be obtaining internal and external outreach information and use that in our process to try to help determine time going forward.

And the far-right box is our quality and clarity actions where we're using our information that we have on quality, and some of our EPQI programs to see what kind of enhancements we can do to the examination time. And hopefully, it all comes to an end with implementation.

So the external outreach efforts. This all started with our Federal Register notice that went out on October 25th. In that notice, we posed some questions, and we also posed some upcoming roundtables. You can see the dates. Our first roundtable is less than two weeks away here in Alexandria. And then we have another one in Dallas, and you can see the pattern. We're trying to hit our regional offices, so we have December 15th in Denver, January 11th in San Jose,

and it didn't make it to the slide, but we're also having one December 15th is the date for the Detroit one as well.

And during these roundtables, we're going to have a short education, maybe half an hour, of showing some slides that kind of give a little bit of background of what our count system is so that people don't go in there not understanding a little bit about what we do here.

We don't expect everybody to have as much knowledge as we do about our count system, so we are going to spend about a half an hour, like I said, talking, explaining our systems so that we can get more valuable feedback.

Our slides are currently on the website now, our ETA website, and that link is at the end of this presentation if somebody wants to look ahead, but we'll be going through all those slides at the roundtables.

And I wanted to thank those of you on PPAC who have volunteered to help out and give opening remarks at these roundtables. Thank you very much. That'll be very beneficial to us.

One other external outreach effort that

we're doing is we're going to try to tap into academic partnerships that we have with our chief economist to try to gather information from not only our here stakeholders, but also academics to see if we can gain any information or insight from them on balancing quality, and productivity, and efficiency.

We have tentatively scheduled, I think, our roundtable right now is tentatively scheduled in January with a pre-meeting in December to make sure that they understand our processes and sharing information with them as well.

Some of our internal outreach efforts, we've conducted numerous focus sessions with our examiners, and we're crafting a survey that's going to go out to all of our examiners and our supervisors to try to get information from our internal stakeholders to see what we can do, what affects, what things affect patient examination time.

A quality and clarity team. You heard a little bit from our qualify team earlier today. We have a team that's looking at our quality data from OBQA, our EPQI initiatives, and also all that

internal and external feedback that we get from everyone to see what kind of recommendations and changes we can make to examination time.

And our technology and data team. This is a team formed to analyze and mine the technology, the technologic specific variables that we have here at the office. When we did the study back in the sixties and seventies, they did samplings of cases. They did 25 cases in a sample technology and used that information to set the time that they have now.

Now, we have all that information in our palm system, in all of our systems, so that we can make better decisions not based on random sampling. We have all this information at our fingertips and we plan on using it to help us baseline our hours for each technology.

And that was it. As I said, this is the link to our FR notice. We also have the link to our examination time analysis website which has links to the FR, has the slides that we're going to be presenting at the roundtable, and updated times and dates for our roundtables, all the useful information that we have about this

project.

That's all I had. Any questions?

MR. LANG: So this is just a comment. This is a great initiative. I know that in the IT industry in particular, there's a broad perception that there is, in fact, not enough examination time to assure a quality patent. We all appreciate that there's a tradeoff between examination time and cost.

However, I believe it is critical for a study like this to uncover to the extent that we can the truth about where is the point to diminishing returns in added examination time, and what is that cost. So that tradeoff can actually be made explicitly. It's a very key design aspect of the patent system as a whole.

I would also encourage benchmarking with other offices. I mentioned that the other day. I understand that that may not be entirely straightforward, but to the extent that we can learn about how much time and how that time is spent in other places, that would also inform this activity.

MR. WILEY: Thank you very much for the

great comments. And, yes, we will be trying to look at the other offices as well to get as much information as we can from them.

MR. THURLOW: So just a quick comment. I think it's interesting. I really don't know anything about it. I mean, having not worked in the office I can't tell you how many hours it takes one person compared to another. So many applications can be so thick.

Can you give me an example today. One of the things that went on during yesterday's discussion with the examiners was the basis example of some cases you get lots and lots of references. And say they get, you know, we hear hours a starting application, but they get separately 50, 100, 200 references. Is it adjusted in process where because of the amount of references they get additional time or not even before this so I can understand where we are now?

MR. WILEY: We do have avenues to adjust time if they're given a great amount of IDS I think is what you're getting at.

But normally the normal applications that an examiner does they're set, the set number

of hours is based on the average time it would take you to do those cases. So some cases, obviously, you know, you may find a reference very quickly, or it may get allowed really quickly, so it may not take as much time, but our hours are pretty much set for the technologies. They range from anywhere to 13.8 I think is our lowest hours per case, and 31.6 is our highest.

So there's quite a range of hours that we give depending on the technology. And one of the ideas of the study is to see is there really that much of a difference in the technology from 13.8 to 31.6.

Maybe back in the sixties when they established it, it was, but now it may, there may not be that big of a difference in the amount of time that we give --

MR. THURLOW: The obvious point is that if they don't have enough time, and they get 200 references, there's a feeling from the community that many, they just check it off without effectively looking at, and at the end of the day, that hurts the quality of the review.

MR. WILEY: Yes.

MS. KEPPLINGER: I think one of the things when it was put in place in the sixties, nobody got 31.6 hours, or 31.3 hours. Right.

MR. THURLOW: Okay. Thank you.

MS. KEPPLINGER: That came in in a bunch of the electricals along the way. And, in fact, many of the technology areas, biotech in particular, was increased along the way because we had very much less time when I started to when I finished. So there have been adjustments, but --

MR. WALKER: David, Esther and I have had this conversation. There is a misperception in some quarters that because of the fine work that the IT Department is doing in making available prior art, the examinations ought to go faster, and I see you picked up there's more prior art, there's more to examine, and that is the reality, and that makes for a good quality patent. Thank you, sir.

MR. WILEY: Thank you.

MR. HAJEC: Just a comment. Dave mentioned the CPC. We've brought in over 60 million more foreign patent documents into the

CPC search collection-that the examiners didn't have to previously consider, so that alone speaks to the point you raise.

MR. SOBON: Just a comment. I just want to say what a great effort this is. So the Government Accounting Office does a survey of examiners, and they say 70 percent say they don't have enough time. Same time, the Office of Inspector General says examiners have too much time, you know, they're not completing their work, or they have too much time.

So it's good to get some data, some actual data here to really understand what the situation is, so I compliment you for bringing some clarity to this issue.

MR. WYLIE: Yeah, those conflicting studies are really a big part of why we're doing this, as well.

MS. KEPPLINGER: Thank you. We need to move along. Thank you very much.

So next we have international update. And do we have Shira Perlmutter here? Oh, Karin Ferriter is going to do it for us; is that right? And also Mark Powell. So welcome, Karin.

MS. FERRITER: Don't have much time having gotten a bit behind schedule, but we did have a few things that we wanted to talk to you about. Unfortunately, Shira can't be here. She's in California giving a presentation.

But we wanted to talk to you about the World Intellectual Property Organization General Assembly. Is that better? That meeting was last month in October, and we covered a lot of topics, but four that I wanted to mention to you.

You may have been seen (inaudible) in the news lately there was an investigation as to the conduct of the director general, and that review was completed, and the members of the organization needed to make certain decisions as to how to address that kind of situation again in the future.

And so we were able to agree upon some changes to our charter for the internal oversight of the organization, and we were able to agree to start to improve the whistleblower protections. So we're really happy that we were able to make those decisions. It was quite political. It wasn't clear that we were going to be tied up to

other issues, and so we're happy that we were able to agree upon new internal oversight charter and new whistleblower protections. That's two things.

The next main part of the General Assembly meeting had to do with the decision to open some new external offices. So the organization decided to open an office in Algeria and Nigeria. We still have some work to do before those offices are actually opened, but, there again, it was another important political decision to take. We will open up to four more offices in the next three years. So that decision will continue.

The next thing that I wanted to talk to you about was we're continuing to look at the financial structure of the organization and how the money is coming in mostly from the patent, international patent applications that are filed, and it's paying for more than 70 percent of the organization.

We were under the impression that the trademark part of the operation was completely financially self-sufficient. Rather than looking

more closely at the budget, it's really clear that the patents is even subsidizing the trademark, the Madrid processing, the Hague processing, and the Lisbon processing. So we'll be continuing to look at that.

At the World Intellectual Property Organization the other main part of what we do is we take decisions on improvements to our PCT in Madrid, Hague, and other rules, and we were able to take the important decisions that we needed to take there. We feel overall, the organization is working very well structurally, but we would like to explore how we can better revise the committee structure, and so that's something that we will be working with other WIPO members to try to improve that functioning, and you'll probably hear more in the upcoming time.

Michele was not able to attend the General Assembly. She had things here she needed to attend to, so West was able to represent the U.S. Patent Trademark Office, so he had it says here 21 bilateral meetings. Those meetings were attended by OPS staff as well as by Mark Powell and Maria, and Mark may have some more specific

insights into that.

Jesus is here with me. He's going to talk a little bit about Latin America, but there was a number of Latin American (inaudible). He'll mention at least one.

OPIA is working together with a (inaudible) team to help organize the subject matter roundtables. We will have one, the 14th will be a very busy day here. You heard earlier about one activity on the morning of the 14th. The afternoon of the 14th we'll be having the first patent subject matter roundtable focusing on the guidelines. On December 5th at Stanford, we'll have one that's more a blue sky, big picture approach.

Originally, we had intended to only have the additional participation (inaudible) at the venue with our regional offices, but because of some popular demand, we've decided that in addition to the event being hosted at Stanford and our regional offices, we will also provide a venue at the USPTO where people who aren't fortunate to be in one of those other lovely places will be able to come and participate. I think it's

going to be on the global intellectual poverty economy so the security provisions will be a little bit more difficult. But people will be welcomed here.

And with that, unless anyone has any questions, I want to defer to Jesus, who is going to talk about some of our recent initiatives with Latin America.

MR. HERNANDEZ: Thank you, Carolyn. To those that I have not had the pleasure to introduce myself, my name is Jesus Hernandez. I am a patent attorney in OPIA, and a member of the Latin America Team.

I will be giving you a very brief regional policy update with respect to our activities in that part of the world, and we will start with none other than Cuba.

As many of you may be aware of, we have begun normalizing our relationship with Cuba. In late spring of this year we began a series of informational dialogs and exchanges with members of that IP office which culminated with a bilateral between their office director and our deputy director, Russ Slifer (inaudible), at the

margins of the General Assemblies that Karin alluded to earlier.

In that meeting, we were able to establish a strong foundation for future cooperation, and we hope to continue engaging them moving forward.

Having said that, there are two caveats to that engagement. The first one is that like every other agency in the U.S. government, our engagement is circumscribed in the sense that we still cannot engage in any capacity building efforts and technical assistance, so at the moment, it's primarily limited to information or exchanges and diplomatic dialog.

The second caveat which was raised in the subcommittee meeting is that next week we do have a presidential election. And, certainly, our posture towards Cuba can potentially change irrespective of who wins, and so we will certainly keep tabs on the new agenda of the incoming administration.

Moving from Cuba, we go to Argentina. Argentina like many Latin American countries has experience a very pro-business pendulum swing

that we certainly need to try and take advantage of, and this is being led by the administration of President Maricio Macri, who as one of his first acts in power instituted Mr. Damaso Pardo as the new director of their IP office.

And one of the first things that that new director did was facilitate a bill for Argentina to ratify the PCT. So as you may have inferred, Argentina is not a member of the PCT treaty as of yet.

In addition, the new director of their IP office implemented a PPP, a PPH arrangement with members of the

(inaudible) trade bloc. So given these positive developments, we also had a

bilateral with Mr. Macri at the (inaudible) GAs, where he outlined to our deputy director and the USPTO staff there basically his agenda for making deep structural changes in that IP office.

And to the benefit of the USPTO, he indicated exactly what the USPTO's role could be in making those changes. As such, we do plan to

launch next calendar year a patent training initiative, and also we will keep close tabs on whether their PTC bill gets ratified or gets passed in their congress, and if that's the case, we will certainly also assist them with implementing the PTC, and facilitate them in becoming a receiving office under that convention.

Finally, we head to Brazil. And as some of you may be aware, we did launch a PPH with that country back in January of 2016. Soon thereafter, we did a very aggressive outreach campaign. We did workshops in Houston, Denver, and New Orleans, and we also participated, did a workshop at the LES spring annual conference. I also traveled to Brazil to assist NP in their own outreach efforts in Sao Paulo and Rio de Janeiro, and they seem to have embraced the PPH because they are currently now trying to do a PPH with the Japanese Patent Office, and also the European Patent Office.

So moving forward, we will continue monitoring the implementation of the PPH. In addition to that for those that are not aware, the

current PPH we have with Brazil is a bit limited at least in their end because it was the very first entry into a work sharing framework, and so once this pilot program sunsets, we will make a very strong push to broaden the scope of the PPH arrangement.

That is all I have to say for Latin American.

MS. MAR-SPINOLA: Jesus, real quick.

MR. HERNANDEZ: Yes.

MS. MAR-SPINOLA: Just out of my curiosity, can you kind of describe the infrastructure and resources that Cuba's patent office may have at this point?

MR. HERNANDEZ: Yes. It is a developing country. Right now it resides in a converted monastery in Old Town Havana. They do have very limited computer and internet access, of course, because of the embargo, but if I were to compare it to any other office, I would say its comparable to the Dominican Republic's IP office. It's small. They have constantly received patent applications from the U.S. included because the embargo did not include intellectual

property. So Cuban inventors have always filed applications in the USPTO and vice versa U.S. just in case. It's just that now just in case seems to be approaching much faster.

MS. FERRITER: And if I can just add, and they seem to have internet access issued, oddly. It's probably self-imposed, but also seems to be a mostly female office interestingly, and very enthusiastic to --

MS. MAR-SPINOLA: Nothing wrong with that.

MS. FERRITER: No. No. I was very happy to see that when I was able to be there in May. They're really anxiously looking forward to the day where they can get technical assistance from us, but they understand at this point it's not permitted.

MR. GOODSON: Would the PPAC benefit from visiting there?

MR. HERNANDEZ: Say that one more time.

MR. GOODSON: Would it be of our benefit to visit there?

MR. HERNANDEZ: Yeah, yeah. One of the things that's very interesting about Cuba

that I noted, and not to take too much time, is that for those who are not aware, Cuba has a very strong reputation for having some of the best physicians in Latin America, and so one of the things that took me a bit off guard was the strong innovative biotech sector that they have there.

And it's kind of one of those ironies that the embargo caused them to be self-sufficient in that space. And so they do have inherent political pressure to have in some respects a strong IP system just to accommodate that industry.

Of course, it is a Latin American country so they have pressures from the other side of the aisle as well, but that was something that really took me by surprise.

And as a side bar, I do want to mention that that first delegation included our deputy chief policy officer, Karin Ferriter, and she holds the distinction of being the first USPTO official to set foot in Cuba in the modern era. And considering that the last time that was even a possibility was the 1950s is very likely she's the first USPTO official ever to have been there

to be in Cuba.

MS. JENKINS: And I will point out probably the first woman PTO official to ever set foot on Cuban soil. So just to echo Julie.

But you know one interesting thing is I'm hearing more clients planning on filing a significant number of applications. Is this something then that's going to in a sense overwhelm the office there, based upon how you're describing it. So, you know --

MS. FERRITER: For a patent application, certainly, and this is why patent prosecution highways are so important for us to agree upon, and then for Mark's people to help make sure that they operate efficiently.

And within the Latin American region, it seems there is some real interest in working together and not just in the patent prosecution highway sense, but in more work sharing. So we're hopeful for that.

And they've already been telling us for trademarks that, since you do cover trademarks as well, that they're under pressure and, again, they really are looking forward to the day when

they can get some technical assistance to try to streamline and improve their processing.

And if you can put in a good word with State to help move that process along, it would probably be a good thing.

MR. WALKER: I have a quick question kind of going back to WIPO. I happened to be in Geneva during the General Assembly, but I did not have the stamina to attend the meetings like you all did for a week.

But my sense is the U.S. is often playing defense at WIPO in terms of protecting IP rights, and I guess my question is just what are areas that are potentially of concern for U.S. and inventors that you could share with the public in terms of like watch outs or areas that you may have been concerned about after attending the General Assembly?

MS. FERRITER: There was nothing specific at the General Assembly that gave us pause. But as you said, at WIPO we're often playing defense. One of the sectors internationally that's really under fire is pharmaceuticals and anything healthcare related

since the U.N. high level panel on access to medicines there has been more leverage from countries to push back against intellectual property protections.

So this is where we're just trying to make sure that people understand that we have a rational and business case for why intellectual property facilitates access to medicines, and you can provide access to medicines in a way that also has a very health generic industry. It's not one or the other. So that's one area.

Another area where we really would appreciate more stakeholder engagement has to do with the WIPO IGC. That's the Intergovernmental Committee on Traditional Knowledge, Genetic Resources, and Traditional Cultural Expressions.

Unfortunately, there's a small number of countries that are expressing concern with that process, and I'm thinking Japan, U.S., Canada, and South Korea. Even Australia and the EU, and some other traditional allies are saying that, yes, we can agree to change the patent application requirements to include a requirement to disclose information related to

the source of genetic resources, and that even kill the design law treaty. That's another thing I could have said that we talked a lot about in the General Assembly.

The African group wants in an industrial design application to be able to require a design applicant to say whether or not genetic resources were used, as well as traditional knowledge and traditional cultural expression.

We think that is totally ludicrous, but they killed the treaty over that issue. So we're optimistic within the Industrial Design 5 Forum, and other places we can still advance that treaty because we really believe in its principles, but, yes, we are often on defense, but not always on the Lisbon GI issue. We're very much on offense in France, and Italy, and a few other countries are trying to figure out a way forward.

But if anybody would like to talk to me more about WIPO specific issues, we'll be happy to. And, of course, any other specific country issue, we'll be here for a bit longer.

MR. WALKER: And thank you. I think

this IGC issue about genetic resources is one that controlling access and benefit sharing through the patent system is the exact opposite of the way it should be done because not all genetic resources get patented, and there are a lot of reason for that. So I think that's a very important point I'm sure the community could help out on. The patent community, I mean.

MS. KEPPINGER: Thank you. Thank you, Karen and Jesus.

So we'll hear from Mark Powell now.
Thank you.

MR. POWELL: Well, as usual, I'm the guy between the participants and their food, but on the good side, I'm not really a slide guy. I've got a couple of slides so I can go as fast as necessary.

I did want to amplify on a couple of things that Karin an Jesus said. First, with regards to the Brazil PPH. As I understand it, they're actually accelerating the cases and have (inaudible) grants which is a huge deal given that their average per session pendency is 12-plus years. Right, Jesus? Way up there.

So their director general has told us in the last couple of bilateral meetings we've had with them that they are attempting to use work sharing to actually get some work out. So that's a phenomenally positive thing.

Second, a couple of trips to Europe myself, as Karin mentioned, lately, and the not topic seemed to be Trump, Hillary, and Brexit. Not necessarily in that order, but Brexit. Obviously, is a very big topic, particularly when it comes to litigation in Europe, and what Mike said if the U.K. is adamant as I have heard, I'm not positive, but the next country in line for a court would be Italy where it could be problematic.

SPEAKER: (Off Mic.)

MR. POWELL: Well, then that too, yes. Earthquakes and the litigation environment there. So many have said that they feel like the entire (inaudible) patent regime could be gone, you know, which would be a shame after all those years of Europeans actually being so close to agreeing to something, which was not easy for them.

Okay. So I'm going to briefly talk about stuff that my office does with regard to quality. What we've done in recent years, and then what we're working on today.

Many of you have seen this slide before. This is sort of a functional chart of what my office does. Normally, on this slide I have our mission statement which somehow left office time, but that is to improve the quality, efficiency, and predictability of patent family prosecution, thereby to improve the certainty of global patent rights.

So that sentence is really important and has a couple of key words in it, 'quality' at the beginning, 'certainty' at the end. Quality is very much a holistic thing. They don't make the right call necessarily, but is, you know, the quality of the system is it provide additional information to the examiners of the various offices, the quality of the systems that applicants need to comply with the various offices' requirements, and on and on and on.

And then at the uncertainty, of course, in a narrower sense is, the certainty of a

particular grant in terms of patent valuation, all the way to the macro of, is the international system, you know, protecting IP in advancing innovation as it should.

And with that, we are attempting to accomplish our mission by focusing on four distinct areas. Upper left working with other offices, governments, and institutions on processes. In the green, working with applicants and other stakeholders on what they have to do to the system. Working to resolve legal and procedural issues which increase costs administratively particularly and slow things down. And then propose business solutions including IT ones which if implemented could improve the entire system.

So that's what we do. My only other substantive slide, as I said, I'm not a slide guy, just list a few things that we are working on today in no particular order.

Don Hajec spoke about the CPC system. I guess it was declared implemented technically at some point months ago, but, you know, yeah, technically implemented, and then socializing

it, and getting really good at it, and really efficient at it is a longer-term process, very much a qualify impact thing, and very much tied to the examination time discussion.

CPC is a mechanism by which essentially the field of search in a classified system is established prior to examination, hopefully. That field of search is shared not only with other examiners, you know, worldwide, but also downstream users of a system that are looking at it from an evaluation standpoint, perhaps, of what was searched out, what search, what was there, when it was searched, and so on.

The cost savings for everyone involved in a fully functional, implemented, global CPC system, really, I don't think can be underestimated. OIPC is very much involved with that very complicated process.

Upper left, collaborative search pilots. That's a direct examiner-to-examiner work sharing program. We have pilots going with the Korean and Japanese offices. Uptake has been a little bit slow, but the IP community is a conservative one. Uptake of PPH was very, very

slow, and, indeed, as I've heard, the PTC system itself was extremely slow when it first began, and we've extended those pilots and are continuing to try to get the word out, and try to get some user advocates who have succeeded in it to propagate some of the good news about it.

Patent (inaudible) is ongoing in a number of respects, and as Jesus pointed out a key way to get some of the less sophisticated officers into a international system not only in terms of (inaudible) sharing, but in terms of the more global discussions of enforcement and every other thing related to IP.

Global dossier is on here. You've heard of it. It's only been not even quite a year since we actually established the first public site. Looking head and in a very few weeks, we will be continuing to embellish it in this case by linking to WIPO's case or centralized access to search and examination system whereby in addition to the IP

offices, dossiers and other information. Information from the U.K., Canada, Australia, Israel, and a number of other smaller

offices will be available in this one-stop shop. So those and other enhancements are ongoing as well.

PCT I believe was mentioned earlier. Not only improving the work of the PTC that we do here in the office, looking ahead we are looking to get our (inaudible) procedures at least as regards to 371 cases are where they should be, and also our Chapter 2 work. We don't do a lot of Chapter 2 work. Examiners don't have a lot of experiences in Chapter 2. I'm working with Deputy Commissioner Barr on particular trying to get some guidelines and training out if only just in time for those cases.

And I think one of the most exciting things we're working on, and I believe I spoke about this a couple of PPAC meetings ago, is the access to relevant prior art project where, among other things, and in hopes of reducing applicants' burden of complying with the duty of disclosure, have the ability to perhaps import search and examination results from other offices, from PCAP, or wherever, get them in front of our examiners at an earlier time, hopefully,

thereby to reduce the need for RCEs, and so on.

We have had two public fora on that. Bob and I did a lunchtime seminar online, and then we did a roundtable a few weeks ago totally about 500 participants so far, and there is a request for comments either, it's about to close, I think. Maybe perhaps we're coming in on that.

So this is a very exciting project affecting all five areas under (inaudible), which are online from the international standpoint, clearly the quality area. IT issues under Mr. Seidel, procedures under Bob, and, of course, training under Valencia, and so forth.

So those are a few in a nutshell other things that we are working on as we move ahead into Fiscal 17.

MS. JENKINS: Thank you. The access to relevant prior art, I'm losing my voice because I'm freezing.

MR. POWELL: It's cold.

MS. JENKINS: What are the next steps for that? Are you going to take the comments? What are you doing next, Because that really impacts the stakeholder community, and I don't

think, I know you all are doing a lot of efforts to get the word out, but I don't think the stakeholder community is truly aware of the impact that this initiative would have on us.

MR. POWELL: Right. Okay. So we're at the request for comments phase, right, and typically, request for comments we're going to get less reaction than a notice of proposed rule change, which could be something impending.

I might turn to Bob, if you wouldn't mind, for next step with regard to the comments and how we cycle through those.

MR. BAHR: Sure. Right now I think the comment period just closed unless I'm mistaken. But, of course, right now there's the state of analyzing the comments. We kind of asked questions about basically what type of system do users want, so we have to go through that and figure out what is wanted, and that's what really tells, that's our next step, and then figuring out how to build that is

(inaudible) in the process.

MS. JENKINS: I would encourage the PPAC to consider this being an initiative that we

get more involved in because it affects us throughout the entire process. So however we can help in the coming year and in the future, please keep us in mind.

MR. POWELL: And I'll just had, we had some really interesting comments. Some were somewhat expected and some were not. One comment, for example, was who should be the decider of what's relevant or not? Is it really the applicant, or should the examiner do that? I mean, all sorts of really interesting angles and contexts that we have found fascinating. So, yeah, we need to compile those and move forward.

The important thing is, this is truly a sea change and could be historic in proportion as an improvement. It has to be done right though not only from on behalf of the patent owners and applicants, but for the examiners, right? We can't have a system just dumping a thousand references in front of the examiners. That's easy for them to parse through. That would not be necessarily a quality improvement, right? So it has to be done right.

I hope that answers your question.

MR. THURLOW: So very quickly. This has nothing to do with, just for an international standpoint. So Sunday we're meeting with the director of the Israeli Patent Office coming up to New York so a number of us has a meeting on Sunday.

So one of the interesting things, and I could talk to maybe you and Karin afterwards, is there's a lot of venture capital backed startup events in New York for Israeli startups, and I just find it very interesting. So he's coming up to get better understanding of the IP issues, and they're going to have different events and I think spending some time -- so I'm not sure if he's coming down here at all, but --

MR. POWELL: Yes, I'll be meeting with them next week as well. So his name is Asa Cling, a very progressive office leader, I think, and they've recently worked with us on joining the CPC system and some other initiatives. Yeah, most definitely follow up.

Thank you.

MS. KEPPLINGER: Thank you so much. Some very interesting and useful information.

Okay. We have a lunch break. We were scheduled to have the general (inaudible) to speak to us from 1:00 to 1:30. I think what we'll do is maybe we can do that at about, we can start that at about ten after one. That will give us some time to go and get lunch and come back here. We can eat. We can continue during her presentation, and then potentially use even some of the break period after lunch to have some internal discussions as well.

So thank you all.

(Recess)

MS. KEPPLINGER: Welcome back, everyone, and we have now Bob Bahr, Deputy Commissioner for Patent Examination Policy.

Thank you.

MR. BAHR: Thank you, Esther. Before I get started into the patent subject matter eligibility foray, I wanted to bring up an issue that's not on the slides. First, we published a Notice of Proposed Rulemaking concerning the duty of disclosure, another topic that's almost exciting as eligibility.

I should explain the background.

Basically, in 2011 the Federal Circuit came out with an en banc decision. Therasense changed its or unified its standard for materiality for purposes of inequitable conduct. Shortly after that decision, PTO decided that it would propose to make the Rule 56 standard for materiality the same as the Therasense standard. We published a Notice. We got comments. This was around July of 2011. And then along came the AIA. So, it sort of, I want to say, distracted us for a little while, and we took up the Therasense -- we'll call it the Therasense rule or the duty of disclosure rule, again.

We made some changes in light of the public comment, and so there are some changes to the rule, and there were some cases that came down from the Federal Circuit since then under the Therasense standard. So, long story short, we thought it advisable to propose the rule again for comment to get stakeholder input to see if there's anything that happened in the last five years that would warrant a different change to this and also to get input on the rule as we're proposing it now. So, basically, we published it for comment. I

think the comment period closes December 27, so if you're not doing anything over the holidays please submit a comment to us. So, that's the status of that rulemaking.

Moving into subject matter eligibility, I'm going to do a brief discussion of some judicial developments and some roundtables and next steps.

This slide is basically a slide on the Supreme Court developments or, I should say, lack of developments. Basically, in October, cert was denied in several patent eligibility cases -- one biotech case and two abstract idea cases.

Currently, there is to my knowledge one petition pending before the Supreme Court, and it's actually set for conference tomorrow. This is the -- it's now in re Writing Technologies, but it was formerly in re Smith. It's the novel game of cards using a conventional deck of cards. So, that's set for conference tomorrow, so I guess next week we'll see how that goes. That's the Supreme Court.

With respect to the Federal Circuit,

since our last meeting there was a decision in McRo. This is the lip synching case where here the claims were held to be patent eligible. I'm not going to read the slides to you, but what we did is yesterday, I guess, we issued a memo to Examiners concerning both McRo and Bascome. We indicated in the memo that basically we looked back and we made sort of the decision that there have been a number of Federal Circuit decisions since the May 2016 guidance, or the memo then, and that it would be appropriate to do another update to our -- a more comprehensive update to our guidance, not in view of, like, one or two decisions but taking into account all the decisions since May. But in the interim, we wanted to issue a memo to Examiners on the two cases, McRo and Bascome, which were found to be patent eligible, that were not treated in other memos.

Just so you know, as we were issuing this decision, the Federal Circuit came out with another decision in Amdox where it held the claims patent eligible. It's mentioned in the memo, but it was sort of, I'm going to say, too late to be

discussed in the memo, so it will be taken into account in our next update.

Here's a summary, but not really a summary but a listing of the decisions since, I think -- I believe since our last PPAC meeting. As you can see, there's -- let's see, six there, and there should be -- the Amdox decision would be seven presidential decisions, one nonpresidential decision, and quit a few Rule 36 decisions. So, there have been a number of cases since our last update to the subject matter eligibility guidance.

As Ken Ferriter mentioned, we're also going to have some roundtables, and we wanted to take into account both the decisions and the feedback we get at these roundtables in our next update to subject matter eligibility. The first roundtable is going to be here on November 14th, and it's focused more on our examination guidelines. There's going to be another roundtable hosted by Stamford University on December 5th. That's more, as we call it, the blue sky -- sort of what would subject matter eligibility be in a perfect situation. So,

that's to get feedback on that.

And next steps, obviously we are -- we have an open public comment period, so please, you know, feel free. Anyone can submit feedback on this certainly and their comments and also at the roundtable. We expect there'll be more Federal Circuit decisions that continue to fill in gaps, and as far as "may" develop additional guidance materials, I think that's probably a given that we "will" be doing additional guidance materials, both examples and training on these guidance materials.

So, are there any questions?

MR. THURLOW: Not a question, a comment for 101. I think it's great with the roundtables. I think, as we've discussed at the last couple of meetings in maybe the last couple of years, that's a topic of much interest and concern and consternation. So, hopefully these roundtables kind of continue to spur the discussion. I'm not really sure how much it's going to solve, but I think you've got to start with the discussion and see where it brings us and go from there. But between the guidance provided

yesterday, between the earlier guidance provided, it was the same (inaudible), and it's good stuff.

MR. BAHR: Thank you.

MS. KEPPLINGER: Yeah, I think any time you can put out guidelines and memos that help both examiners and practitioners, it's a real plus for all of us as we all feel our way through this minefield.

Anything else? Thank you very much, Bob.

MR. BAHR: Thank you.

MS. KEPPLINGER: Okay, next we have the OCIO. So, we have John Owens, David Landrith, and Debbie Stephens.

MR. OWENS: Good afternoon. You all caught up on me. It caught me off guard. Sorry about that. It was supposed to take a long longer than it was.

I seem to have misplaced Mr. Landrith. I'm sure he'll show up in the middle of this, so if he does just send him on over. (Laughter)

So, good morning, everyone. Thank you for welcoming us this afternoon. I guess I'll

start with the presentation myself.

So, lots have been going on.

Obviously, just to tell you how to read this, the highlighted stuff on the right-hand side are the goals that we have upcoming here or are about to complete, and everything else above them has all been done, and we'll start with Docket Application Viewer, DAV.

We met with eDAN parity, and I'd like to point out that on December 1st -- actually, the last day of November at midnight -- we will be shutting off the legacy system known as eDAN. First time ever in my tenure I think ever here at the USPTO have we ever shut off a system, and Docket Application Viewer will become the standard for examination.

Official Office correspondence is going well. We have a pirate we released to a larger audience, several hundred more people in November. That is a replacement for OACS, or the Office Action System.

The Examination Search System, which was a replacement for East and West -- it is also getting expanded or just was expanded to a larger

audience, and that is going well.

Though the dates of a December release are aggressive, we do assume that things look like they will work just the same way they did with DAV, which is we will release in December -- give or take a couple of weeks due to holidays and whatever else we find -- and then there will be a bunch of iterative releases close there after. And then of course training, final rollout, and shutting down the legacy systems a year after training is done, which is still our goal. And of course the cooperative patent classification, CPC, is on target for its next release of enhancements and its ongoing series of enhancements.

Welcome, David. Thank you for joining us. They caught up. So, would you like to take over the conversation?

MR. LANDRITH: Sure. I apologize. As I was coming through the door at a point where I would have been on time, I got a call from my wife.

MR. OWENS: I know what it's like when the boss calls, so we're good.

MR. LANDRITH: So, these are usage statistics that we've been going over now for more than a year. The trends have continued in the same direction. We've reached an important milestone. We're at 70 percent usage for the document application viewer, which is the blue line. It continues to overtake the eDAN usage, which continues to decrease. And, as John noted, we are going to be retiring eDAN in December, which is a huge milestone.

Going into the project detail on official correspondence, we've got a major release coming up in November that's going to enhance the authoring. The workflow and the forms are the major parts that we're doing there, and that should set us up to release in December of this year.

So, with the Content Management System, we've been going over this for some time. We've made a lot of progress, so that earlier this year we were reporting that it was live and was serving data to examiners in both legacy and PE2E applications. We've had some setbacks with the storage solution that backs that related to high

availability. So, we've backed off of that in order to investigate other storage solutions, and so this right now remains on hold, although we continue to do work to make sure that we can migrate additional datasets effectively.

The Patent Center is one that we've been doing work on for a while. We first began reporting progress to you on it last quarter. We recently, or in August, deployed a limited pilot that works through EFS-Web and Private PAIR. It accepts nonprovisional utility applications, and it makes Office actions available in text to the applicant.

In December, we're going to do another release that's going to improve the way that the DOCX files get converted to XML for IP, and it's also going to begin to incorporate proof-of-concept work with RBAC, which is our single sign-on solution.

The examiner search product is the other big product besides Office actions. It has a major release coming up in December. So, last month we released a majority feature complete product, so if that's within the

framework -- "feature complete" being measured as parity to the east-west solution that is currently under youth. Obviously, once it is "future complete" in terms of reaching parity, we will continue to add features; and in fact the purpose of the examiner's search, the new examiner's search, is to give us a flexible foundation upon which we can build.

MR. THURLOW: Just a quick question since so much discussion we have in patent equality is getting a good search and getting good examination. With respect to the search, how much are the examiners involved in the pre-launch review and working out any kinks?

MR. LANDRITH: They are intimately involved.

MR. THURLOW: Okay.

MR. LANDRITH: And they're involved at every level. So, we have a user council that is actively engaged in using the pilot. They are also being used to review the UI as it's being developed, and then we also have people who are detailed to open Debbie's organization, who act as owners of the specific features in order to

make sure that those are defined correctly and implemented correctly.

So, if you want to speak to that further, go ahead, Debbie.

MS. STEPHENS: That one doesn't work, so. It's about -- on the User Center Design Council.

There are over 700 in that council. Right now we are expanding the search part of the users who are exposed to the tool, and we're training them now, so we anticipate by the end of November to have over 300 examiners in the council itself who are going to be using and being exposed to the tool, providing feedback, and testing for us. That's in addition to the over 50 staff in (inaudible) that regularly participate in the design, development, and testing of the tool.

MR. THURLOW: Thank you.

MR. LANDRITH: Obviously the examiner search is a big, big effort, so it is getting a lot of those resources. But all of the PE2E projects have a strong level of involvement that corresponds to the size of the project in terms of the resources like that are devoted to it.

MR. OWENS: If I could say thank you to POPA for helping us with patents management to get those folks, because their involvement is critical to the success of the project. We're using the same methodology here with the POPA's involvement that we did for the successful delivery of DAV, and we will continue to use that method. So, thank you.

MR. LANDRITH: So, data for PE2E is the project that converts the images that we get in through EFS Web and XML4IP, which is then used by examiners and provides additional tools for examiners with metrics. Over the past fiscal year we've converted approximately 220 million pages. So, this is not just optical character recognition; this is converting them into structured documents. It includes claims, spec, abstracts. It also includes the IDS documents and provides a great deal of value to users. So, an application comes in on average, and in four hours it's been converted to XML.

So, with Global Dossier -- Global Dossier went live after many of the features that are Global Dossier-type features were documented

in the document applications.

(Inaudible) drives with the Global Dossier is then to make the document application viewer functionality equivalent to the more recent stuff that's been done in Global Dossier by making sure that they're sharing code and services and integrated.

And then in December of this year, we're going to deliver a document sharing system for IP5 partners to test, and this includes a fully functional act of component services in order to process shared documents that are non-public documents. And so we want them, going forward in the next phase of this project pending IP5 partner agreement, to implement something like that that would go into production that would allow us to share these documents with our IP5 partners.

So, CPC database -- I believe I mentioned this before -- has reached a fairly mature stage, and at this point we are working closely with Europe in order to automate the management of the workflow for the revision projects that we do. There's a little bit more detail about that on the next slide, but the CPC

database project is impacted by that, and then the CPC database project is also working on the features that will be needed for retirement of the legacy system and adding features that the classifiers within the USPTO use.

So, for the CPC IP Office collaboration tools, specifically they're continuing to enhance the revision and edit control. They're looking and introducing rich text editing instead of just plain text editing online. They're, you know, implementing discussion boards and other collaboration tools.

And those are our major projects.

MR. GOODSON: Well, that was great. John, you took an oath one time about enemies foreign and domestic. These enemies foreign that we have read about -- some databases lately in politics -- how bad are they trying to get in, if you can say, and what's your office doing to address that?

MR. OWENS: I would say we're no different than many public and private organizations where hackers try to break into our environment. I'm not challenging anyone. Our

defenses are good. But it is a constant battle, right? Of course we report anything that does happen and how far they get. Some of that information is classified, and I can't go into detail here about that, but I don't want to curse myself either. We're in pretty good shape. I mean, it doesn't hurt that most of our data here at the USPTO is public, if not right away very soon -- I mean 18 months for patents. Our classified material is handled only in paper and is not put into the electronic system, and therefore it doesn't have risk associated with it, because it's maintained in physical files and handled with other Department of Defense folks that do examination for us.

So, our current state is pretty good. I'm not going to tell you that there are no attempts. There are. But I can tell you that -- I'm proud to say that I haven't had to report anything, and we update our scans monthly. We do scans with the Department of Homeland Security, and we do other exercises throughout the year where various organizations both inside the federal government and contracted to try to

test our defenses. But I would never come before this esteemed group and tell you that it's perfect. It's not. And it never will be, because as soon as you produce something someone tries to find a way to exploit it. We just have to keep as ahead of them as physically possible, and right now we're doing good.

MS. KEPPLINGER: Okay, anybody else? Thank you so much.

MR. OWENS: Thank you all.

MS. KEPPLINGER: Okay we do have -- we did have one more question for Bob Bahr from the outside from Eric Sutton: Has the PTO considered providing succinct 101 guidance to examiners that would not require them to pore through a multitude of specific examples?

MR. BAHR: Thanks. Yes, some succinct -- I'd like to think that our guidance is as succinct as the law allows. We have put out a (inaudible) two-step framework, the Alice/Mayo framework. It's a relatively succinct flowchart. The problems come in where you have the question of what is an abstract idea where there's no definition for it, and so, you know,

the courts have basically required that you go and do it by comparison to cases.

And as far as the examples go, examples really aren't the guidance. Examples illustrate how the guidance is applied in different situations. It's one thing to have guidance, but words mean different things to different people. So, the examples are helpful to make sure there's a meeting of the minds as to what's being said, you know, as applied to particular claims. And, actually, examiners -- from my understanding, people ask for more examples. They don't find the examples to be trouble -- they don't find the examples to be complicated; they find the examples to be helpful. So, that's why we issue the examples we do.

MR. HIRSHFELD: A quick two cents, then. I would just add that I think both Bob and I receive input not only from examiners but from the public also that the more examples the better. And so that's a constant theme we hear, and actually we hear -- the people want more and more art-specific examples. So, Bob and I are both preceding that the more the better for the

examples.

MS. KEPPLINGER: I was going to echo that very thing. I think from the practitioner's side, the examples are extremely helpful. Thank you.

MS. KEPPLINGER: Okay, our next speaker is Frank Murphy from the -- he's the Deputy CFO on the finance side. Thank you.

MR. MURPHY: Well, thanks for having me here. You can see from slide 2 we have four topics I was going to go through today. One is just a recap of how we ended fiscal year '16 and then talk about where we're at in fiscal year '17, and we're of course already working on fiscal year '18 budget. We've often said in the past that at any given point in time we're working on three budgets. In this case, we're closing out one budget. We're still doing the financial audits on that. But we are actively engaged in the '17 budget and development of the '18 budget. And then the last topic will be to talk about the status on the fee review, the fee rulemaking.

So, in '16, you'll see that we collected slightly over \$3 billion, 2.784 patents. Those

collections we update. When I started talking about the three different budget years that we'd be working on as we did the '16 budget, that was done two years in advance. And as we do the '17 President's budget, we update the '16 estimate, and that's why you see two lines there. The 17.9 million -- we were about 6/10ths of a percent below the updated estimate we had in the President's budget for '17, or we were 4.8 percent below where we were two years ago when we first put together the '16 budget. And those numbers -- the 17.9 is primarily in trial and appeal fee payments and in maintenance fee payments.

We did look through for the maintenance fees to see if we could identify any trends. The answer is there are no trends that are identifiable. And it was a raid over the first, second, and third stage. The first stage was slightly above the plan that we had, and the second and third stages were slightly below the plan that we had. So, you know, in essence where we were a year ago in terms of our updated President's budget estimate of the '17 budget,

the '16 numbers came in just about on plan -- 6/10ths of a percent below plan.

What that looks like when you go to the end of the year -- this just breaks it out a bit more. But it gets to the point for the operating reserve that we often talk about, and we can see here through the end of '16 we're going to end the fiscal year with a \$354 million operating reserve in the patent business line. That's good news. However, we've also made a very conscious decision, and I think at the last PPAC we had we talked about the Financial Advisory Board -- the FAB -- and some of the decisions that we've made there in terms of reductions of spending.

In '17, we've consciously made a decision to dip into the operating reserve for critical expenditures, and we plan to dip into that to the tune of about \$67 million in '17, and that assumes that the proposed fee increase goes into play. And if that does not go into play in Q4 of '17, then we would dip into the operating reserve about \$92 million -- the difference there, about \$25 million for that.

For '17, we are in a continuing

resolution, and that will go until December 9th. For the PTO, that's really not impacting our operations much. It is important for us to monitor our expenditures, because we are held to the fiscal year '16 spending level whenever we're in a continuing resolution or, because we do have the operation reserve, we have some flexibility there that if we had a sudden increase in expenditures we'd be able to accommodate that. Nothing is planned. We don't see anything on the horizon that would say that we're going to need to do anything different. But on December 9th or shortly before that, we would expect the Congress to enact either -- extend a continuing resolution or perhaps put in an omnibus appropriation for the year. I think Dana actually has a slide on continuing resolutions in his presentation, so I won't steal his thunder other than to say this has become more of a norm than an exception in our budget process.

And I mentioned that we are working already on the '18 budget. Because it's a presidential transition year, we know we will not be submitting -- the administration will not be

submitting the budget to the Congress on the normal timetable, which would be in February. What we are hearing from the Office of Management and Budget is that they expect the new administration will be submitting the budget in the March-April time period. We will have a draft of that budget to you in mid-January, looking for comments back by the end of January, and then we'll be working with OMB to finalize that.

And the last slide is to talk about the fee review, the fee rulemaking. You're all well aware that the NPRM was published with comments due back on December 2nd. Our current plan is that any fee changes from that would go into effect in the fourth quarter of 2017, and by law we already need to be starting our next biannual fee review, and that will begin in January. One of the key considerations here, one of the questions that was raised in another meeting to dispel some confusion, is that the biannual fee review does not mean that we're going to be adjusting fees. We do need to look at the landscape. We need to see what the expenditures

are, what the projected revenue is, and determine if there are any changes that we would want to recommend. The review could result in status quo. I just wanted to clarify, we're not going in with a preconceived notion on that. And it was a good question. It was raised yesterday. I thought I should clarify that since I didn't put it on the slide itself.

I believe that is the last slide that we have. So, I'll open this up for any questions or comments that you may have.

MR. GOODSON: Yes, sir. One of the things that PPAC did in the report that was just released was recommended continue high spending levels in terms of IT. Will that -- is that going to manifest itself with the increasing fees coming in?

MR. MURPHY: Both with the increasing fees but also as part of the deliberation that the FAB, the Financial Advisory Board, went through this past year. We did in fact prioritize the critical IT expenditures, so we worked closely with John and his team as well as with our business unit counterparts to make sure that the most

critical IT programs were continued to receive funding, and that's going forward and will continue to go forward.

MR. GOODSON: Thank you, sir.

MR. MURPHY: Mm-hmm.

MS. KEPPLINGER: Anyone else? Okay.

Thank you very much, Frank. And next we have Dana Colarulli on legislative.

SPEAKER: We're early. I don't think (inaudible) later.

MS. KEPPLINGER: He's not here. Okay. Are we early?

SPEAKER: Yeah, we're really early.

MS. KEPPLINGER: Oh, okay.

MR. THURLOW: I always seem to catch up in the afternoon, so that's a good thing. In the morning I'm always worried. I'm, like: Change my flight, push it back.

MS. KEPPLINGER: Do you want to make closing remarks, or do you want to wait?

Okay. Well, we could take a 10-minute break, if we want. Or, alternatively, if there's anything that the Committee wanted to speak about, it's a public session, but we certainly can

speak if you want to. Otherwise, we'll take a 10-minute break.

MS. JENKINS: Yeah, I think we should take a break. (Laughter)

MS. KEPPLINGER: Okay, great.

(Recess)

MR. COLARULLI: Thanks so much. Good afternoon, everybody.

Well, this is the last time this year, I guess, I get to give you a legislative update. It's an odd time to do so, given that most members of Congress are out of town likely campaigning for their candidate, one or the other. Congress returns for their lame-duck session, so-called lame-duck session November 16th. I'll talk to you a little bit about that.

But what I thought I would start with is just quickly kind of doing a review of the 114th Congress. After this lame-duck session, beginning of next year we'll start the 115th Congress. There are quite a few issues that were discussed during the 114th Congress that I'm sure will continue next Congress. There'll be a host of unrelated IP issues -- I know it's hard to

believe -- but issues unrelated to IP that the Congress will be busy on as well, so I'll give you a sense of both of those.

In this Congress, we had the opportunity to testify quite a few times -- twice in the first session -- that's the first year, 2015, of the 114th Congress, one of which was the second confirmation hearing for the director; another was on the issue that dominated the IP space, and that was patent litigation reform in front of the House side.

In the second session -- that's this year, 2016 -- we testified four times on a number of different issues: on China antitrust issues, on counterfeiting issues in front of the Senate Judiciary Committee, and then on trademark issues in front of the House Judiciary Committee; and then, finally, a general oversight hearing on the PTO that Director Lee testified at in September addressing quite a few issues: certainly workforce management issues and the recent DSIG reports.

Congress is also interested in the GAO reports in quality, so we spent quite a bit of time

on that. We're completing some of the work in the follow-up from that hearing now, officially responding to some questions for the record that were submitted after the hearing. So, that will be completed here in the next couple of weeks.

I mentioned the lame-duck session. Lame-duck sessions are becoming quite routine where that wasn't the case some years ago. They've become quite routine for the most part as members push things off a bit until after the election. Sometimes that's because they can't get the work done and they want to reserve that time. Other times, they have some incentive not to vote on particular issues. I think that's resulted in lame-duck sessions becoming a bit more routine. When they come back this year, similar to other years they still have the appropriations process to complete. We have a CR that you were probably briefed on by CFO. It runs through December 9th. It's possible that we'll have an omnibus or a so-called mini-bus series of smaller appropriations bills that are pulled together to be able to move and be voted on together, which sometimes expedites the process.

We are watching, from a PTO perspective on both language and the appropriations bills that might direct the PTO to do a particular thing and also report language that advises the Office that we should strive to do other things. In report language in recent years for PTO, it has included a number of requirements for the Office to provide quarterly reports or annual reports on particular issues. So, we're very much watching those to see what additional requirements we'll be held to over the next year -- in particular, some of the so-called riders. Riders are generally defined as language that's added to the bills, the actual appropriations language itself. It's generally unrelated to funding the agency, but may meet some particular policy priority. This year we've seen riders affecting the PTO on issues like the Havana Club Trademark. And, again, another trademark issue related to some of the National Park Service's issues with enforcing their trademarks or trademarks that they want to claim. So, we're watching those very closely for any operational impact that they will have.

Clearly, the TPP has been a very active discussion topic both in front of Congress and in the presidential debates. Whether the Congress will choose to act on that during a lame-duck period is unclear but certainly could be possible, certainly would be subject to some discussion, and then certainly to filling the current vacancy on the Supreme Court I think will be one of the topics.

Now, notably, the Supreme Court nomination certainly and potential action beginning next Congress on issues like immigration -- those are issues that are generally dealt with by the Judiciary Committee, not IP related, but it will take quite a bit of the bandwidth.

I think the members that we traditionally look to, to provide some guidance or be active on IP-related issues.

So, it may mean that some of the IP issues are pushed off. We'll see.

This was an interesting slide that I thought I'd just include in your deck to explain a little bit more on the CRs also. Like, the

lame-duck sessions have been a regular tenant of our appropriations experience in recent years certainly going back to 1998 every year we've had a CR of some period of time. The last time, all the appropriations bills were passed individually.

Back even further, back in the mid-'90s, there's also been in '96 some effort to meet the deadline of September 31st by passing these so-called mini-bus without the benefit of a CR. But it's an interesting history to see where we've been. I think -- it's interesting, the '94 and the '96 dates were also preceded by I believe efforts to shut down the government. So, when they came back, there was much more incentive to prove that they could meet the deadline. So, it's just an interesting history of our CRs that we're living through.

Looking forward to the 115th Congress. I already suggested some of the issues, and I'll talk a little bit more about that. What you see right now is our current leadership in the House Judiciary Committee for both the House and the Senate. If the Senate were to flip, which may be

more likely, I think not much would change. I think the leadership stays the same; they just trade hats between chairman and ranking member. On the House side, which news reports suggest might be less likely that it would shift in terms of majority, I don't think you see much change. Of course the subcommittee chairman could always change. We'll be looking for that. Those decisions wouldn't be made until the beginning of the 115th Congress. Oftentimes chairmen are offered other chairmanships that they might find more interesting or want to spend more time, so that could create a vacancy as well. Those are issues that my team looks at very, very closely.

But I think otherwise at this point we'd assume that the membership of the committees would stay relatively the same. In the beginning of the next Congress, one of the things that my team does is they look at new members that are to come in and they look at new members of the Committee, and we try to target those folks and go up and provide some basic information about PTO, what we do, so that when the question arises that's related to IP they have a resource here at

the PTO. We'll continue to do that in the next Congress.

MR. THURLOW: Hey, Dana, a quick question?

MR. COLARULLI: Sure.

MR. THURLOW: So, say the individual members all win their seats and the same people, same party, and so on - - I heard something and I just want to get your thoughts. Is the chairman or are there certain term limits for the chairman or for members in a particular committee?

MR. COLARULLI: Yeah. On the House side for the Republicans they are term-limited chairmanships. Chairman Goodlatte is not term limited. I believe his term would be the beginning of the following Congress, so he would continue. On the Democrats, they have not adopted a similar rule. Those rules in terms of term limits are adopted by the individual parties. A similar rule also does not exist on the Senate side. So, the only one that would be affected in this grouping would be Goodlatte.

Now, interestingly -- I didn't mention before, but Darrell Issa has a very tough race

that he's facing, so that could be a potential upset. Outside of the Judiciary Committees, Chairman Honda, also from the state of California, is our current ranking member for the CJA Subcommittee, our Appropriations Subcommittee. He has a tough race there, so that's, again, the second place where we might see some changes. Again, maybe some other changes in the membership but in terms of leadership those are the folks that we're focused on.

MR. SOBON: Dana, this question about Grassley, if he loses who would be the next senior member on the Republican side?

MR. COLARULLI: Senator Cornyn -- oh, I'm sorry, Senator Hatch would be the next one, followed by a couple of others and then Senator Cornyn. Senator Hatch is the next. Now, as some remember, he was the former chairman of this Committee at a time he also had spent -- he chaired a subcommittee when there was a subcommittee in the Senate on IP, but he would be the next in line. I'll correct the record if that's not the case, but I think that's the case.

Issues in the 115th Congress: I had

already suggested I think there are a number of -- regardless of who wins the presidential race next Tuesday -- issues that are non-IP related that are likely to dominate Congress' attention probably in the beginning of the 115th. I think that certainly would include, as I said, immigration reform if Congress decides to take up immigration reform -- the Supreme Court vacancy filling that -- again, another one that might take up the early months of the Congress.

But certainly IP issues left on the table in the 114th Congress likely would be raised in the 115th -- patent litigation reform certainly one of those. And the conversation during the 114th and some of the 113th was dominated by a comprehensive package. That comprehensive package stalled a few times, both the House and the Senate sides. I think it's likely to assume that conversations that they've picked up in the 115th Congress might be more narrowly focused. I think that for a couple of reasons: No. 1, because the political consensus couldn't be achieved for comprehensive reform during the 115th. But it's also important to

note many things that have changed while the conversation up on the Hill pursued addressing abuse of litigation reform. So, I think it's fair to assume that efforts might start with a comprehensive bill, and they might be narrowed down to find something that might move forward.

Marylee.

MS. JENKINS: Dana, I appreciate the comment on the copyright and particularly since the recent activity at the top of the Copyright Office. Is there any discussion about moving the Copyright Office under the umbrella of the USPTO?

MR. COLARULLI: That's certainly been one of the options that's been discussed. It has not been offered in any legislation, but various modernization or restructuring proposals have been made. One would be to leave the Copyright Office in the Library of Congress within the Legislative Branch but give it some autonomy, and defining what that autonomy is has been part of that discussion. Another would be to move the Copyright Office out either as an independent branch, independent commission within the Legislative Branch or the Executive Branch. And

then yet a third would be to move it into the Executive Branch either as a -- into the Department of Commerce someplace or within the PTO. I think all of those have been ones that have been discussed, and the administration hasn't expressed at this point a preference for any of those.

I think what we have been fairly consistent with is both some attention to the Copyright Office and making sure it has the resources it needs, which is certainly a worthwhile (inaudible). So, while that means some autonomy on the operations side or some influx of resources to address its side, its significant IT needs and other operational issues, that's certainly important.

We've also expressed some concern about how whatever change is made might overlap with activities that PTO is also engaged in. We have a good working relationship with the Copyright Office, particularly on international treaty negotiations, pulling them in on some of the domestic issues as well. We want to make sure that we continue or at least coordinate those

activities. So, there hasn't been any member that's proposed, but it certainly has been one of the topics -- bringing the Copyright Office into the PTO -- that's been on the table.

I think the recent changes in leadership of the Copyright Office might fuel people's interest certainly in finding a new leader but also in thinking about some of those options.

MR. WALKER: Dana, on that point I'd just say, you know, to have the IP granting organizations under one roof would certainly, from the user community, make sense. And so I think that would be certainly a positive development on Copyright. On the patent litigation reform --

MR. COLARULLI: Yeah.

MR. WALKER: I don't know if you're going to touch on it later, but we have had the FTC report come out on the patent search and entities, and I was curious about your views on the recommendations in that report and how that might influence the reform issues going forward.

MR. COLARULLI: Yeah, thanks for that

question. Yeah, the FTC released a long-awaited report back in September looking at a lot of the data around NPEs and PAEs. I think one of the things that the report did do is provide some numbers to abusive litigation, particularly the demand letter activity that we've seen. And so I think that might have an influence. I think some of the other recommendations we're certainly still looking at. I think it certainly points to some of the initial issues that drove interest in legislative reform might have already been addressed and put some numbers around the scope of that problem. But I don't think it will have a huge impact on the legislation and, if any, simply pointing out that maybe the need is a little less dire. But we're still looking at the recommendations. We'll see how it's picked up by Congress and how it's perceived by Congress. I think we haven't had the chance to really get a sense of how they're reacting to it yet.

I mentioned also §101 discussion. Certainly there've been a number of discussions about whether there would need to be a legislative fix to 101. One of the reasons why the Office

felt it important to pull together roundtables, which we're doing this month and next month is to help inform that discussion going forward. If legislation is taken up next year, next Congress, one thing we can do is make sure that there's a base, there's a good record of discussions over the scope of whatever legislative change might look like and certainly what the issues are. I think there's -- it's fair to say there are differing views on what the problem is, so therefore there are different views of what the solution would be. If any value that we could bring to the table, it would be to create a better record that those in Congress or the public could look at in scoping us any kind of solution.

And then I mentioned changes to IPR proceedings also. One of the discussion points during the 114th Congress was whether there needed to be legislative changes. We're continuing to implement the interparties' review proceedings at the Office. They continue to be very popular, as you know. We'll see where we are next Congress.

MR. GOODSON: While your dancing

partners with the House or the Senate may change, something I don't know -- or the Committee -- Office staff, would they pretty much stay the same? And I assume you've got a working relationship that will continue with those folks.

MR. COLARULLI: Some do change, certainly, and that's a challenge, kind of creating those relationships again. Some of the more senior IP councils that sit on the committees tend to shift a little less frequently, so we have some history, some longevity there, and we can rely on the previous relationship. But that's certainly a challenge in the beginning of any new Congress. So, unclear kind of who might go off and find a new career in the private sector or somewhere else on the Hill. We'll address that challenge in the beginning of next year certainly.

I mentioned the last two issues on the bottom of the page. Certainly could perceive -- depending on what the Supreme Court says in the Slants case -- a response on trademark disparagement -- for that, a legislative response. And then purely operational for PTO,

two things that we flagged for the Advisory Committee before: a TEAPP in our ability under the Telework Enhancement Act of 2010 on travel flexibility expires at the end of 2017; our ability to set fees provided under America Invents Act expires in 2018 in September. So, both of those we're looking at, and both of those we're actively now and will continue through the next Congress to make sure that we don't trip those expiration dates.

Lastly -- and this came out of the subcommittee meeting we had yesterday -- I did want to give a sense of kind of what of my office does. When I brief the Committee, I frequently talk about issues that are in front of Congress, issues that we expect that we'll be involved in. I don't necessarily talk about some of the less glitzy activities that my office tries to handle for USPTO, like responding to members' letters on behalf of their constituents on "Where's my patent?" and "Where's my trademark?"

We also facilitate clearance of interagency documents both my office and certainly many folks on Chair Promoter's staff in

the Office of Policy and International Affairs and interacts with various parts of the administration on any IP issue that might come up, and that often takes the form of testimony that will be given by someone else in the administration but might have an impact on IP. It would often take form of various reports that will also comment on IP and developments in IP. We have an opportunity to comment and even edit and even provide suggestions. So, my office facilitates those activities. That's that center box.

The things that I generally talk to all of you about are representing PTO on Capitol Hill. We're the primary liaison between the Office and the Hill. Any Hill staffer that has a question about anything related to IP, they'll call my office, we'll figure out who within PTO is best to respond. But we'll be the filter for that interaction. As Mark suggested, a lot of that is dependent on good relationships that we build. We spend a lot of time on keeping up with staff changes and building relationships with those staff even as they're changing. That's that

first box.

The last box is really where my staff in the last three or four years has spent a lot more time, and that's the proactive activities, some in supporting our regional offices. Great opportunity that I've talked about here in creating additional champions around the PTO and what we do in the services that we provide, as we have boots on the ground in Dallas, Denver, Detroit, and San Jose -- in those regions -- building relationships with those members that may be off the Judiciary Committee, off committees that generally look at our issues, to really talk about what we bring and what we do. So, we spent quite a bit of time doing that.

Equally as important, I think, in the modern post-

(inaudible) period is extensive stakeholder engagement, and I think you'll see that just about in every part of the PTO, whether you look at patents or trademarks or our policy function or my office, having a role and really engaging the stakeholder community, not just on policies that the PTO has control of but what our

advocacy might look like, and various other issues. We're getting a lot of feedback. So, my office has a role in that as well.

Those are lot of the things that we do. My office also tends to be the "other duties as assigned," given all the relationships that we help to support, and we're happy to do that and we do that, really, on a weekly basis.

So, I wanted to just give a sense of some of the activities that we engage in on behalf of the PTO and the public, because we hadn't -- as the subcommittee said yesterday -- hadn't really spent time talking about that a bit. That gives you a little bit of view into my team.

My team right now is a staff of about 10 folks -- some attorneys, some not, some former Hill folks, some a little bit deeper in various parts of IP policy. We really need that. We need that to be able to knowledgably facilitate some of these discussions on our team. So, that's what we look for. I have a vacancy right now. Please tell all your friends and their kids (laughter) who might be interested in a position in my office.

With that, I'll take any questions that folks have.

MS. KEPPLINGER: Hearing none, thank you very much, Dana.

MR. COLARULLI: Absolutely.

MS. KEPPLINGER: Always a pleasure.

MR. COLARULLI: Thanks so much.

MS. KEPPLINGER: Okay, we now have Russ Slifer, the Deputy Undersecretary and Deputy Director of the USPTO for closing remarks.

Russ?

MR. SLIFER: Thank you. Good afternoon, everyone. My closing remarks will be fairly short since I'm fighting a cold, but I thought it was important especially to come and say thank you to those who presented today, to those who joined us both here, in person and on line, and of course to the Committee for taking their time to meet with us and ask good questions from all the presenters.

The input, of course, from PPAC and from all of our stakeholders is extremely important to operating the Office and, as Dana pointed out, we have a couple of roundtables that we just put out

Federal Register notices to talk about patent eligible subject matter, and in those roundtables we're not only going to talk about examination guidance but also take a look at the current 101 jurisprudence and see what changes need to be made or at least have a question amongst all the stakeholders on whether legislative, judicial, or administrative changes are necessary.

Hopefully, Valencia shared that we're going to have a roundtable here on December 13th on quality. I saw the agenda for that. It looks extremely well thought through and covers a variety of topics. I'm looking forward to that.

I'm also excited about some roundtables that we're putting together here in November and then in Dallas also in November to talk about examiner time. It's a topic that is very near and dear to me. It's been brought out in the GAO report and others about the appropriate time that examiners need to do their work, to do a quality job. And, having that discussion now alongside of the quality discussions is important so that we can together map forward the exact amount of examiner time or the right framework for that.

So, that's important for your input, the public's input also, to participate in that.

So, as we quickly approach a transition in the administration, I thought it was important to reiterate the commitment of the agency to maintaining an open dialog with all of our stakeholders, supporting our nation through our regional offices, working with our international colleagues to improve efficiency in patent examination around the world. We continue to improve our work product while we also work to improve the work product that comes into the Office and to focus on our financial management but, most importantly, to invest in our most important assets, and that's the employees of the agency.

So, Title 35 empowers the PPAC to review the agency's policies, goals, performance, budget, and user fees and to advise the director on these matters. I just wanted to reiterate, your role is extremely important to help ensure that consistency is maintained as leaderships will change through the administration changes.

Speaking of leadership changes, I have

the pleasure of thanking two of our PPAC members for two consecutive three-year terms.

And the first, Wayne, I wanted to thank you for your commitment to PPAC but not only PPAC but to the broader IP community through your roles in AIPLA and IPO and all the leadership opportunities that you've taken on over the years. Your assistance and dedication is extremely helpful and grateful to the community.

And the second is to thank Esther Kepplinger. I don't even know where to begin or end. You know, your dedication to this agency, the long career that you've had with us, and then continuing for six more years to bring your knowledge and leadership to bear in guiding the PPAC has been invaluable to the agency, and we want to thank you also.

I believe Marylee wanted to say a few words before I present each of you with some certificates of appreciation.

MS. JENKINS: And the key word is "words." Thank you, Russ.

As Vice Chair of PPAC, I thought it was appropriate that since our focus is so much on

claims and how important words are to this committee and to us and the undertone that we've had during meetings about the importance of words, some come to mind for both of you, and I quickly jotted them down during the meeting: dedicated; committed; hardworking; diligent; devoted; enthusiastic; zealous; caring; concerned; passionate; spirited; steadfast; dynamic; talented; smart; and brilliant -- and, simply, not overbroad, right?

(Laughter) No 112 issues for me please. Personally, I just want to say it's been a pleasure and an honor serving with both of you, and on behalf of the Committee we simply thank you for your service. (Applause)

MR. SOBON: Well, thank you all. It's been a wonderful treat to have had this opportunity for six years to be a part of this group but also to really be a hopefully helpful partner with the Patent Office in achieving its mission, and it's been a, you know, highlight of my professional career to have done this, and also especially just my memories of working with the Office and especially also with Esther during the

implementation of AIA was really a significant set of things to do but also just a complete, again, highlight of my career. So, I am really am grateful for having this opportunity to serve. So, thank you very much.

MS. KEPPLINGER: And for me, it's been a really special honor. I spent so many years here, so the PTO will always be a special place in my heart. You can hear it in my voice.

I want to thank all of you. There are a tremendous number of really dedicated, talented people here, and I've been so pleased to see the work you do and pleased to see how you've all advanced in the agency and the dedication and efforts that you've put forward.

I want to thank everybody on the PPAC. It's been a pleasure. Very talented and impressive people. And, actually, I wanted to recognize Jennifer Lo. Jennifer is such -- she takes such a great effort to make sure that everything runs very smoothly and make sure that we have everything that we need. I also wanted to -- and Andy's not here -- but especially for Wayne and me, we spent a lot of time being able

to work very, very collaboratively with him when we first were on the PPAC to develop a number of programs. And it's been really gratifying to see some of those put in place. So, thank you all, and thank you for your patience with some of my excited and passionate stream of comments over the time. So, thank you all, and I'll miss you. (Applause)

MR. SLIFER: Well, the little red button on the bottom didn't work. Sorry.

We want to give both of you a token of our appreciation. As you know, we don't have a large coffer to provide (laughter), as you oversee. But we do have some certificates that we would like to present first to Esther and then to Wayne.

MS. KEPPLINGER: It actually was my great pleasure to have seven years, because I had a one-year term from someone else. (Laughter)

Okay, thank you. I guess that's a wrap. So, see you around someplace.

(Whereupon, at 3:24 p.m., the PROCEEDINGS were adjourned.)

* * * * *

CERTIFICATE OF NOTARY PUBLIC

I, Carleton J. Anderson, III do hereby certify that the forgoing electronic file when originally transmitted was reduced to text at my direction; that said transcript is a true record of the proceedings therein referenced; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and, furthermore, that I am neither a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action. Carleton J. Anderson, III

(Signature and Seal on File)

Notary Public in and for the Commonwealth of
Virginia

Commission No. 351998 Expires: November 30, 2016