UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Thursday, August 3, 2017

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P R O C E E D I N G S

(9:03 a.m.)

MS. JENKINS: I have been given the red light. I think it should be green, but -- are we ready? Yeah?

I just want to point out -- good morning. Good morning, welcome. What a great crowd. Thank you all for coming. We really, really appreciate your being here. Had to quiet them down before we could start.

Hi, I'm Marylee Jenkins. I'm chair of PPAC. And it's August. I'm not sure where the year has gone to, but it's been a quite active one for the PTO and IP in general. So, we come to yet another interesting, wonderful meeting for us and learning so much and trying to give all that knowledge and information back to the shareholders in the user community. So, thank you again.

I first would like to just briefly start with a thank- you to our past director, Michelle Lee, for her stewardship and leadership commitment and support to PPAC. We have had tremendous value

from her input and knowledge and look forward to her next adventure in her life and her career.

So, Michelle, wherever you are, thank you. With that, I'd just like to go around the table as we usually do and have everybody introduce themselves, and then we'll start with the agenda after that.

MS. FAINT: Cathy Faint, Vice President, NTEU 245 and member of PPAC.

MS. SCHWARTZ: Pam Schwartz. I'm the president of the Patent Office Professional Association, and I'm a member of PPAC.

MR. SEARS: Jeff Sears, PPAC.

MR. KNIGHT: Bernie Knight, PPAC.

MS. CAMACHO: Jennifer Camacho, PPAC.

MR. GOODSON: Mark Goodson, PPAC.

MR. LANG: Dan Lang, PPAC.

MR. THURLOW: Pete Thurlow, PPAC.

MR. WALKER: Mike Walker, PPAC.

MS. JENKINS: Marylee Jenkins, PPAC.

MR. MATAL: Joe Matal, USPTO.

MR. HIRSHFELD: Joe Hirshfeld, USPTO.

MR. FAILE: Andy Faile, USPTO.

MS. MARTIN-WALLACE: Valencia Martin-Wallace, PTO.

MR. SEIDEL: Rick Seidel, PTO.

MR. POWELL: Mark Powell, USPTO.

MR. BAHR: Bob Bahr, USPTO.

MS. JENKINS: Okay, so I'm just noticing that we have all the PPAC on one side. (Laughter) Do not read into that, people who are watching, please.

So, we're going to start with opening remarks. I'd like to introduce and we're very excited to welcome Joseph Matal, intern director, performing the functions and duties of the Undersecretary of Commerce for Intellectual Property, and director of the USPTO.

I want to say that though your tenure has been, I guess I could say, brief -- not casting any aspersions on you in any sense of the word -- but no (inaudible), so -- but you have been so supportive of us, and we have gotten off to such a great start with your leadership and

look forward to continuing.

So, with that --

MR. MATAL: Oh, thank you, Marylee. I'm not going to -- since I only have a few minutes, I'm not going to explain my title. (Laughter) I'd just like to touch on a few issues that some of the business units will go into greater detail on.

There's been a lot of interest and inquiry about the Shared Services Initiative, so I'll give you a little update. In the past, the PTO has made -- well, winding up all the back, about three years ago then Secretary Pritzker launched an initiative to collectivize the provision of administrative services for the 12 different bureaus of the Commerce Department, principally financial management, HR, procurement, and IT management. The PTO more or less made a commitment to at least participate in the startup of this program in order to preserve its ability to participate. This year, some of the bills for starting up this program have come due, and they're a bit larger than what we apparently

expected. And this has also forced us to take a hard look at PTO at how this program would work and how it would serve our needs.

Early on a decision was made that because of the way PTO was financed, it wouldn't participate in the financial management part of this. But it's still planned that it would participate in the IT and HR portions of the program. That's forced us at PTO to take a hard look at our IT and HR needs and figure out how operationally they can be addressed by such a program.

As you all know, the PTO has very acute, very specific hiring and IT needs and, you know, we need to make sure we're hiring the best quality examiners. But the candidates that we choose are the ones who really understand the technology in the 550 different art units.

And then on the IT side, the PTO spends about $600 million a year on IT. We have a 24/7 IT operation that serves examiners all across the six U.S. time zones 24 hours a day, and we need to

make sure that system stays up and running. And unfortunately we still operate under a number of legacy systems that are very fragile. Of all of our 200 or so systems -- about 160, 170 -- are legacy, meaning they still operate on, you know, mainframes and communicate via Local Area Networks rather than Wide Area Networks, and this makes them fragile. It makes them susceptible to shutting down in the event that that there are changes. And for PTO, a shutdown of our network is a disaster.

We're completely dependent on our computers, and if the network goes down our people can't work. So, keeping that network up and running is our top priority in any -- you know, however we resolve these issues about how IT is provided, our top priority at PTO is making sure that there's no diminution in the level of IT servicing that we receive. It's just absolutely no other savings or no other benefit could make up for a diminution in the quality of IT. And, you know, the last thing we want is to stand up in the

universe where our system regularly goes down, because that directly impacts our production, our employees' ability to do their job. But shared services program and how it's going to be implemented is currently under review.

With the new administration, I can't project or predict exactly what the outcome is going to be. From my interactions, though, with the Commerce Department, I'm confident we'll find a solution. The people running the Commerce Department are business people, and they'll want to know how things work and make sure that the system does work before it's implemented. So, although I'm not sure how it's going to be resolved, I'm confident we'll find a solution that serves the USPTO's needs when this is resolved.

And if you want to know more about some of the financial issues, you can ask our CFO, Tony Scardino, when he comes up and John Owens, our CIO, can go into great detail about our IT system and the difficulty of keeping it up and running 24 hours a day.

I wanted to touch on a few other issues. There's been questions about which of the initiatives of the previous director are still being kept going forward.

Earlier this year a PTAB reform initiative was started. That's been put on hold. What direction we take with broad changes to PTAB will have to await the appointment of a permanent director.

I would like to note, though, that that doesn't mean we've stopped thinking about these issues and about how these programs are implemented. The PTO continues, for example, to study the amendment process and inner parties' reviews. It's been a continuing source of controversy.

The paucity of amendments allowed under the program is something we continue to look into. You know, earlier, a year or two ago, we did a study of those amendments, and we continue to review these issues.

The PTO recently did an internal review

of, for example, why the amendments are being denied, and we found in about 85 percent of the cases they're being denied on the merits; that is, the amendments are rejected because they're unpatentable for largely the same reasons that the original claims are unpatentable. And we started looking at, for example, the European and Japanese practices where there are more robust amendment results, not just process but results, and, you know, we've noticed that in their system people get an earlier notification of where the case is going, and so people are more willing to focus on amendments once they know that the original claims will no longer be maintained. It seems like the way our practice has evolved there isn't that opportunity, that forewarning that, yes, you're going to need to amend if you want to save something.

And so these are things that -- you know, we're going to put together the data and, you know, have ideas and proposals ready for when a permanent director comes in. I will continue to

study these issues.

And on the issue of serial additions in IPRs, there's been a fair amount of controversy and discussion about that as well. And I'd like to note that the Board continues to issue decisions in this area and continues to refine the ways that it exercises its discretion to regulate these additions and prevent, you know, any type of harassing behavior.

In fact, I'd like to highlight a decision that was just issued on July 27th on a case called Genentech Hospira v. Genentech, IPR2017-739. This is a case where the Board applied the 325D bar to prevent a follow-on review of something that had actually initially been reviewed by an examiner. The examiner had reviewed issues of priority and enablement and whether an application was entitled to a previous determination and was entitled to a previous application's priority date. And the Board, in the end, concluded that the examiner considered fully the written description and enablement

issues underlying, you know, the priority claim, and Petitioner has not presented new evidence or arguments that would convince us the examiner's decision was unreasonable.

You know, effectively, in this case just a few days ago the Board applied a type of, you know, more differential review of the examiner's decision in this application of the 325D, but I just highlight this case so people are aware that the common law process at the Board continues to function, you know, with or without any direction from the leadership of the Agency. And these are issues that the PTO continues to study and address.

Finally, just a few other minor things. I wanted to highlight that the PTO remains committed to its pendency goals of eventually getting to an average of a 10-month pendency for the initial action and 20 months for, you know, final resolution of patent applications.

We've also begun discussing and implementing additional pendency goals. The

patents operation -- and Drew and Andy can talk more about this -- has also talked about timing pendency, not just to average goals but to also achieving the patent term adjustment goals of 14.444.36 across the board. So, at some point it became clear to us that, yeah, reaching 10-month average pendency is great, but it doesn't do people much good to tell them: Well, you know, it took us 2 years to get to a first action in your case, but on average it was 10 months. So, we're discussing taking on this additional goal of aiming to make sure that every patent, or at least in every work group, the first office action is reached within 14 months. That will require some adjustments and differences, but we've decided we really need to reach for these further goals.

What patent owners want is certainty, and again it's not the average; it's, you know, what's happening in your particular -- you know, what happened to your particular patent. So -- but Drew and Andy can go into more detail about that.

We're also doing an examiner time analysis. We haven't really done a hard look at evaluating how much time examiners get for their applications since, I believe, the '70s. So, that's something that's underway right now.

And then, finally, I'd like to highlight the report on Section 101 that the PTO recently issued. The PTO held two symposia at the end of last year where we invited industry -- you know, businesses and patent professional associations and trade associations -- to give us their views on the Supreme Court's recent 101 jurisprudence and its impact, and the report summarizes what CRD stakeholders told us.

What you'll find in there is that there still remains a fair amount of division in the views on the software side of the equation. There's sharply conflicting opinions on the impact of the Alice decision and whether that's been good or not. I think Dennis Crouch and his blog criticized our report as being "bland." I think that's the term he used. But in this context, I

think "bland" is good. The PTO isn't about to wade into the middle of this debate, at least not in this interim period about the Alice decision.

But on the Life Sciences side, what you'll find in that report is that there's actually a surprising amount of consensus about what should and shouldn't be eligible for patenting in the Life Sciences. And there was a surprising degree of almost uniformity of views that some of these inventions -- that the Mayo and Myriad decisions impacted the diagnostic techniques and inventions where you just discover some practical application of a natural substance and reproduce that substance, that it really should be eligible. That was nearly a consensus view. You know, the only people -- it's only some very marginal interest that believe that those types of inventions should be ineligible.

The report also discusses what's eligible abroad and how U.S. standards now compare to international standards in this area, and I want to commend that report to all of you. It's

been 5 years now since the Myriad and Mayo decisions, and the time is becoming ripe for taking a hard look at some of these issues, and I hope the PTO's report will be an important part of that.

Aside from that, we have an exciting program for you. I know the different business units at PTO have worked hard on their presentations, and I actually intend to stay for almost all of the day today to watch these presentations with you.

And with that, I'll hand it back to you, Marylee.

MS. JENKINS: Mm-hmm. Thank you. Well, you can tell the interim director has jumped into the fray, so to speak, and we appreciate that. And if anyone was watching my expression, I was quite surprised that you're going to stay for the whole meeting. But that's wonderful. We're pleased to have you for the entire meeting.

I'm wondering if anyone has any questions from the PPAC on any of the topics that

were talked about briefly.

MR. WALKER: I'll make a comment -- and thank you, Joe, for the comments about shared services.

I think you know the position of the user community, that over a long period there's been a settled expectation that -- especially when it came to fee increases there was always, in the user community, support, even though a lot of people, like in the industry I was in, never liked spending more money than we had to. But when it came to fee increases, we were always supportive, because of the quid pro quo that we knew with the increased fees you would be able to hire the examiners who had the technical qualifications and skills examine the applications. You'd make the investments in the IT systems that would be robust, that would not be breaking down every other week, and so on. So, that was really an important thing.

And so with the shared services, you know, just thank you for your comments there,

because, you know, every day businesses are making decisions about investment based upon their patent rights. And to have a delay in examination because an IT system goes down or lack of quality hiring of examiners -- that has a real life impact on people whether it's large companies in their patent portfolio, but even a large company -- businesses are always making decisions as to whether or not to introduce a new product based upon their patent protection. And then if you're a small company and you're looking funding, VC funding, you really need settled IP rights, because a lot of companies won't invest or a lot of companies won't deal with smaller companies until that smaller company has some granted patent rights. So, thanks for those comments about the shared service, because I think if you surveyed private industry when other entities have tried to go to these shared services, it seems like the benefits are a illusory and it goes to a lowest common denominator. And so from the user community I think, you know, antennas are out and

so thanks for your comments about your view on shared services, and hopefully it gets to the right place.

MR. MATAL: Thank you, Mike.

MR. GOODSON: Yes. (Inaudible) on shared services. I oversee the subcommittee for IT, and I wouldn't say it's not doable. I would say that when I talked to John Owens and people there and the people on the IT Committee with me, we would say shared services would not be advisable.

MR. THURLOW: So, just to change the topic a little bit, this may be a sensitive topic but it just came up. One of the interesting things about PPAC is it's the August meeting, and sometimes I think the summer -- it's going to be not as eventful and a pretty calm meeting. But Tuesday there was a front page story in the Wall Street Journal about concerns of an intellectual property theft in China, and one of the things I've learned at being on PPAC for 5 years is the international involvement in intellectual property

-- the IP 5 meetings, the great international team that you have here -- and then I believe China responded today. I know there's not much you can say today, but it's just -- it's a very important topic as you can appreciate. I receive many emails. There's great interest in, obviously, the trade issues and IP protection, because once you've been doing this for 20 years, the IP -- not just the U.S. (inaudible) but it's a global thing that most clients we have -- it's a global issue. So, these issues raised in the Wall Street Journal articles and many other papers are very important, and to the extent you can even briefly discuss it would be appreciated.

MR. MATAL: You know, we track the same issues. PTO actually has -- I don't mean to brag too much, but I think we have the most advanced China studies team anywhere in the federal government, and we've been following these very issues. The team led by Mark Cohen not only studies the laws but also the court systems, how things work in practice in China, and we're aware

of kind of been beating the drama about some of these same issues. We're delighted to have the leadership of the administration take these issues up.

Just some of the issues with licensing in China and discrimination, kind of mandatory technology transfer -- that goes on. You see the impact of it in the amount licensing fees that Chinese companies pay as opposed to, for example, Taiwan and Japan. Although China has a much bigger portion of the market for high- tech goods than those two countries, the pay is a much smaller amount of licensing fees, and to us the reason for that is pretty clear. It's these discriminatory regimes that make it hard for people to license and to get the real value of their intellectual property when they do business in China. We're again delighted to see the administration take that up, and hopefully some of these abuses can be corrected.

MR. LANG: So, along with the concern about shared services and what that means for fees

that are going to the Patent Office that are collected from the user community, you know, there's I think broad stakeholder support for giving the PTO fee- setting authority in the first place has already happened -- but also, you know, maintaining and extending that into the future.

And one concern related to that is that the fee increase that had been developed as part of the fee review process in which the PPAC was involved has now been significantly delayed, and it is essentially lapping into the next fee review period. And in a sense, the period seems long enough that it's undermining the what was supposed to be independent fee-setting authority to begin with and is inevitably going to have an impact on long-term finances of the Patent Office at the model, the model that was built up in terms of how the operating reserve is supposed to be filled over time. It may not be achieved, and we hope that there will be an expeditious approval of the increase that was previously envisioned and submitted and that the fee-setting authority will

be extended permanently.

MR. MATAL: We're all for that.

(Laughter) We'd love to see it.

Our current fee package is

currently

under review at OMB. It's been cleared by the Commerce Department, so, you know, we think it will move through with all deliberate speed.

I'd also like to point out that the Appropriations Committee has honored the commitment it made in 2011 to give PTO access to its reserve funds but actually two PTO reserve funds:

One is a fund that we keep just in case our projections and our expenses don't match up to reality. We can dip into that fund.

And the other reserve fund is funds that come in above and beyond what was appropriated for us. Before that, it used to get diverted, and now it's kept in a separate fund. And through reprogramming a kind of mix of notice and permission, the appropriators give us access to

that money. And that money is invaluable.

Other than the unfortunate hiccup with the sequester and the way that that was interpreted by the previous administration's OMB, we've had continuous access to our fees. And, you know, when our fees get cut off, most of our money goes to Labor. And obviously we're not going to fire people, so the place where you feel that effect when you have something like the sequester interpretation is in our IT. We cancel IT projects, and that's really -- you know, that's part of -- you know, we would have been on Patents E2E, for example, the next generation patent search and docketing technology, were it not for the money lost as a result of the way OMB implemented the sequester. And, you know, when you cut off those projects, too, you know, you cut off your contractors, and when you're ready to start it up again, you can't get those same people that have already moved on to another project. And so there's a huge learning curve. It's just a huge waste when we have those kinds of

disruptions. So, we're very grateful to the Appropriations Committee for including the appropriate language in our CJS bills to continue to give us access to all of our user fees.

MS. JENKINS: Okay, thank you. Appreciate the questions and the comments. One of the things that PPAC is trying to do, going forward, is really trying to take more of a future viewpoint of where is the Office going and how all these different elements when you tie them together -- shared services; the fee adjustment increases; the delays in approvals -- how that all impacts. And ultimately, obviously, it impacts the Office and how it's run and maintained, but it also impacts the user community. And as we become more dependent on using the PTO services on a daily basis, we need to have reliability and consistency. So, we're here to work through these issues with you and get a good outcome hopefully for everyone, so -- in a perfect world.

Let us move on. We have many topics today, so our next topic on the agenda is Quality

Review.

Valencia, do you want to start us off?

MS. MARTIN-WALLACE: Yes. Thank you, Marylee. So, thank you very much for this time for quality.

Before our presenters start, I just wanted to remind everyone of the commitment that the USPTO, in particular Patents, has to the constant pursuit of quality improvement in our product, our process, and our customer service. And one of the ways that we do that is our outreach in order to get the feedback, the partnership with all aspects of the IP community, and while we may not have as many outreach activities as we've had in the past year or so, the quality of that outreach has remained the same.

Some examples of that are our STEPP program, which is the Stakeholder Training in Examination Policy and Procedure, of which we've had six sessions this year and an average of about 96 percent approval rate from the participants'

waiting list getting in to be part of that.

Another example is the leadership of Andy Faille in the Corps with partnership meetings, which have always been very, very popular; and he's pursued even more of those these years in each technology center.

And one of the constants that we get from those outreach activities is an ask of the review of the examiner's work: What does that mean? How does it go? So, that leads into today's presentation where we thought this would be a great opportunity to let everyone get a better understanding from both the side of OPQA as well as the side of the Patent Corps on how our supervisors, our reviewers, review an examiner's work and give feedback on that work to further pursue quality improvement.

So, today we have I believe two great examples of supervisory controls in our organizations that Sandy Spyrou from the Office of Patent Quality Assurance and Christyann Pulliam from the Patent Corps -- I believe specifically

TC2100 -- who are here to speak to you on the review process. So, we will start with Christyann.

MS. PULLIAM: Good morning. As Valencia mentioned, I'm a SPE in 2100, and for those of you that don't know that's an electrical TC, so we're mostly dealing with computer-related applications.

So, I'm going to give you an overview of what the TC does for reviews and then hand it off to Sandy to talk to you about the additional reviews that occur in the Office of Patent Quality Assurance.

The basic standard the TCs are applying when we are reviewing work is the examiner PAP. The examiner PAP standard is set for all examiners, and it lays out the responsibilities that each examiner has for what they are responsible. So, it lays out what the definition of an error is. That error can be reflected in their yearly ratings for quality. And it varies greatly for each -- it varies a little bit for each level of an examiner.

So, here's a visual display of it. An examiner that just started in the Office maybe came in at what would be maybe a GS-7. They're not held to the same responsibility level that an examiner is who is a primary that has full signature authority and has been here for many years. They have different requirements. But when a supervisor is reviewing their work, we're looking at those. We're considering those different standards. But we're also working with them to create a good work product no matter what level they are. What should be mailed would be -- we're looking for it to meet all those requirements.

So, the work can be returned to work with an examiner for things that are clarity, for things that are those PAP errors, or for other reasons of clarity, best practices to improve the office action.

So, there are a couple of different types of reviews that occur in the TC, and those are before mailing and after mailing. So, before

mailing with junior examiners, you're looking at reviewing every piece of work that they create. They do not have the authority to send you an office action without someone else signing off on it and working with them.

So, when examiners first start out at the office, they're in the academy going through training, and so the person reviewing their work is often the training SPE or training primary that's working with them in the training academy. And when they come over to the technology centers, then they're working with their SPE in the art unit to review each piece of work, and sometimes later they're working with other primaries or we have GS-

Trainers. So, these are primaries that are doing more intense training with the examiners. And that changes over time over the course of someone's career who's reviewing their work, but the general process is the same.

For primaries, obviously since they have the authority to sign work without review, they

sign their work without having anyone else look at it before it mails. There are some exceptions to that with reopens. After appeals, an examiner's answers, and things like that, they still need to be reviewed before they are mailed. But that amounts to fewer reviews before mailing for primaries.

However, after mailing we're not done yet. There are still reviews that occur in the TC. So, we -- each TC has quality plans that support the initiatives of the Office for the enhanced quality initiatives. And so each TC has looked at what they are doing and what issues exist in their TC and they're evaluating and doing reviews that are targeted to help find those root causes and work with the examiners to get them training and correct those issues and improve the work product that's going out in the future.

So, those are occurring after mailing. Currently those are looking at things like rework and reopens and looking for consistency among the Corps and working with the examiners to really

make changes for the future.

We also have requirements to do quarterly, at least, reviews of primaries in order to be able to rate them. We have to look at their work to be able to know what to rate them for quality. So, those occur frequently after mailing.

Also for pre-appeals and appeal conferences, those occur -- those are done -- the final office action has already mailed. We're reviewing that when we are meeting on those panel meetings to evaluate the work.

And then of course there's the signatory review panel. So, if an examiner, as they progress through their career, wants to gain that authority to sign office actions without review, they go through a process called signatory review. And those panels review work that has already mailed in order to determine if the examiner has earned the right to sign without conditional reviews.

At this point, I will turn it over to

Sandy.

MR. THURLOW: Can I ask a quick question?

MS. PULLIAM: Sure.

MR. THURLOW: So, what's helpful about the presentation it's going on, if I understand correctly, right in the TC Unit itself, right? Before it goes over.

MS. PULLIAM: Yes.

MR. THURLOW: So, that's really helpful.

MS. PULLIAM: Mm-hmm.

MR. THURLOW: One of the big things we've always looked at is the pre-appeal program where 30-40 percent of the cases are reopened and sent back. I assume that's more datapoints that you review from the TC Section to kind of see what happened before it went up based on the pre-appeal decision.

MS. PULLIAM: You want me to answer that? You're asking if the TC is looking at --

MR. THURLOW: Right.

MS. PULLIAM: -- at pre-appeal decisions

generally. From a SPE perspective, we're looking at it for that examiner: What happened in that case? What can we work with them on so that that kind of -- whatever issue caused us to decide to reopen in that case -- what can we do in the future that would prevent that kind of reoccurrence of an issue?

MR. THURLOW: Right.

MS. PULLIAM: So, from a supervisor's perspective, that's what we are looking at each of those cases for: How can we fix this going forward?

MR. THURLOW: Okay.

MS. SPYROU: We also have data on that at rolled up levels --

MR. THURLOW: Right.

MS. SPYROU: -- in the QIR, which would be reopens after appeals or after pre-appeals, and we do look at those datapoints also, and we'll look at -- we can see if there's outlier behavior occurring in certain areas, and then we can dig into that to find out: Well, why is that

occurring there? Do we need to go back and do some training? What do we need to do at that point? So, that's very valuable information for the Corps as a whole, for TCs, as well as down to art units that we have at our fingertips through the QIR, the transactional data that we have.

MR. THURLOW: Great. And just one more very quick question.

MS. SPYROU: Mm-hmm.

MR. THURLOW: Yesterday we had a full day of meetings, and the major part of the meetings of course was Section 101, so I don't practice in your group art unit but I assume that 101 is a major issue, and it just seems tough because cases are changing; it's just a lot of information out there, and I'm giving you a softball that's kind of -- (laughter) you know, it's just -- you know, can they tell me from a practical perspective? I mean, there's just so much information out there on 101, how you're going about reviewing these cases and patentability issues, and so on.

MS. SPYROU: Every TC has a pool of specialists that answer. We have an email box where examiners can send their questions, and they field those questions and give advice and point them to -- in case they're not aware of, we have an intranet site where we house all of our information with regard to 101.

So, it has all of the different -- we've done at least four workshops I believe at this point -- somebody can correct me if I'm wrong, but I know I've taught thousands of classes now on 101 over the last years. So, all of the training materials are housed on this intranet website, and there we also have some of what we call kind of cheat sheets where we're keeping track of all the recent court decisions by topic of whether they were found valid or invalid in claims or whether 101 was maintained or not. And we have that all in one spot for the examiners so that they can go there. It's readily available. They can sort through it and get to whatever their question is.

But we also have kind of this ad hoc

team where they can go to these people. SPEs come, examiners come -- can email and say generally in 2800 those individuals are the T-crosses. They're also the people who help with the training. But, as you know, it's a changing target, and we try to keep up on it as much as we can. Sometimes what happens is when an examiner started prosecution, we had the line at one spot; by the time they get to the appeal or the pre-appeal it has changed maybe once, maybe twice in that timeframe. So, we do the best we can with gathering where we're seeing the problem, certainly where we're seeing the questions at the help emails. You know, just what we're getting reversed on. When it goes up to the Board we keep track of all that, and it's all kind of funneled through the quality shop in each TC so that it can get out in their quality initiatives.

MS. PULLIAM: So, each art unit -- a lot of -- we've been going over 101s a lot in art unit meetings, as well, to highlight to the examiner's when the Corps-wide lists of cases have been

updated, highlighting to them ones that are the closest to our technology. These are going to be ones that you're going to be really illustrative for what they are working on. So, we're using art unit meetings for that. RTC is also creating some more QEM- style meetings -- some quality enhancement meetings -- for the examiners to go and ask questions to the T-crosses in a more formal setting and then also to be able to learn from what the other people are raising in those meetings about those cases.

We've been trying to spread that information to increase the consistency in the application of 101, and as we address the moving target we've -- you know, getting information out there to the examiners, making sure they're aware when those decisions come down so that they can see how that affects their practice in their art areas.

MS. MARTIN-WALLACE: So, if I could just add a little to that and give another shout out for the Master Review Form, we're at over 14,000

reviews just for this fiscal year in OBQA, and that information is identified for each technology center, and it breaks it up by statutes. It's not only the results, but it's also good comments and feedback from the reviewers as well as comments and responses from the Corps. And every manager and quality assurance specialist in the Corps has access to all of that data, so that can help them understand better what's going on in their particular area and be able to move forward with training and coaching of examiners.

MR. FAILE: So, to add in to PTO original observation, one of the things Christyann said -- she talked a little bit about TC quality action plans on a high level. Just wanted to underscore that point, because this is kind of a fundamental process improvement that's done in the TCs all the time. We're constantly looking at data and looking and looking for areas for improvement, and each TC has a unique set of issues that they face, depending on the technology; the examiner makeup, whether it's more

junior, more senior; et cetera. You can think of the numbers of variables that are play.

So, each TC actually gives data, whether it's from internal reviews they do, from feedback from managers, from handoffs from the MRF data from OPQA. They take all this data assimilate it, and each TC comes up with a set of action plans for their particular TC for improvements that are unique to them. I think this is really important, because we are using data, but we are trying to get away from individual datapoints per se and correct this one little thing in this one case and look at trends of things we need to look at for processes that underlie the decision-making that turns into office actions being, you know, good, bad, or indifferent.

So, as the TCs are constantly working with this data developing their action plans, we're trying to tighten the loop around this from a feedback perspective, then we'll measure again next year. As long as we've made improvement on that, the TCs will change their focus elsewhere.

So, the iterative process by feeding the data back and using it more to tune up processes in each TC, we hope to bring up the quality of everything that we're doing en masse between all the examiners and all the work products. So, the quality action plans that Christyann mentioned are really a fundamental piece of looking at things that are very specific to TCs and looking at those processes -- leaning those processes up and making them better as time goes on.

MR. KNIGHT: One thing I wanted to ask was -- you know, a lot of resources have gone into this new quality initiative, and, you know, since I've been working at the PTO in the year 2000, I mean, every director -- their goals are always to improve quality and to reduce pendency. And then under Director Lee -- she had this big push to improve quality. Do you have any metrics available to show what the outcome of this new initiative is? Has quality really been improved? And how have you measured that?

MS. MARTIN-WALLACE: So, that's a great

question, and we actually have had more measures than you can possibly imagine. So -- and the Patent Office has always been excellent at measuring. What our focus has been is what do we do with those measures? What do we do with that data? How do we analyze it appropriately and, as Andy said, identify the appropriate trends and do it at lower levels -- not at the Corps-level, moving down to the work group and art unit? And we do have that information available, and I will absolutely get the links for the entire committee of where you can find it on our web page. Since the start of my division, we have all that information that's been published. Each program that we've worked through we have measures, and we have the analysis and results that come from that. So, I will make sure that you receive those links for each of our programs as well as what's going on in OBQA and the different measures that we have there and what we're doing with what we're finding.

MR. KNIGHT: Well, has quality -- have

you found that quality has improved, and by how much?

MS. MARTIN-WALLACE: The measures that we have on our web page -- we can certainly get you the links to those.

I say yes. I say not only from the point of the Patent Office in our perspective on things, but from the feedback we've received on the outside. And, in fact, we had a quality forum yesterday with examiners, and one of the questions from the examiners to our panel was: What are you hearing about us? Give us the information so we can use that. And we've received from the outside, from the IP community, that they are seeing changes, changes in the communications between the examiners and attorneys and applicants, changes for the better of office actions and the extent of the recordation, which are the things that we have been looking for and doing.

So, yes, we are seeing improvements. And one other improvement that we have is with the

data and digging deeper with our analysis and our trends to identify the pockets of issues, not only issues where we need improvement but also issues of where we're doing a great job and our best practices and recording, identifying, and publishing those best practices so that they can be replicated throughout the Corps feedback we've received about things that could be improved with applications that are newly being filed.

So, on a high level the answer is yes. I've seen improvements. I've been told from the outside that there are improvements. And we can give you some data on that through the links that are up on our web page.

MR. HIRSHFELD: I'd like to jump in, too, if I can. So, much of what we've been working on over the last many years to me is bigger picture process changes, that it's going to be very challenging to look at any examiner and say yes because of, you know, X you improved Y. I'm not suggesting that's not something we should be focused on; it certainly is. But I wanted to

just give a high-level sort of overview of some of the big changes.

For those that will have immediate impacts on examiners, I believe what we've done well is really change the way we've trained examiners. When we train examiners now -- and you heard Sandy and Christyann talk about this -- rather than put examiners in a big lecture hall and roll out training to hundreds of people at the same time and nobody can ask any questions, we've been a lot smarter about how we've trained. We've trained, one, more often; two, we've trained in smaller groups; and then we always have that follow-up training with some kind of workshop where examiners in sometimes groups of 15 -- now, as you know, we've got over 8,000 examiners; think about the undertaking to have groups of 15 or so people where they can ask questions relative to their particular technology, how it applies to them. I think that's been a huge change. I think that has helped us assimilate better any changes that we want to make, such as in subject matter

eligibility and other areas. I think that's been big.

On the process side, what we've done -- and I'm trying to remember if we've -- I think we have reported out in a PPAC on this -- we've changed the way we look at and review cases in terms of what the standard of review is. And we've changed to something I think is more aligned with the public perception of how we should be looking at quality.

When we look an office action, we used to have a little bit more leeway on the reviewer to call whether they thought an error or not on its impacts on prosecution. Now we've switched to something that appears to be more basic, although it has its own issues. But it's more what we're calling statutory compliance.

So, we're looking on a claim-by-claim basis that every statute is the decision you made statutory compliant. That is a change that we've put in place, and we're in the process of assimilating to that new change, and I think

what's going to happen with that is we will be able to have more meaningful report-outs to members of the public that are more aligned with their perceptions of quality, right? It shouldn't be -- if you're a member of the public, you cared did the examiner get this right or wrong on this particular claim, you don't care if a reviewer thought, well, it did or didn't impact prosecution in a positive or negative way, and the Office and the public may have different views of that as well. So, the statutory compliance is a huge difference.

Another process we made -- Valencia referred to it as the Master Review Form. That undertaking completely changes the way we capture data so that we can better analyze data so we can understand what our strengths and weaknesses are, potentially leading to more specific training. Andy mentioned the specific reviews that each supervisor -- each first-line supervisor is now in their performance appraisal plans that they're going to do a performance plan for just their

examiners, a quality improvement plan. That is all new. And then our whole efforts on clarity of the record, which we're starting to -- we've never really captured data on that. So, not only are we training examiners to take more steps of clarity of the record but we're now capturing that data. Now, I will tell you it's hard for us to quantify how much of a change we had because we never captured this data in the past. But, moving forward, we certainly are capturing clarity data -- data that we feel is going to be important for letting us track in the future. So, it's easy to look at the quality element and say, you know, can you point to A and B and see a change. But I'd like to think that not only are we having individual changes at the examiner level, but we've also put the processes in place for the big picture so that we can better -- we can have more meaningful and more impactful changes moving forward.

MR. WALKER: Valencia, just a point about the links that you mentioned, because this

was a question that we got from the audience or from a member of the public before the meeting. So, when you said make them available, I just want to make sure that we can make them available not just to PPAC but to the general public.

MS. MARTIN-WALLACE: Yes, we will.

MS. SPYROU: Okay, so we're going to shift gears a little bit and talk about the reviews that take place in the Office of Patent Quality Assurance -- or in OPQA. So, OPQA does a lot of different types of reviews, just like in the TCs. For example, we do case study reviews, sig reviews, appeal and pre-appeal conferences; we answer patent eligibility questions, end loaders reviews, and other types of special reviews, mostly at the request of the TC -- in supporting the TC. But the primary duties of RQASs or reviewers in the Office of Quality Assurance is to do what we call random compliance reviews. So, I'm going to focus, really, on these random compliance reviews, because that is what the basis of our compliance metrics that you're going to see

on the link that Valencia will send to you. You'll see the data on those. So, I'm going to focus on those.

So, we're going to talk about these random compliance reviews -- the parameters that we use in order to do the reviews -- and talk about the review process as well as how does this information get back to the TCs? How does this get incorporated into the work product?

So, when we think about random compliance reviews, what you have to look at -- what we as an OPQA look at is we look at the quantity of work that is being generated in each of the TCs, and then we pull what we call a statistically significant sample from each of the TCs. So, compliance review are random, and the number of these reviews per TC is going to be set based on the volume of work product that is produced by an individual TC relative to the work product produced as a whole in the Corps.

We pull allowances, finals as well as non-finals, and so once these office actions are

indicated to be reviewed, then they are assigned to an RQAS based on the TC designation. So, we don't have RQASs that specialize in dockets like examiners do. For example, in 2800 I have 12 reviewers that work for me, and when a case is designated to be reviewed, it's whoever needs work. It goes to them.

So, reviewers really are what we call generalists. They're experts in the technology of 2800, and that's how the cases get assigned. It's all random. And I know that examiners oftentimes like to ask me -- and I don't know if you on the outside have the same question, you know: Are you out to get me? Are you reviewing all of my cases? Are you avoiding my cases I get? Whenever I go to speak, I always get those questions, and I always say to them: It's random; you might have the luck of the draw; and if all of your cases are being reviewed you should play the Lotto, because you have a lot of luck, right? (Laughter) So, it is random. So, they're assigned.

Now, the other question I get all of the

time about RQASs is: Are they on production? Do they have an infinite amount of time to dig into that case to find all the errors? And they don't. They're on production just like examiners are. And the average is four hours per review. Now, some reviews will take more time and some will take less time, but on average what we expect from an RQAS is basically four hours per review. And that's up for debate. Some people think maybe it should be more, it should be less relative to the time that we give an examiner to prosecute. But that's where it's at now, and that kind of drives the depth of the review that we do.

So, once they get the review, once they get the office action that needs to be reviewed, what does an RQAS do? Well, they're going to use the Master Review Form that Valencia talked about. And the Master Review Form has -- I think it's over 600 questions on it based on each of the statutory bases. So, they're going to look at every rejection that was made in that application and review it for what we call compliance --

statutory compliance. They're also going to look for any omissions to that office action where there are rejections that should have been made objections or requirements that should have been made, and they will also raise those. And they'll look at other issues like the search restriction, objections. They look at the whole big picture. So, they're digging into all of the aspects of that office action.

And they're going to point out not only areas for improvement, but the RQAS, even when everything is good, will raise areas of best practices. They'll look for or they'll raise what we like to call accolades. They're going to say: Hey, you did a really great job here. We call them "attaboys": Attaboy, you did a good job. Right? That's what we kind of refer to them as in our office.

So, if you remember, in the past -- I know we've come and talked about the MRF -- the MRF is really encompassing. On the left side you'll see -- it's called a Smart Form, and the

reason it's called a Smart Form is the reviewers will look at the office action; they'll come up with their ideas; they'll dig into it. They'll go to the form and say: Okay, what rejections have been made? They'll click on those statutes. Are their any omissions? They'll click on those. And then those are the sections at the MRF that pop up for the reviewer to complete. And each section drills down into a lot of questions, both with regard to the correctness as well as to the clarity of what's going on in that office action. So, it really gets down into the nitty-gritty a lot more than we have ever done in the past. So, we have datapoints to look at that we've never really been able to analyze before. So, it really has driven.

And one other thing that the MRF, besides giving us data, has really given us is an opportunity to be more consistent, because if you think about it, if all of the reviewers are asking all of the same questions in kind of the same way, it really drives consistency also in the review

process going on.

So, what do they do during the review process? Well, technically they're focused on the assigned action: Look at this office action and review it. Now, they will open up that review and look at the prosecution history as a whole, as it's appropriate, but generally they're focused on that last office action that has occurred in the application. And what they're looking at -- the rejections being made as well as omissions -- they're looking at what we're calling a compliant rejection.

You might remember that before, as Drew pointed out, before we looked at things from a standard that was called an IPED standard, and the

IPED standard looked at things from: Is what the examiner doing impeding prosecution? And that leaves a lot of wiggle room, and it also kind of raises the bar to the worst of the worst for being a problem. And we've kind of lowered that to: Hey, look, our constituents, our stakeholders -- what they're looking for is correct, that the

claims are correct, that the statute being applied is correct, and that the evidence provided in support of that rejection is sufficient to notice the applicants of what our position is.

So, we've moved the bar to a compliant rejection standard, and so now the reviewers are reviewing things from that perspective, and any time all three of those are not met the reviewer is going to say: Hey, there's a noncompliant rejection here. Similarly, for omissions, if they believe that they as the reviewer can identify the claims, the statute, and sufficient evidence in support of an omitted rejection, they will raise that also as an omission. So, we look at compliant rejections from both perspectives.

All of the reviews include feedback, so if it's a great office action we're going to give them feedback that: Hey, this is a great office action; attaboy, keep up the good work, you're doing great. If there are noncompliant issues, those are going to be pulled out, and a lot of times the reviewer is going to explain where the

examiner went awry and maybe how they can correct that issue.

So, we give positive reinforcement. We pull out best practices. We try to point out areas for improvement. And we also highlight these noncompliants or these issues that need consideration and need to be handled by the TC.

MR. KNIGHT: Are these reviews when you find, like, either, you know, great work or poor work -- are they rolled up into the examiner's PAP for purposes of their quality rating?

MS. SPYROU: As of today, the agreement with POPA is that we were reviewing at such low quantity in OPQA before. And, as you heard, we've really ramped it up this year to -- we're going to hit 18,000 before the end of this year -- that these errors that were called or identified as OPQA were not permitted to be PAP errors, okay? And you also have to remember that we're holding -- when we're reviewing cases, we're reviewing cases to what's a compliance standard and not to a PAP standard. So, not necessarily everything we

say -- hey, there's an issue here; this quality could be improved -- necessarily rises to the level of being a PAP error anyway. So, today if an error is found through the avenue of OPQA, we have an agreement with POPA that, no, it won't be held as a PAP error; it will be for improvement purposes. They kind of get a buy on that.

MS. PULLIAM: But the TC is aware of those.

MS. SPYROU: They are.

MS. PULLIAM: So, I know what errors OPQA has found from my examiners, and we're still going to work to address those issues. They're not going to be ignored, even if the examiner isn't charged an error for their quality rating. It's still an issue that we're going to work with them to train them on and correct for the future.

MS. SPYROU: Every single review that we do, whether it's good, bad, indifferent, excellent, whatever scale is available to the TC is available to the TC, to the SPE, to the directors. All of this data is funneled back, and

all of it is rolled up into our quality metrics and into a lot of our metrics.

I'm sorry, I interrupted you.

MR. KNIGHT: Okay, great. Thanks. I'm just wondering, since you said that there are, you know, PAP errors for purposes of rating the examiner for their performance ratings, and then there are compliance errors for purposes of this quality review. If our goal is to increase the quality of the patents that the examiners are granting, shouldn't the compliance errors and the PAP errors be the same?

MS. SPYROU: Well, I think I'll leave that up to the 10th floor to negotiate that and come to that. (Laughter) I think that's an excellent point. I think what we have heard, going around the country and talking to our stakeholders, is that they didn't believe our numbers in the past. They said: You're reporting out you're at 97 percent compliance. That's not what we're seeing. We wanted our quality metrics to be more in line with what our stakeholders are

feeling with regard to our quality so they can have faith. And we understand that as stakeholders what you expect from us are compliant rejections, and so that's what we're going to measure; that's what we're going to report out.

To get that in alignment to the expectations of what we expect from the examiners, that's above my pay grade, so I'm going to pass that over to you guys. (Laughter)

MS. MARTIN-WALLACE: I'll start, and then I'll hand it over to Andy.

Just to make clear for the Office of Patent Quality Assurance, the role and responsibility of that organization is to identify statutory compliance for the Agency. So, that's a much higher-level look at whether something is an error or not. So, we're looking at, based on policies, case laws, are the actions developed and sent out statutorily compliant? That doesn't take into consideration many things like the great level of an examiner and what they are responsible for in their PAP. It doesn't take into

consideration case law that may have already been published but the examiners have not been trained on yet. So, those are -- and many other examples I can give you of where the determination that OBQA makes is independent and objective of those other considerations that are required when reviewing an examiner's work and determining what is a clear error or not.

So, that's where I'm going to pass it on to Andy, because that's the piece that goes into operations.

MR. FAILE: Great question, Bernie. (Laughter) Short answer, no, they're different, and I'll try to explain why.

So, there are "two different standards." I would point out that there's a massive overlap between the two standards, but they're not the same. And the reason is when you're looking at statutory compliance or correctness of a rejection, you're looking at the end work product signed and sent out by the Agency. We want that

to be as correct as possible. If there's an error in that, then that needs to be something that we correct, and that's an error in the work product. Most of the making of that work product comes through the examiner, but not all of it.

I'll give you an example. That's why there's a little delta between the two. Christyann had shown earlier kind of a stair-step list of duties for examiners -- list of responsibilities that's in their Performance Appraisal Plan. Most of those have to do with correctness of claims, but there are errors that could be made in an office that's sent out that you can't attribute back to the person doing the work. If they were the same, examiners would be responsible for every single thing that could happen in an application in the time they're allotted.

For example, an examiner has to plan a field of search. If a reviewer were to find a reference that was completely out of their field of search and not a reasonable place to look and

it did preclude patentability of a certain claim, then there's an error in that particular work product that we'd want to correct. We can't attribute that particular error back to the examiner, because their duties have a certain boundary point to it, and that reference would not have likely been found by them. So, we've got an error in a work product that wouldn't necessarily flow back to the evaluation of that particular examiner.

Again, having said that, there's a large overlap between statutory compliance and then the duties the examiner performs and what they're accountable for, but it's not absolute. So, there are times when we would have an error in the work product that could not be reasonably attributed back to the examiner's performance of their duties under their plan.

MS. MARTIN-WALLACE: And I'll just add that this is one of the areas that we've really concentrated on, Andy and I, in working closer together to have the findings in OBQA and the

partnership in collaboration with the TCs. That's why OBQA is structured such that there is, as Sandy mentioned, a particular supervisory quality assurance specialist, in particular RQASs that are assigned to TCs so that they can build that relationship and have an open communication.

Sandy mentioned four hours per reviewer, but that's just for the initial review. The quality assurance specialists -- well, the reviewers as well as the supervisors spend much, much more time collaborating with their counterpart in the TC to make sure that the information is flowing and the decisions on cases are something that we can agree on and, when we don't, identifying things that may need further discussion on policy or other issues. So, while there are slightly different standards, the collaboration and partnership between the TCs and OPQA is getting stronger and stronger to identify those areas to make sure that the work is consistent.

MS. JENKINS: Okay, let me jump in.

Chair, just a -- team. Here, team. Stay with me guys.

So, I'm getting emails from the user community. I need to make sure I feed PPAC, because they complain when I don't let them eat.

(Laughter) And we're running almost a half hour late.

MS. SPYROU: Okay, I'll finish up real quick.

MS. JENKINS: All great questions -- I didn't give Valencia 45 minutes like I normally do. I apologize. So --

MS. MARTIN-WALLACE: I don't want Dana to have five minutes. (Laughter)

MS. SPYROU: I'll just close real quickly. Every review that we do gets funneled back to the TC through our IT systems whether or not it's noncompliant. If it's for consideration pass- through, if it's an accolade, one of those attaboys we talk about -- all of this data goes back. If it is a noncompliant, it goes through me as their supervisor first where I kind of say,

yeah, I agree with it, and it goes to the POC and the TC who then make sure that the appropriate action is being taken in the TC. If we disagree, like Valencia said, we'll have a dialogue, and that's a lot of times where a lot of the learning and the agreement happens between OPQA and the TC and we come up with improvement plans for the TC for an examiner or for an art unit. So, with that being said, no more questions, so I'm going just go to the next slide, and that's the end.

So, thank you very much for having us today. Appreciate it. (Laughter)

MS. JENKINS: We are going to give the audience one question, because I don't want to not allow question and comment. Is the Patent Office considering using, during examination, any real time automatically gathered patent quality information such antecedent basis, claim links, spec support checks, et cetera; in addition, the after-the-fact information from the Master Review Form?

MS. SPYROU: There have been some

quality initiatives directed to that, and we do know that there is some software out on the market where you can run an application through it and it's going to identify, like, 112 issues and all that. And I believe that that's an IT initiative. I'm not as familiar with where it's at, at this point, but something to be pulled into our future IT improvements in PE2, and maybe Valencia can talk to where that is right now.

MS. MARTIN-WALLACE: Okay, I'll just say very quickly that, yes, that is an area that we are looking into; and Andy, Rick Seidel, and I have been working very closely to identify the appropriate IT tools that will help us with that.

MS. JENKINS: Great. Thank you so much.

MS. MARTIN-WALLACE: Yes.

MS. JENKINS: Operations update -- Andy?

MR. FAILE: Okay, while the team comes to the table -- so, timing-wise, Marylee, do -- we'll start.

MS. JENKINS: How long is it for you to eat, PPAC members. (Laughter)

MR. FAILE: We'll start. Please keep us on time so to speak.

So, we have three updates for everyone today. One is a high-level stats update. We've kind of trimmed the stat pack from what we normally have with our litany of graphs to a select few. We're going to end that up on a point that Joe made earlier about looking at 1444436. We'll start to show you some data in that realm in charting our progress towards those goals.

Second update is we're going to -- we talked a little bit earlier about examination time analysis. Joe mentioned it in his opening remarks. We have an update from the team on our progress in that huge endeavor in which we're looking at the time allotted for examination for examiners to do their work and thinking about some changes there. We'll give you an update on that.

And then finally we have a little bit -- hopefully a quick one at this time, depending on the time -- on interview practice, and Tim and Tariq from the TCs are here to talk about that.

I think we'll probably start with interview practice, if you guys don't mind, in trying to resequence it. We'll probably need the most time for the examination time analysis discussion, so we'll start with the interview if that's possible.

MR. HAFIZ: Sure.

MR. CALLAHAN: Yeah, that would be great. So, the important stuff first. (Laughter)

MR. FAILE: All right, Tim and Tariq, take it away.

MR. CALLAHAN: All right, thank you. So, we're here to talk about and give you an overview of interviews. My name is Tim Callahan. I'm from TC3700. So, just a quick -- we wanted to show you some trends on interviews, show you what's going on. We'll talk about some of our latest innovations with the AIR form, look at some of the resources we have available to our applicants, and then just a small look at what we're planning for the future.

So, as far as trends, this is a look at

the amount of hours that examiners claim to do interviews, and it starts all the way back in 2008, because 2008 is where we first started to push, to use interviews as a tool to compact prosecution. So, you see, there's a great increase. We've had about a 200 percent increase in the amount of time.

But to put this in a little more perspective, in 2008, the average number of hours that the examiner claimed for interviews was about 13 hours, and these are fiscal years. The last one on the chart there is fiscal year 16, and then that year was 27.6 hours. That's the average amount of time each examiner has claimed for interviews. So, you can see it's over a 200 percent increase. So, we've been emphasizing that as an effective tool, and the examiners I think have joined in.

Here's another look the data, and this is a look at all the serial disposals over that time that actually had at least one interview per application. As you can see, it tracks with the

increase in interviews, and this is about 35, 36 percent of all those disposals have at least one interview during their prosecution.

MS. JENKINS: Can you get a little closer to the microphone. That's always my problem.

MR. CALLAHAN: Oh, sorry.

MS. JENKINS: Thanks.

MR. CALLAHAN: Yes. This better? Thank you. Sorry. We tried to cut the data a little bit differently, and again it's tracking the increase in interviews, but instead of tracking the hours, this is actually the actual interviews, and we do that by interview summaries that we see submitted in the application. So, we're tracking how many actual interviews are happening as opposed to just the number of hours claimed, and it tracks the same way, well over 200,000 for the last fiscal year.

And then to dive a little bit deeper into the data to see what is it that applicants are requesting, we see that primarily what we're

getting is requests for telephone interviews, and the data shows that.

As we were emphasizing the availability of video conferencing in the last few years, we were making some great progress in '14 and '15, you see; in 2016 the number of video conferences we held was much less. The data for this year is tracking very closely to 2016. We believe we're going to exceed 2016, but we won't be quite to the 2015 level.

And I'm going to pass it over to Tariq.

MR. THURLOW: Hey, Tim, just a quick comment. Nothing against the videos, it's just the phone is so easy and (laughter) -- you know, it's a nice idea. I think it says something -- you know, I think you spoke a year or two ago on interviews.

MR. CALLAHAN: Right.

MR. THURLOW: You know, it's a nice option to have with the phone, and for the most part you have the same examiners over the years or the same team. So, you get to know them a little

bit plus we don't want to see the joke -- it's a joke -- we don't want to see anybody in pajamas or something like that, you know.

(Laughter)

MR. CALLAHAN: Yeah, but it's true. We've done a lot over the last few years. We've done a lot with the examiners to train them up on the use of the tools and encourage them to use that. And we see that the examiners are comfortable with using it, but right now the applicants don't seem to be selecting that as a choice; it seems like primarily we're getting the phones as requests.

MR. HAFIZ: All right, thank you, Tim.

MR. SEARS: I have a question for Tim before we go on.

MR. CALLAHAN: Yeah.

MR. SEARS: Did I hear your statistic correct? Is it hours per year for the average examiner on interview time?

MR. CALLAHAN: Yeah, 27.6 hours in fiscal year '16 was the average claim by

examiners.

MR. SEARS: So, the average then is about half an hour a week, ballpark?

MR. CALLAHAN: Um --

MR. SEARS: Ballpark. That seems really low, because I know in my cases I routinely interview. Just curious if you've had any thoughts: Is that a number that's low because it's averaged over the entire Corps?

MR. CALLAHAN: I think if you look at the one chart, it showed about 36 percent, 35 percent of the cases have at least one interview when it's disposed of. So, it's only about a third, or a little bit more, of the cases that are actually requesting interviews. So, if you take that subset down and you divide it up, it comes up to the 27.

MR. HAFIZ: And when you think about 27 hours, it comes out to a little over 8,000 interviews every two weeks, which is quite a bit of time.

MR. KNIGHT: Do the examiners get extra

time to conduct an interview?

MR. CALLAHAN: Yeah, there's one hour available for an interview always for an examiner, and there's the ability -- if it's a complicated case or the particular interview takes longer than that, then they can request and get more time from their examiner -- from their SPEs.

MR. LANG: These numbers -- even if there are 8,000 interviews in a time period, they show that there's a lot of room for improvement in how interactive the examination process is. I mean, my experience and the experience of

> (inaudible) is -- I mean, the more interactive, the more that your along on interviews, the more efficient prosecution is going to be and, you know, I would have expected that that number could be doubled, tripled, quadrupled and we still wouldn't see diminishing returns on the effectiveness of the examination process.

MS. JENKINS: And just to jump in real quick, I'd love to see the corresponding slide for the trademark side of the house, because I know they -- because they do both. They call, they write, they email, they're very proactive, so.

SPEAKER: (Inaudible).

MS. JENKINS: Not yet.

MR. CALLAHAN: Not yet.

MS. FAINT: Our examiners have privacy concerns about video conferencing, and so that's one of the things I think to take into consideration by the Office is to think about that a little more in ways we can help people with that concern.

MR. KNIGHT: Can the examiner initiate the interview, or does it always have to be the applicant?

MR. CALLAHAN: Examiners can initiate the interviews, and some do, but when we did -- I think it was in 2015 we did a survey of our applicants and the examiners, and we were looking at the data, and the vast majority are

applicant-initiated interviews. But also from that survey, we got -- of those that responded, I think it was in the 90+ percentile, so that when they request an interview it is usually granted, so. I think we have the examiners on board, that if they get the request, they're going to have the interview, and if they get the request for a video interview, they're going to have that interview. I think it's up to the applicants to increase the call for that, so.

MR. KNIGHT: Just picking up on what Dan said about, you know, the interview process being so important to the applicant and really enhancing the efficiency of the examination and the fact that you do give an hour to the examiners for that interview if they want to take it. I'm just curious. Why don't more examiners then initiate interviews? Why do you think they're not really being more proactive and engaging with the applicants?

MR. CALLAHAN: I think the examiners, when the prosecution gets to the point where they

think they can resolve the issue -- for example, maybe a minor amendment to overcome a rejection. I think that's when they're reaching out to use interviews to try to shorten prosecution. I think many times there are points in the prosecution where it's really the applicant that is looking for the more information. So, I think that's why you see most of them are initiated by the applicant and not the examiner.

MS. SCHWARTZ: Can I say something?

MR. CALLAHAN: Yes.

MS. SCHWARTZ: First of all, when an examiner gets to the point where they think they might know of allowable subject matter and they just call and request an examiner's amendment, they don't get time for that. They don't get time when they call about something that short, so they only get time when there's a significant substantive discussion going on. That's one thing. And another thing is when there is a significant substantive discussion going on, an hour isn't that much time when you think about it.

Especially if it's initiated by applicant's representative, the examiner doesn't have the case in front of them, so while they've worked on the case before, they have to pick up the case, they have to familiarize themselves, they have to hold the interview themselves, and they have to prepare the interview summary form -- all within an hour or they're losing time by holding the interview, so. And while they can request more time, the standard is an hour, so it's almost always an hour. It would have to be a very unusually involved case to get more time than that.

MR. KNIGHT: Have you proposed to management that examiners get more time for interviews because of this, or where does it stand?

MS. SCHWARTZ: On occasion we have proposed that there be more time, and in fact we get more time for interviews now than ever before. It used to be that you only got time if an interview was initiated by applicants and was in person, right? And then it became that it could

be initiated by applicants also on the phone and you got time. And now -- so, we've gone further now. An examiner can initiate a substantive conversation and get time for a telephonic interview now. So, we're moving toward -- the Agency has moved toward more time for interviews over the years.

MR. KNIGHT: Right.

MR. HAFIZ: Okay. Speaking of efficiencies, in September of 2015, we launched this new tool to make it easier for applicants to schedule and request interviews. It's called the automated interview request. It's on our website if you go to uspto.gov/interview practice. And one of the things this form does is you're able to fill out the form and request a type of interview you want and when you want it. You can do this any time of the day, 24 hours a day, 7 days a week, from anywhere. So, you don't have to wait to call in an examiner, wait for a return call, and play phone tag. And this has really made the actual scheduling of the interview really

efficient.

To date, we've had over 24,000 people use this form to request interviews. This is what the form looks like. You just fill in your basic information, serial number, request the type of interview you want. You'll get an email saying, hey, examiner will contact you within two days to confirm the interview. So, this has been a really successful program, and we encourage everyone to use that.

And speaking of WebEx, although not as many people request WebEx, it's a really simple tool. Once you request a WebEx interview, you'll get a link. You click on the link, and you can start having that interview. Really easy to use. One reason we're promoting WebEx is that we've had applicants that want an in-person interview but the examiners are remote, the applicants are remote, it just makes it easier to have that in-person experience through video conferencing.

MR. THURLOW: Just a quick comment. The benefit of this meeting is -- I've honestly never

heard of the AIR form and never used it, so this is good.

MR. HAFIZ: Okay, yeah.

MR. THURLOW: I don't know if anybody else has one.

MR. HAFIZ: Okay, great, thank you. So, you can see, like, since we launched it back in 2015 the trend keeps on going up. Last month we had over 2,000 requests just in one month, so we are continuing to try to promote this form so people can use this. I'll tell you one of the things we've added improvement to or promoted is we added a new form paragraph at the end of each office action just to just about the types of interviews that are available, including the automated interview request form. And we hope more people use that. This was launched back in January 2017, so if you see an office action when you're looking for examiner information, you'll see this form as well.

Another thing that we have on interview -- we have a lot of resources on our website,

again, USPTO.gov/interview practice. Obviously, that's where you access the AIR form. We have a lot of information on video conferencing. We have TC interview specialists, all the policy and guidance, as well as all the training that we provide our examiners.

Speaking of video conferencing, one of the things with video conferences is the fact that there's email communication. You need Internet authorization to do that. There are two ways of doing it. If you're just going to have a video conference interview, you can go ahead and do that oral authorization, but if you want to communicate with an examiner via email, we request that you do a written authorization, and one of the ways to do that is filling out a form SB/439. It's available through EFS-Web, a very simple form. Just check a box, and it will allow you to communicate with the examiner on the merits of the case via email.

And another thing that we do on the video conferencing is that we have interview specialists that will help and provide training to

applicants on how to use WebEx. Some applicants are unfamiliar or unsure on how to have a video conference. They'll do a one-on-one mock interview with you so that you can actually be comfortable using video conferencing.

Again, our email box is examinerinterviewpractice@uspto.gov to request one-on-one WebEx training.

So, speaking of interview specialists, they are subject matter experts in interview practice and policy. They assess both applicants and examiners in facilitating effective interviews. We have a link here on this site. Also, if you go to USPTO.gov/interviewpractice, there will be a link for interview specialists. There are about four interview specialists per technology center, and you can contact any one of them if you have any issues associated with interviews.

Public interview rooms: We have a public interview room on every USPTO campus. Sometimes attorneys will come to a USPTO campus.

They have multiple interviews, and one of the interviews with the examiner may be remote. So, you can schedule that interview and just use a public interview room to have that interview with the examiner that's remote, in addition to other interviews that you have on campus. So, it's a great resource. We've had a lot of use of the interview room on the Alexandria campus. In fact, out on the Alexandria campus we have two public interview rooms.

So, this is the usage, as you can see, from 2015, 2016, and 2017. I think 2017 is trending about the same as 2016 in terms of public interview room usage.

MR. CALLAHAN: So, we just wanted to give you a heads up on some of the things we're working on. One of the things we're working on this year is what we call the Interview Experience Survey, and this is an opportunity for applicants and examiners to give us some feedback on how the interview went and how effective it was. We're using the AIR form, so if an applicant uses the

AIR form they'll be able to participate in this survey, so.

And just some other things. We have a series of videos that we developed about interview practice on how to have a WebEx video conference. We're developing our last one in a series. This is our fourth one. This is one with examiners giving testimony about how effective interviews are and why you should have them. We're also working on some tools to update the Interview Summary Form and make it easier, more streamlined for examiners to document the interactions they've had. And each year we try -- each year we do have some type of training or information goes out to the examiners about interviews and we'll be beginning trying to decide what we're going to do for FY18 on the interviews.

So, that's our presentation on the interviews, and we end with our mailbox, which is for -- applicants and examiners can send any kind of questions, comments, feedback on the interview practice to this mailbox, and our interview team

will answer those. Thank you.

MR. KNIGHT: Just a comment. You know, just looking at the examiners getting one hour for the interview, I know, just being a lawyer and having to have, you know, many phone calls or many hearings with courts on cases, for me to pick up a bunch of cases and be prepared to hold a conversation all within one hour would be a very difficult task, really, for me to accomplish. And I just wonder, in this Interview Experience Survey if one of your questions in the survey might be: Do you believe the examiner was adequately prepared for the interview?

MR. CALLAHAN: Yeah.

MR. KNIGHT: And then if your getting a lot of responses that the examiner did not have time to be adequately prepared, then maybe you might consider, you know, talking to Patents Management about giving the examiners more time for this since, you know, it's, you know, overwhelmingly appreciated by the applicants and creates a much more efficient examination process.

You know, you want it to be as useful possible.

MR. CALLAHAN: Yes, we agree. Thank you.

MR. WALKER: But, Tim, one quick comment on that is just -- it's a balance of getting feedback on these surveys, because people have survey fatigue.

MR. CALLAHAN: Yes.

MR. WALKER: And to the extent that it's too long, you're going to get fewer responses, so Bernie raises a good point about that question. But I would caution to keep it as short as possible if you want to get a good response

(inaudible).

MR. CALLAHAN: Thank you for that. Yeah, we're definitely trying to keep it as short as possible and just to give applicants an avenue to give us feedback, good or bad, on what their experience was.

MR. THURLOW: Thanks, Tim, a very quick question. Drew has always talked over the years about clarity of the record and Valencia an

important part. While we're on the interview summary, there's been lots of betas as far as trying to make that meaningful as far as what goes on. We've all had different experiences with that.

MR. CALLAHAN: We do have training for the examiners on how to document their interviews and what went on in the interviews, and part of what we're trying to do is to make the form a little more interactive so it will direct the examiner in and gives examples on how they should be doing it. So, we're hoping that that new form will help them better document what went on.

Also, very quickly, as part of the clarity of the record pilot, we had the interview summary. That was a piece of it which we identified best practices that have been shared there on our web page, and they've gone out to the examiners as well. So, we have been putting forth initiatives specifically to recordation of interview summaries.

MR. FAILE: Okay, thanks, Tim and Tariq.

So, let's switch over to the stats presentation. Bob Oberleitner will run through this in a fast, speedy, efficient manner that he is known for. Hint, hint, Bob -- so, we're kind of running low on time. I mean, we do have a reduced stat PAC, so Bob's going to hit the highlights to kind of get everyone oriented in some of the trends that we're seeing.

MR. OBERLEITNER: Thank you. The first slide shows our serialized and RCE filings.

You can see that the serialized filings have been essentially flat since 2013. This year in 2017 we're effectively or essentially flat also. When we ran these numbers we were about.2 percent increase on serial filings. We project that by the end of the year we'll end up somewhere near our projection of a 1 percent increase. As of mid-July our RCE filings were down slightly. They were down percent. This slide is showing first action and total pendency.

Our total pendency goal for FY17 is 24.8 months, and we are currently at 24.7, so we're in

good shape there. We are projecting to fall short of our first action pendency goal. Our target was 14.8 months, and we're currently at 16.4. Our pendency to first action has been negatively impacted this year by a couple of things, including the federal hiring freeze, some reduced levels of overtime that the examiners have been using compared to previous years, and some additional CPC adjustments that have worked into the system. We separated designs here and designs over the past two years. We have hired in that area proportionately way more than what we have in the TC to address increasing backlogs in that area. We're now seeing the results of those hiring efforts with pendency values leveling off and starting to come back down.

The next slide shows, in the business method area around the time of the Alice decision, we were seeing a large number of reopening rates following the reversals based on that decision to start making rejections consistent with that, and this is just a quick slide just to show that we're

seeing the spikes leveling back off to the pre-Alice times, and we're considering that (inaudible) leveling off again to before that court case.

We were talking earlier about 101 in general, and with our reviews that we've been doing in cases this year we're seeing that essentially about 15 percent of the applications either have a 101 rejection that's made -- this is in the Corps now -- that have been made properly or a rejection should have been made. To say that in a different way, 85 percent of the cases did not have a 101 rejection made, and it was proper not to have it.

The last slide is looking at what we had talked about in previous PPAC meetings, which was kind of the historical values of some of the patent stats. We're focusing here on PTA -- Patent Term Adjustment -- and we have their current values for this year, FY17, and we compare that with the historical averages over the past five years. And we have for the five areas that

we're showing improvement in -- for example, in the first action pendency over months, historical average is almost 66 percent, and we're at percent this year. The one area that we're slightly above is grants after payment of issue fee, the percent going over four months. Our historical average is 1.2, and we have slightly above that at 1.5. The total pendency is expected to continue to improve as our first action pendency numbers continue to go down.

MR. FAILE: Thank you, Bob. So, let's tee up the next piece, which is kind of an overview and latest progress report on our examination time analysis project, and we have Assistant Deputy Commissioner Remy Yucel and TC Director Jay Kramer who will walk us through that particular presentation.

So, Remy?

MS. YUCEL: All right. Good morning. I promise, Mary, we'll try to make up some time here. I'll be hitting some of the high points on some of the slides, but, you know, the slides do

have some more granular information.

So, this morning we wanted to give you an overview of our Examination Time Analysis effort. We call it ETA around here, because we're PTO and we always shorten things to letters.

What is Examination Time Analysis? So, our goal here is to have a comprehensive analysis of examination time, and it's really to take a holistic look at the entire examination process to really have a better and more developed, more fundamental understanding about the factors that influence the time that should go into the examination process.

You know, once we have our hands around this information, it is our hope that we will be able to make better informed decisions about examination time. And also another goal of this is to develop methodologies so that we can repeat this process on a more frequent basis. Right now as it stands, this is the first time such a comprehensive effort has been put into this examination time. I think it's around 40 years

since the last major adjustment. We've had smaller adjustment on the fringes here and there for very specific reasons but not the entire whole look at the process and all of the factors that feed in and out to influence the time.

So, not only is this, you know, an important thing for us to consider, but it's also our mandate that's been memorialized in our strategic plan, because not only do we have to be careful about our quality but we also have to balance that with the pendency. You know, rolling out pristine patents is important but not at the expense of having everybody else wait in line to get their turn. So, it's very important that we've made this commitment, and now this is really the hard grunt work to make good on it.

So, why now? Again we talked about the importance of why properly calibrated examination time is important, but we are also faced with the march of time again. It's been 40 years, and in that 40 years a lot of things have happened, right?

So, there are new technologies; there's increased technological complexity. Back in the old days -- I won't comment as to whether they were good or not but, you know, you had very distinct lines between chemical inventions, mechanical inventions, electrical inventions. Now you've got inventions that blur those lines considerably, and so there's more technology to consider in these applications, and they're not very easily categorized into one particular type of discipline. So, that's a problem.

There has been exponential growth in the availability of prior art and our ability to access that prior art, so there are more pieces of art that may need to be considered because, again, there's technology creep in all of these applications.

We have undertaken in the last several years -- and we're hopefully coming to the end of the transition -- but we have left the USPC -- United States Patent Classification -- behind in favor of CPC, so that was another huge shift for

us in terms of the way technologies and applications are categorized. And so we had to make the necessary adjustments to be able to work in that environment.

And, you know, again we talked about the electronic tools and the use thereof in the IT and the ability for us to access and to have made available to us vastly more, larger bodies of information. And of course our friends at the courts have not been idle during this time. They seem to pump out seminal decisions on a more frequent basis, and that requires us to make more significant adjustments on the fly.

So, all of these factors are -- you know, again, they're a very high level, but there's a lot in each of those that feed into -- really are taking a step back and looking at the time devoted to examination.

So, this is -- I mean, I hope -- we've kind of been able to sketch out how large this endeavor is, and this is kind of a graphic to help further solidify that idea. We have a lot of

different major items or facets that could potentially affect examination time. So, how do we get our hands around it, and how do we look at them and study them and analyze them in a systematic way?

So, we have devised a structure where we have a steering committee that is composed of both management and our partners in POPA, and we looked at the three major big pieces, and each one of those has a lot of different sub-pieces. But we've got to look at information from the technology/data realm. We want to be able to get outreach -- that is, input from, you know, as many relevant stakeholders to this process as possible, and we'll go into who those are. And lastly, you know, figure out again the quality and clarity of actions and how we can make improvements, and if we make those improvements how that affects examination time.

So, we've organized ourselves in various different teams and sub-teams to tackle each one of these broad areas so that the teams can then

come together and make recommendations, and then we'll go from there. So, that's kind of the overall scheme. We are still in the midst of this process. We don't have any final results to share with you, but we wanted to give you a peek into our process. You know, this has been ongoing. I think we started last summer. You know, there are a lot of people involved, and we are making progress.

So, the first thing I'm going to want to talk about is the outreach, because it was very important for us to engage early on the important stakeholders -- not that all stakeholders aren't important but, you know, who are we talking about here?

Well, we have our internal stakeholders -- our examiners and our SPEs -- who do the bread-and-butter everyday work of getting the work done, reviewed, corrected, and out the door. We also have our user community, and we also have expertise in academia that can also help us think about different approaches that we might take as

we take on this holistic analysis of examination time. So, those are the three main broad areas or groups of people that we sought input from.

So, the first thing I'm going to talk about here is the survey results from our internal stakeholders, and this is in the form of surveys that were given out to examiners as well as SPEs. You can kind of see on that second bullet there we had a tremendously high participation rate, especially from the examiner. Eighty-three percent of the examiners participated in the survey.

So, we wanted to get the examiner point of view of impediments and enhancements to effective examination. We also wanted to get our manager's point of view for the same things in managing in this environment.

I'm not going to go through all of the contents of this slide -- you can read them for yourselves -- but the next several slides are summaries of what we found from the data from the surveys.

This slide -- slide 8 -- shows the characteristics and resources that most enhance productivity from the examiner's point of view and those that detract from their productivity and their efficiency. So, you can see the top five answers. You've got well-drafted applications that make it go easier; there's, like, a reasonable, appropriate number of claims, relevant information disclosure statements, and this, like -- not that there is one or there isn't one, but the references contained therein are actually helpful; the availability of related cases so they can take their knowledge and their experience from related cases and put it into the case that's in front of them; and then also the use of international search reports. And then on the bottom of that slide we've got things that impair their availability to do an efficient job during examination. And these include involving patent complexity, which we talked earlier; poor application quality; IT issues; multiple inventions; et cetera. So.

The next slide is a summary of what could indicate an application would take more time or less time, and again the top part shows -- these are some of the things that the examiners key on that will give them a hint that this application may take them longer. And those include greater than the typical number of claims that they get in applications in that area; the complexity of the application; if there's, you know, that blurring of the technologies; poor claim quality.

And we'll jump down to the bottom of the slide, and then these are variables that indicate that an application may take them less time to do. So, again, claim numbers came up. If it was an RCE, clearly they're familiar with the subject matter and they already know the prosecution that (inaudible), so of course that may take them less time. Ditto for continuations and divisions. They're already familiar with the specification, the area of

endeavor, while the claims may vary. So, those are things that will take the most time time.

And again here is a comment on the IDS. Yes, the IDSs are great, but if the IDS is really good and has good references, it can be a help. But if it's there but has bad references, it can be a hindrance.

We have a number -- you know, these are some of the top things that floated to the top of that list.

MR. SEARS: Before we move on, can I make a quick comment?

MS. YUCEL: Sure.

MR. SEARS: I know we're pressed for time, but the notation that the availability of RCEs leads to an examiner taking less time. I think this is a really good follow-up to a conversation we started in the last meeting, and I just want to note, make a suggestion. I think the Office has made tremendous progress in addressing RCEs. They were a focus of incredible public

attention. I think the high was somewhere in 2010, 2013. The Office has done a great job in reducing the backlog. So, one of the questions I have and a suggestion for the Office is: Is now potentially the time to start thinking about changing the examination incentives to focus more on new applications driving towards '14 rather than spending so much focus on RCEs? I know there's potentially public input that might be desirable, so maybe now is becoming the time to solicit public input on RCEs versus first actions and driving towards '14.

MS. JENKINS: I hear Esther someplace.

(Laughter)

MS. YUCEL: We will definitely take note of that. I want to close the internal outreach piece by this last summary slide, and this kind of summarizes things that didn't neatly slot into the specific categories on the survey. And basically we can close this section by saying quality improvements can best be achieved by investing more time early in that prosecution, in particular

in performing an initial search. And I think, you know, this shows that everybody -- our applicant community as well as our management team as well as our examining corps -- is of one mind on this. So, this is good news that we all agree on this part and now it's -- you know, we have to figure out a way to make that come to fruition.

Another takeaway is the top benefits for enhancing productivity. We find that the flexibility of work schedules and ability to the planned work really feed into an examiner's ability to work most efficiently. Clearly, the expertise and the claimed art also enables an examiner to work more efficiently.

And, finally -- and this was heartening from our management staff and our SPEs who work very closely with the examiners -- the examiners felt that they had effective management support and staff support in terms of having the main resources that they need to do their job and assistance when they need it.

Another very clear takeaway and one that

we have been thinking on for quite some time is that it came through loud and clear that there's great dissatisfaction within the Corps with the time allotted for tasks after finals. So, that is an area that will be fertile for further study and further discussion on pinpointing what the issues are and possible solutions.

Okay, so the next segment that we sought input from was our public outreach, and many PPAC members helped us with this endeavor late last fall and into winter of 2017, and this was to gather public feedback regarding expectations of the IP community. We wanted to understand the interest regarding quality and pendency and the costs for services, because that's a three-legged stool that we have to manage and balance out, and getting input from our stakeholder community is crucial to that.

And we also wanted to kind of shed some light on the characteristics of patent applications, which can lead to a more time-consuming examination.

So, the next slide pretty much summarizes our methodology. We used a Federal Register Notice to solicit written comments, and we held a number of different outreach events at all but I think the Detroit office, and we held roundtables for the public, and we solicited input from there as well, so we had out several sources to gather the input from our user community.

So, essentially these are the top -- a number of things were brought to our attention, but this slide summarizes the top concerns or priorities that our user community wanted us to take into consideration.

First and foremost is measurable quality, thorough and high-quality searches that filtered up to the top, and if you remember that was something that the examiners themselves also identified as being extremely important -- the public, again, with the discussion that we had earlier with Tim and Tariq. Effective oral communication throughout the prosecution process was also highly valued from our stakeholder

community. And then also again, jiving with what the examiner said, the expertise of the examiner not only in their given technology but also of applicable law was very important.

This next slide summarizes, from our stakeholder user community, the areas that they felt most impacted examiner time, and those roughly fell into those items listed in the left-hand column, "Examiner Related Factors." They also identified applicant-related factors, Office-influenced factors, our court system, and rapidly developing technology. So, you can kind of see each one of those has further sub-bullets under them. But you can see the emerging themes are very similar from what we learned from our internal survey. It's mirroring quite nicely with what we found out from our external stakeholders.

And lastly, to close out this part of the outreach report-out, again there were things that, you know, again, what were the higher things, things that didn't necessarily slot in neatly into the other comments. These are some

common observations (inaudible) to draw parallels between -- or among, I should say -- our examiner SPEs in the IP community.

Again, these are the four things that keep floating to the top: Got the examiner's expertise; importance of clear communication between applicant and examiner; a very solid, thorough search is very important; and everybody recognizes that depending upon the application there are a lot of factors that can influence the complexity. And that really ends up being application specific, fact specific.

So, the last segment that we sought from was from the academic community, and we overworked and we partnered with the Office of the Chief Economist, and we hosted an information- gathering session with scholars with expertise in personnel, economics, business and human resource management, and organizational incentive mechanisms. And I think this was going to a comment made earlier.

So, we partnered with four different academics, and what we really wanted to find out

from them was, you know, what is already currently known of the academic literature about incentives for knowledge workers, right? Now, these are not line workers; these are knowledge workers, yet they work in a production environment. So, it's a workspace that draws from two very distinct types of workspaces that you find in the public sector. This combination is not necessarily a widely used one, and so to be able to get the best and latest from that area of research was important to us.

We wanted to get ideas about how to improve our current incentive system and to get ideas about, you know, what kinds of empirical studies and research designs we could use to analyze the current incentive structure that we currently employ, what might work better for us.

And I think I forgot to advance the slides. I apologize.

Last, this is kind of a summary slide of -- you know, it helped us to talk with those folks from academia, because they were able to really kind of crystalize our thinking in this particular

topic. We all recognize that there's tradeoff between examination time and examination performance, but it was really good to hear from them, you know, empirically and, you know, how much importance to put on both sides of those equations.

We learned about the variety of incentives available and the potential drawbacks and advantages of using different incentive structures; the impact of aligning quality measurements and monitoring mechanisms, and Agency objectives; and, finally, the importance of effective management practices to bring about the best employee management relationships.

So, with that, I'm going to pass it over to Jay, and he's going to walk you through the other two pieces of the big ATA effort.

MR. KRAMER: Thank you. So, now that Remy did about 10 percent of our presentation, I'll handle the other 90 percent. (Laughter) No, in all seriousness, the piece that Remy talked about, which was the outreach piece in the middle

is the piece that we are most fully through now, and we've gathered the information, we've collected it, and now the question is how do we take that information and assimilate it and then turn it into -- and basically do the analysis behind the examiner time analysis. And that's kind of what the next two blocks from that chart were, which is looking at the quality and balancing that with some of the data stuff. So, I'm going to start now with what we're doing with regard to quality and clarity of actions.

So, the first step we've embarked on is putting together a team, and they're looking at what is basically mapping out every step an examiner would do within examination, and the last duration of this I think had somewhere near 600 different steps that an examiner does in the course of examination. And so as we go through those steps, we now put that next to some of the internal and external feedback to say: Okay, how do we prioritize these steps? Which of these steps take more time? Which of these steps take

less time? How do we look at all of these that we're requiring an examiner do and start to analyze those with regard to the time we want to give an examiner to do them?

Some of the other pieces we're starting to look at are: How can we look at the modernization of some of these steps in terms of what needs to be done by a patent examiner? What could be peeled off and maybe done at a lower level or even in an automated manner as we move towards IT solutions?

So, again, looking at these steps, how does an examiner do them and then how do we go through and apply time?

MR. THURLOW: So, Jay, this is just a friendly comment. Six hundred steps seems like a lot. From the public standpoint, this is all great stuff, the quality and everything, but it really -- in my opinion, it just comes back to a good review of the application, a good search, and a good analysis. So, it's interesting to me. I'm not sure you're going to have exact numbers, but

just really it all breaks down to that for many of us in the public: Review the application; do a good search; and do a good analysis. And I'm sure I'm simplifying the process, but that's just my perspective.

MR. KRAMER: Well, you raised a very good point that maybe I left off, which is also of the 600 steps, we've also looked at how often you do those so. So, examiners are going to search in every application. They may only write an examiner's answer or conduct an interview in 30 percent. So, we're capturing all -- we don't want to leave anything out when it comes to the time that's necessary, but we certainly understand that some things are done often and in every case and are required and, as we noted, are priorities that need time. Other things happen far less frequently in case-by-case situations. So, that's all part of that, but we really wanted to be completely thorough in trying to capture everything.

And then the last piece is what can we

peel off? What needs more time? What needs less? And that's all part of that process. And we've taken in, like this year, input both internally and externally as we set that prioritization level. So, actually, that's a very good point and part of the process, trying to make it part of the process.

So, that's where we are with that. We're still working through that, but that's an update of where we are and how we're going with the quality piece.

The third box from the chart before was the Impacts of Technology. Where the USPTO has noted before, we have data. We love data. We love to look at data. So, no analysis would be complete without trying to figure out how we can use data.

So, what we're embarking on with this is: Again, going back to our internal and external surveys and looking at the factors that we think drive time and impair as well as make things easier for an examiner with regard to time.

We try to look at a bunch of different datapoints that are relevant to an application that might drive time.

So, going back to the survey, internal and external stakeholders noted that the number of claims in an application can drive the time it takes, so can we look at, through a data standpoint, the number of claims filed in an application to glean something about different areas in the USPTO that might require more time and less time.

We're identifying the methodologies to pull this data, what data to look at, again similar to the quality, how to prioritize which datapoints are more important than others and would lead to needing more time versus others. So, this is a pretty good example of some of the different factors. We've broken them into a couple of categories: Application factors, search factors, and prosecution factors. Again, in an effort to be as thorough as we can based on the data that we have, we put a lot of up there, we're

not going through those to say, okay, which ones are the more important or the priorities towards time, which ones are less, and so, again, this is an active analysis that we're going through and trying to capture this data and go through it.

The last piece of the time analysis is, then, the CPC considerations. And you've heard a lot of talk today about the move that the USPTO has undergone to move from a USPC classification system to a CPC classification system. And, again, I don't want to personally get too weedy in this, but at a very high level, thinking about USPC -- under USPC system as the USPTO operated under U.S. classification, we gave every application defining symbol, and that's what routed it to an examiner or to a technology. The way that the international system works and CPC works is it gives applications many symbols that are representative of the technology within it, and when an application has many symbols, we can glean a lot of information, especially things that you saw from the internal and external stakeholder

regarding multidisciplinary technologies. Trying to put one symbol that defines an application, you tend to pigeonhole it to mechanical, electrical, chemical. When you can put multiple symbols on a document, you can put a chemical symbol with an electrical symbol and you learn much more about the complexity of that application.

So, as we make this shift to CPC we're trying to take in this transfer and see, well, what can we learn from this again that tells us things about how difficult it would be to examine the application and what time would be necessary to do that. And you can see that there from diversity of symbols, field of search, and all these things.

MR. KRAMER: Our next steps are simply to continue to evaluate the factors that impact time, consider changes to time especially in light of how long ago it's been since we did this analysis, so what has changed in different areas and how do those changes affect examination time. We're trying diligently to devise a methodology to

make updates in the future so we don't have to wait another 30, 40, 50 years to do this.

The last thing I'd like to leave everybody with is to put into everybody's mind, what a massive undertaking this is. Almost every group director in Patent Ops is involved in this project in one way or the other through all the various teams. We've also got many, many supervisors who are working on this project in various forms to give us input and give us feedback. As Remy mentioned, we have roles where POPA is rolled into almost all of our teams. They are involved at the highest levels in the steering committee. We've reached out to Valencia shop and the quality mark shop and international as well as rick shop so it is within patents, every piece of the organization is coming together, this is a big undertaking. Here we are today at the last pole with PPAC seeking your input and giving you guys a briefing on this. Thank you very much.

MR. MATAL: So Remy, I just want to say, Jay did a great job and covered a lot of material

but you definitely did more than 10 percent.

CHAIRPERSON JENKINS: Okay we're going to move on, we need to move on.

MR. LANDRITH: Just quickly, this really is an important initiative and the tradeoff between on the one hand quality and the other hand examination time is the critical tradeoff in the system. The benefits that come with quality and there are costs that come with examination time and increasing that. Is there any public available output from the session that the chief economist had with the academics because I would think that they would be the ones focusing on the bigger picture and what are the social benefits of increased quality and how to balance that against the cost of potentially adding examination time if the analysis shows that that would be beneficial.

CHAIRPERSON JENKINS: We have partnered with them for our academic outreach event. That is one of the things that that office looks at on a regular basis. That might be something that we can ask them to cover at a future PPAC and have

them kind of go over the different activities that they've been involved in with regard to the social impacts and the impacts on jobs and innovation and that. I know that that is something that they work on. It is one their raison d'^etre but I don't know of a single work product. I think we should get them in here and have them explain themselves.

MR. FAILE: That's a good point, Dan. That would be a good conversation to have. When we did this endeavor in brought in the chief economist's office who were looking at slightly lower levels than this, we were looking at kind of, from a human resource point of view, are there studies to say that workers that as Remy explained are knowledge workers in a production line. What incentives would really drive them and a lot of times, pay doesn't do it, you need other incentives. They were pretty helpful in bringing the research out about what would drive workers in this particular situation and what would detract and what would actually drive. So, we were kind

of partnering with them for this endeavor on that level but I like the higher level and I don't know that we've specific conversations with them on that level, that would something to engage them in. Thanks for the comment.

CHAIRPERSON JENKINS: We must move on. Bob, policy update. Thank you, thank you all.

MR. BAHR: Thank you. While we're getting set, I'd like to introduce Charles Kim. He's the Director of the Office of Petitions and he will be giving us an update on e- Petitions, e-Terminal disclaimers and Web-Based ADS.

MR. KIM: Thank you, Bob, and good morning everyone. Thank you for having me. As Bob mentioned, my name is Charles Kim and I'm the Director of the Office Petitions. Today I'll be providing you an overview of some online tools that are currently available that can help increase the efficiency of the prosecution process by saving time and money. The online tools I'll be covering today are e-Petitions, e-Terminal Disclaimers and the Web-Based and Corrective

Web-Based ADS. So, I suspect that most people are going to be more interested in hearing about one on one so I'll go my best to go over my slides as quickly as possible so that Bob Bahr has enough time to talk about one on one.

So, the first online tool is the e-Petitions. Before I get into more details about the e-Petition process, I did want to provide a little bit of background about the Office of Petitions. So, the Office of Petitions handles over different types of petitions. We receive about 50,000 petitions per year. Of the 45 plus different petition types, there are 12 types that can be file by an e-Petition. I do want to point out that there is a difference between filing an e-Petition and filing a petition electronically using ESF-web. So, as I mentioned, there are 12 types that can be filed using the e-Petition and if all of the requirements are met, then you can receive an immediate grant. Whereas for pretty much all of the other petitions that we handle, those petitions can also be filed electronically

using ESF-web but those petitions would be manually decided by the Office of Petitions.

So, there are several benefits of using e-Petitions. The first benefit is that it saves time. Although the Office of Petitions has significantly reduced our backlog and our processing times, a petition that is manually processed can still take several months for us to decide. But if you use an e-Petition, you can avoid having a wait and you can receive an instant grant and that grant letter will actually be automatically uploaded into the image file. The other benefit of using e-Petitions is the auto granting feature. With this feature, it helps to increase the chances of a successful petition because the only decision that you can get is a grant. If you compare that to a non e-Petition, it is very possible for a non e-Petition to be dismissed if certain requirements are not met. When that happens, the applicants typically file a renew petition and we will have to issue a decision on that renew petition. So, by filing an

e-Petition, you can avoid that back and forth which can take up to several months. The e-Petition also provides the benefit of instant feedback so that at each step of the e-Petition process, the user will be notified if any specific requirements are met. The way the system works it will actually prevent you from moving on to the next step if all the requirements of each step are not met. That is how it is able to issue the auto grant.

So, these are the 12 types of petitions that can be filed by e-Petition. In the interest of time, I'm not going to go through all 12 types. This information is available on our e-Petition resource page which I'll show you in one of the following slides. The next few slides will show you a couple of web pages that provide more information about statistics related to e-Petitions. The first web page is the Data Visualization Center or the Patents Dashboard. If you see on the bottom right of the dashboard, there is a tab labeled Petition Data. If you

click on that tab, it will take you to this page and this page shows you a side by side comparison of what you can expect if you file and e-Petition versus a non e- Petition. As you can see here on the left with the e- Petitions, the average pendency is zero days because you receive an immediate decision. The grant rate is going to be 100 percent for all the e-Petition types because the only decision that you can get is a grant. Now if you compare that to the information on the right for the non e-Petitions for the same petition types you can see that the average pendency can take up to several months and the grant rate can be as low as 32 percent. So, I think table really highlights the benefits and the value of using e-Petitions.

The next page is the petitions timeline. The timeline was launched back in 2015 in response to feedback that we received from our users requesting more information about petitions. Basically, with the timeline what we did was it provides various information about different

petitions that can be filed throughout the prosecution process. We've broken down the prosecution process into five stages. For each stage, we have a list of different categories where a petition can be filed. So, if you see here, it is hard to see here but under the first category for abandonment related if you click on that it will take you to this page. This page will show you all the different types of petitions that can be filed when an application goes abandoned. So, you can see here, the timeline provides information about the average pendency and the grant rate and both of those two numbers are determined based on a 12 month rolling average. The timeline also provides information about the deciding office so if you have any questions about a particular petition type or if you want to check the status of your petition, you can contact the appropriate area.

So, one of the updates that was recently made to the timeline can be seen on the far right column, the e-Petition option. So, we added that

column to help our users see which petitions on the timeline can be filed by an e-Petition. Before, I mentioned the e-Petition resource page. This page has recently been updated to include an e-Petitions computer based training video, a CBT, that provides an overview of the e-Petitions. It also includes a step by step demonstration that shows you how to file an e-Petition.

The next online tool I'll be discussing is e- Terminal Disclaimer or ETD. The ETD system was first launched in 2012 and since its launch, we've seen a steady increase in ETD filings. For this current fiscal year, FY17, a little bit more than half of all the Terminal Disclaimers are filed with the USPTO are filed using ETD's. You can see why more and more people are using ETD's. ETD's are easy to file and cost effective. One example of how it can be cost effective is if the applicant is trying to disclaim over both a patent and a pending patent application, without the ETD, they would need to file two separate forms and pay two separate fees. But with the ETD, you can do

both. You can disclaim both to patent and the application in one submission and pay one fee. Similar to e-Petitions, the ETD provides instant feedback to ensure that the filing requirements are met and also provides an immediate approval upon submission.

So, here are some basic guidelines for filing an ETD. It is only available for registered EFS-Web Filers and they can be filed in the non-provisional utility application including National Stage 3 71 applications and reissues and design applications including design reissue applications. The ETD's are currently not available for plan applications, reexaminations and Terminal Disclaimers based on a joint research agreement. For these scenarios, a regular TD would need to be filed.

So, here are some tips for filing and ETD. It is important to verify both the applicant and the ownership information. Currently, the ETD system does not communicate with the assignments database, so it doesn't verify the ownership data.

So, it is very important that both the applicant and the ownership information is accurately entered into the system. It is also important that the reference application and patent information is correctly entered. It is also important to note that filing an ETD does not (inaudible) a need to respond under rule 37 CFR 1.111. So, if a response under rule 1.111 is needed, a separate response must be submitted. If the ETD is filed after the payment of the issue fee but before the patent issue, a request for certificate of correction must also be filed to indicate that the patent is subject to a Terminal Disclaimer. So, more information about e-Terminal Disclaimers can be found on our research page that is shown here.

Moving on to the Web-Based and Corrective Web-Based ADS tools. Both the

Web-Based ADS and the Corrective Web- Based ADS tools were launched back in December 2015. The difference between the two tools are the Web-Based ADS can be used for when you're filing a new application and a corrected Web-Based ADS tools available for follow up submission and existing pending applications. So, there are several benefits of both the Web-Based ADS and the Corrective Web-Based ADS. I'll start first with the Web-Based ADS tool. So, the Web- Based ADS provides the benefit of saving time by providing the option of prepopulated certain application information based on the previously filed application. The information that can be prepopulated include the inventor information, the domestic benefit or national stage information and any foreign priority information. It also reduces the chances of an ADS being improperly executed. We've seen certain situations where the filing by reference section of the ADS was inadvertently filled out. We've also seen ADS's where the domestic benefit or foreign priority information

was not correctly entered into the ADS. So, using the Web-Based ADS system can help minimize these types of mistakes.

The Web-Based ADS tools can also help increase the accuracy of the data that is captured by the PTO. Because the Web-Based ADS, once it is completed, is automatically uploaded into the system and that avoids the need to manually enter that data which can cause errors. These are the basic guidelines for filing a Web-Based ADS. It is available for both registered and unregistered e-filers. It can be filed in a new utility and design application that is filed on or after September 16, 2012. All the required fields of the Web-Based ADS must be completed and they must also be properly signed.

So, some tips for filing a Web-Based ADS. As I mentioned before, there is the ability to prepopulate certain information. When you do use that feature, all the benefit information will be prepopulated in the order that it was presented in the parent application. So, the only thing

that you would need to do is go in there and designate the relationship of the application that is being filed and the first link in the chain. The next tip, I think, applies more generally to ADS practice regardless if you use the Web-Based ADS or the Corrective Web-Based ADS and that is to properly review the filing receipt to ensure that the information in the filing receipt is accurate, especially with regards to any domestic benefit or foreign priority information. If you do review it and you do see any errors or any issues with the information, you can request the PTO to issue a corrective filing receipt. If you're able to do that within the 4 month,

month time period, then you can avoid the need to file a petition for a delayed priority claim which can be costly and cause delays.

So, moving on to the Corrective Web-Based ADS tool. Again, this is available for follow on submissions. There are several benefits of the Corrective Web-Based ADS tool. The first is that it shows you the application information

that is currently captured by our systems and it will also show you the information that is being changed. One of the screens that you will see when using the Corrective Web-Based ADS is there is a table with one column showing all the bits of the application information that is currently captured and it will also show you another column that shows you any changes that are being made. The other benefit of the Corrective Web-Based ADS tool is that it automatically marks up the ADS so that if there are deletions or any changes it automatically marks it up with the proper markings. That can help minimize some of the issues that we've seen with the ADS's where changes are being made but the proper markings are not being used.

MR. GOODSON: As I understand it, that's only available for registered users is that correct?

MR. KIM: Yes and I actually have that on the next screen, it is available only for registered users. The Web- Based ADS which can be

used for new applications is available for both registered and unregistered users.

MR. GOODSON: And if you have a mistake, how do you fix it if you're not registered?

MR. KIM: If you have a mistake with the ADS?

MR. GOODSON: You cannot do underline and strikethrough.

MR. KIM: If you review the filing receipt and if you see any issues with the information that is in the filing receipt, you can contact the PTO to request that a corrected filing receipt be issued.

Here are some basic guidelines for filing a Corrected Web-Based ADS. It is very similar to the guidelines for filing a regular Web-Based ADS so I'm not going to go through all the bullets. The only difference, as was mentioned, for Corrected Web-Based ADS, you do have to be a registered e filer whereas for the Web-Based ADS it is available for both registered and unregistered.

So, here are some tips for filing a Corrected Web- Based ADS. It is very important to indicate the correct relationship and order of the domestic benefit information that is listed in the ADS. Because if the order is not correct the Office of Patent Processing, OPAP, during the pre-exam stage, may not be able to capture the entire benefit information. It is also important not to delete any information when you're in the Corrective Web-Based ADS system especially if you don't want to change that information or if you don't want to delete it. If you do delete the information, it will automatically generate the marked up ADS that shows that that information is being deleted. For the domestic benefit and national stage information, it is very important that the application numbers and the filing dates are correct because the Corrected Web-Based ADS system will accept the information that is being entered, it will not verify that information.

So, we do have two quick start guides that are available for both the Web-Based ADS and

the Corrective Web- Based ADS and the links for those two quick start guides are listed on this slide. That is the end of my presentation. I'd be happy to answer any questions that people may have, otherwise, I'll turn it over to Bob Bahr.

MR. BAHR: Thank you, Charles. Now I'm going to move into the section 101 update. I'm going to go over the judicial development. I'm just going to go through them at a high level and then I'm going to speak to the next steps. With regard to three petitions at the Supreme Court, there is currently two pending. There was one filed last Friday so there are currently two cert petitions pending at the Supreme Court. However, you should note that since Alice, the Supreme Court has not granted cert in any patent eligibility case. There is a list of denied petitions. Similarly, at the Federal Circuit, there are four petitions for En Banc hearing, again one was filed on Monday so it is not listed on here. Once again, the Federal Circuit has not heard any patent eligibility case En Banc since

its decision in Alice. There have been a number of Federal Circuit decisions, and this would be in the last six months, since the last time we had a 101 update at PPAC meeting. Roughly, if you look there, roughly half of the cases were disposed of with a Rule 36 decision. A quarter were precedential decisions, another quarter were roughly non precedential decisions and of all these cases, there was only one that found the claims at issue to be patent eligible, that's the Thales case. Here basically it was directed to method of sensors, one on a moving platform one on a stationary platform and a system of determining motion tracking. This case actually was against the U.S. Government because it was claimed that the sensors in the F-35 navigation system infringed this patent. Here, the Federal Circuit held the claims to be patent eligible. Basically, it distinguished between a situation where an invention involves the use of mathematics versus one where the claim is directed to mathematics. So, it found it to be eligible under step 2A or

the Mayo Alice step 1 and so did not need to proceed further. So, the judgement in the lower court of invalidity was reversed and I guess it was sent back for further action. That was Thales, the eligible case.

Moving on to what we've been doing, we recently issued a report on subject matter eligibility. Basically, in this report, it was from a roundtable we conducted and we invited public comment. The report basically sets out the historic background of patent eligibility. It also discusses the recent supreme court decisions on patent eligibility and the Federal Circuit decisions interpreting it. It also did a brief survey of patent eligibility as viewed in the IP 5 offices it briefly discussed that. And then it included a summary of the public comment we got at the roundtable and the written comments we received. If we can put them into two bins, basically the one is from the bio life science area. It was basically a consensus that the Myriad and Mayo cases were impeding innovation and

were not good and there was a need for changes to that. Whereas in the high tech area, the comments were more split. There were some that felt that no, the court cases should be allowed to sort themselves out where other commenters felt that no, there needs to be legislative intervention to change these cases. That was basically the report, it was issued recently and is posted on our website. That is the link to the report and all the materials like the Federal Register Notice announcing it, all the comments we got and the transcript of the hearing. I think I sent you an email giving you that information this morning. That's the report we issued.

What are our next steps, obviously, we'll continue to monitor any judicial development. We are in the process of revising the MPEP and the revised MPEP will contain a revision to the section on patent subject matter eligibility which will incorporate all of the guidance we've issued and basically in the federal register notices and examining to the core. Also,

we'll include the cases that were issued from the Federal Circuit since our most recent update and also it will respond to the feedback, basically incorporate the feedback we got from the public comments on the other -- in addition to having a roundtable on the contours of subject matter eligibility, we also had a roundtable discussing possible changes to our examination guidance and the written comments we got in response to that and the comments we got at the roundtable. We're also going to basically modify our guidance in response to those comments in the next revision of the MPEP. We are also continuing in developing training to reinforce patent eligibility principles and to thy and improve consistency throughout the examining core on subject matter eligibility. And, of course, there is an ongoing public comment period so any time someone wants to submit a comment, they're welcome to do so on subject matter eligibility.

MR. KNIGHT: Bob, is there any coordination between the training given to

examiners under 101 and what the PTAB is basically training the judges on 101 issues? Is there any coordination between the two offices?

MR. BAHR: There is not direct coordination. Obviously, we monitor PTAB decisions to see trends. It is not like, I mean, we don't sit together and develop the training materials. For examiners, obviously they are mostly technical people, they're not lawyers for the most part so we sort of gear it in that direction. I haven't been involved in the PTAB training.

MR. KNIGHT: Thanks.

MR. THURLOW: Can I make a very quick comment and we discussed yesterday. I think the report is very helpful. I need to read it and as Joe mentioned, I think it really provides a good background on the information for people to get up to date. The real challenge with organizations, with firms and the Patent Office, is what do you do with the information that you have, the report. You mentioned the AIPLA meeting, the IPO and that

you speak at that to disseminate the information. So, that's a challenge. One of the things we're looking at is doing more video conferencing and so on, so I just recommend all of the above because now you have it and need to get it out there.

With Charles' presentation really quick, many of us manage very large patent portfolios so from a substantive 101 standpoint, that's not you, I guess. But what you're doing is really important and if you work with law firms and smaller shops that do lots of prosecution, what you're doing is critical because if we can make the process more efficient and we're not aware of the petitions, I think your presentation actually can be more important or from a process efficiency standpoint, really important to law firms and companies as they manage large portfolios. If you're missing out on e- Petition, then you're really not doing good.

MR. BAHR: Thanks. That's one of the reasons I asked Charles to give this presentation. We often get suggestions on how we can improve

things by adding more e- Petitions. Rather than say I'll do that and take credit for doing what Charles has already done, we point out that many of the things we're requested to do, we have actually in place already with these e-Petitions and the e-Terminal Disclaimers. So, we thought it was important to get that information out there. Thank you.

MR. KIM: And just to add, thank you for the kinds words, Peter. We do really think that these online tools are a win-win both for the office and for our users. As you can see, it does save our users time and money and it is a win for the office because it does help free up the office resources. To the extent that you can help spread the word, we definitely appreciate it.

MS. CAMACHO: Bob and Charles, I have a question. As our understanding of 101 continues to evolve, I'm curious how to ensure the standards by which we measure compliance and quality keep pace with the changes in our understanding without overreacting to every swing of the pendulum.

MR. BAHR: Yeah I agree with you not overreacting to every swing. One of the things we do is when we give guidance and training to examiners, we make sure that both the examiners, the examining core group and the OPQA group gets the exact same training so that they are on the same page with respect to subject matter eligibility.

MS. MARTIN-WALLACE: So, great question. One of the things that we do at the deputy level is constant meeting and communication on policy and making sure that our areas are consistent in how we review the cases in operations and OPQA as well as in OPLA. And there are points of contact in OPLA, representatives that are assigned technology centers and to OPQA to build that relationship and make sure that we're constantly consistent on whatever changes are coming down. That we're hearing it at the same time and have discussions to make sure that we're all in agreement with the direction that we're going in.

MS. CAMACHO: Thank you.

CHAIRPERSON JENKINS: Great, thank you so much. Nick, next on deck please.

MR. OETTINGER: Good morning. My name is Nick Oettinger. I came to you last quarter to talk about the work of our working group on regulatory reform. I'm here to give you a quick update. I'll try to be brief to give some time back to PTAB. I am Senior Counsel for Regulatory and Legislation Affairs. Our working group has continued to meet regularly since I last came to talk to you. We had given input and I participated in the Department of Commerce taskforce on regulatory reform. That taskforce released a report to the Secretary in late May. I don't have a copy with me, the Department hasn't released that publically yet. I've had some discussion with the taskforce about them doing that and having a website that will put those materials up. But in that report for PTO, we identified a handful of candidate regulations for removal. And our current work right now is we are at this moment, internally drafting notices of

proposed rulemaking that are going to propose removal of these regulations that represent, I would say, our first cut at various low hanging fruit. Based on a review of things that are no longer needed or perhaps duplicative, repeat things that are in the regs or are otherwise unnecessary. I'm meeting at one o'clock with our working group to discuss these drafts which are proceedings for our normal rule making process. The Committee will see that as part of that and I would expect these to be reviewed internally and published sometime in early September so the public will see them. These will be proposals for removal of regulations. As you recall, the executive order requesting two for one issuing of regulation required that regulations be proposed for removal. We have guidance from ONB that tells us that a removal of regulation can effectively be banked for use later. PTO has done a number of small rulemaking since the executive order have come out, that ONB has judged not affected by the executive order. They have not required removal

of regulations. But when we do issue rules in the future that will require per ONB's guidance removal having done some already and affectively banked those savings will allow us to proceed normally with rulemaking without needing to engage in additional process at that time. So, it is a relatively minor update. You will see those rules when they come through. I would manage expectations by saying I don't think they're any sort of earth shattering or very significant changes and what we'll move but it will represent the beginning of our efforts of this. Our working group continues to meet regularly. Our email address continues to be open and we seek input. These NPRM's will focus on that as well. These principles of the executive order continue to guide us as we engage in rulemaking in the future.

MR. THURLOW: A question of in the bar association in the IP community, a lot of discussion about the IDS requirements and looking at that. Is it really necessary to have hundreds of references submitted in an application? Can

you give us a flavor is whether that is a topic without me asking a leading question?

MR. BAHR: Yeah we are looking at our IDS process and the IDS requirements. We're looking at, I can't tell you which way it will go. We have requirements because basically we need them to function. We need to change how we operate if we change the requirements and that is kind of where we're at but we are looking at it.

MR. WALKER: Nick, just a quick question. So, when you come up with regulations that you want to put into the process here to be removed from future regulations to be allowed to be issued, is the Department of Commerce giving you the thumbs up or thumbs down? Is there a review process by Department of Commerce on whether or not those regulations that you want to withdraw are appropriate or accountable towards --

MR. OETTINGER: Yes I would say there is sort of in two ways. The regulations that we have identified were discussed within the Department of Commerce Regulatory taskforce specifically created

by the second executive order that is this body within the Department where we sit. All the bureaus are kind of talking about what do we have that are candidates for removal, are there savings that could be realized from these, what would be the effect of that. So, there is sort of discussion there about them. I wouldn't say they're necessarily approving them up or down in the sense that we're submitting to them and asking for their clearance. Is this one that can go, what do you think of the effectiveness. Our normal rulemaking process involves, in part, review through the Department. So, when we write a proposed rule here, we finish it internally, there is review by the Department and then there is review by ONB. They will be involved in the process as well. We will be in part through them but these proposed rules that you'll see that are part of this process are going to be effectively normal notices of proposed rulemaking for us suggesting here are some things we've identified, here are the reasons we think they can go out,

please give us your comments before we make a final decision.

CHAIRPERSON JENKINS: Nick, thank you. Let's move on.

MR. OETTINGER: Okay.

MR. RUSCHKE: A couple of quick announcements. I wanted to make sure everybody was aware of some big events that we had occur over the last three months since we last gathered here together. At the end of June, PTAB had three events back to back here in Alexandria, the first event was on Monday June 26th where we gathered all of PTAB's leadership together in one place for the very first time. If you recall, we had an announced and organizational change about six to eight months ago where we installed four operational vice chiefs' and one vice chief for engagement and then we expanded our sections to around twenty sections, each one having a lead judge. So, this is the first time that all the leads and the vice chiefs were together in one place. I think it was a very positive experience

for all of the leadership of PTAB to be together. That was followed the next Tuesday and Wednesday which was what we called our all hands meeting. So, we actually gathered all 275 judges and over 100 staff here in Alexandria. This was the first time we had an all hands meeting of PTAB in over two and a half years. A number of the judges had never seen each other in person, although they have communicated by WebEx constantly with a conferencing over the cases. But it was nice to have everybody here together. Finally, and we'll get to this a little bit more when we talk about the agenda later. The following day on Thursday, we put together our own judicial conference, which we hope to hold on an annual basis. It was a half day program here in Alexandria. We had the benefit of all the judges being here from the previous all hands meeting. It was quite well attended by the public and we were very excited about it. We talked about appeals and talked about behind the scenes operations at PTAB. A little bit what we want to follow up on a little

bit later and is what Joe mentioned in his introductory comments is that we spent a lot of time actually having in-depth conversations about these two hot button issues which have been out there for a long time. Amendment practice as well as multiple petitions. We'll get into the mechanics of that as well. The interaction of the judges with the stakeholders sitting around a table, I don't think we've had that before and it think it was very, very effective.

I also wanted to give everybody a heads up of another event that is going to be occurring prior to our next PPAC meeting. We do live hearings in conjunction with TTAB. We've made a decision to try to limit those live hearings to situations where we are doing that in conjunction with law schools as opposed to with some of our larger stakeholders. The next one that is coming up, we did one actually in April. The next one that is coming up is actually going to be September in Minnesota in conjunction with the University of Minnesota. I think it is September

27th or 28th, so stay tuned for that.

Also, I wanted mention, again following up on some of the comments that were made in the introduction. We had representatives from JPH over here for two days. We sat down with them and we went extensively through each other's processes and procedures, statistics, data. They also saw appeals hearings as well as IPR hearings here in Alexandria. This exchange has been very, very positive. They've asked for PTAB representatives to go over to JPO as well. I think we're going to be furthering that also at the EPO. Again, this sharing of information, best practices, best procedures, I think it only better the PTAB procedures that we have here in the United States. Those are my introductory comments. I wanted to make sure we got to those announcements before we get to the slides.

We don't actually have too many slides, we have about a four or five point agenda that we worked through in a sub-committee. As Joe already mentioned, formally the PTAB Procedural Reform

Initiative that was launched under Michelle's direction, has been put on hold. That said, I've heard that when I go out and speak and just with discussions with shareholders, there is still a lot of interest in submitting information. We completely welcome that. This is just a screenshot of our webpage. If you're unaware of this, on our webpage we have a box of suggestion boxes. Please put them right in there. We have one for appeals, one for trials as well as PTAB end to end. That's the best way to get information to us. Also, you can email me directly, David.Ruschke@USPTO.GOV and you'll cover all your basis if you do both. That is effective and we're still getting information on a fairly regular basis, I would say, and I still get inquiries. So, the time period for submitting comments has not closed but there is no formal initiative going forward at this point.

MR. KNIGHT: Could I ask a question before get into the data? That is when I asked Bob Bahr during his segment whether or not there

is any coordination with the Board in developing the examiner guidelines under section 101 and I think Bob said there isn't.

MR. BAHR: Are you asking about training?

MR. KNIGHT: Oh okay, I meant that as part of training.

MR. BAHR: Is there coordination, yes I run them by David.

MR. KNIGHT: Oh great. Because one thing that I would be concerned about is if you're issuing guidelines to the examiners under 101 and they are finding patent eligible subject matter and then later the patent is challenged in a post grant review or a CBM before the Board and there is an inconsistent decision, I know there is going to be some different decisions, examiners are going to make mistakes. But I think some level of coordination is really important for the patent applicant community.

MR. RUSCHKE: Well we definitely have coordination on that piece but Bob was right that

as far as training goes there in not necessarily any formal coordination on the training piece that we do for our EU's.

MR. KNIGHT: Do the judges actually, do they review the patent examiner guidelines under section 101 when they are issued by the patent core? Do you actually educate and train the examiners on those 101 guidelines so that different sections of the agency are on the same page, meaning the examination court and the Board. So, that when a patent is granted, patent owners have some sort of understanding that the Board is basically going to follow the same rules if someone later challenges their patent.

MR. RUSCHKE: So, we have essentially monthly meetings for both appeals, trials and then on the off days we have brown bag training sessions. So, every week there is some sort of formal training that is going on at PTAB. Again, if there is a major change that happens, in the patent corps, for instance, that would be one topic that we would cover in our brown bag. I

think that is how we would typically handle those sorts of things. We also handle any major changes, let's say in Federal Circuit or Supreme Court law, that also gets handled through the brown bag training sessions.

MR. KNIGHT: So, I'm just trying to focus a little bit more on making certain that we get the judges and the examining core on the same page when these guidelines are issued so that it is basically an agency statement of position and the user community knows if they follow these guidelines that they're actually going to be followed by the examining corps. Later, they are going to be respected by and followed by the Board judges. Is that a reasonable expectation of the user community today?

MR. BAHR: Well Bernie, just from my perspective when you speak to insurance and certainty, there is a degree of flexibility here in that the case law sets out a framework for analysis. Also, our instructions to examiners are to consider things abstract ideas because they are

similar to a case. So, remember that how similar something needs to be to a case could be in the mind of a reviewer. You could have an examiner and a later panel of APJ's come to a different decision on a particular case. Also, just by the nature of this, there are going to be more cases issued by the Federal Circuit as we go on, so different things will be considered abstract under the passage of time from when we issue the patent and it is subject to review by the PTAB. So, even if we perfectly worked towards the same guidelines, you could have different results. There is no real way to guarantee identical outcomes in all cases. I agree the framework should be generally the same.

MR. KNIGHT: Okay great. I totally agree.

MR. BAHR: I just hope you're not asking for too much.

MR. KNIGHT: No, not asking for too much. I'm just speaking from past experience when I was the General Counsel here and, at times, when

I was working with the Board, it was a little bit difficult for me to get the Board judges to appreciate to the level I wanted them to appreciate that PTO guidance or an agency position on something is something the Board judges should follow as well and it is not just examiners. And I think it is more important now that the Board, the agency really is being criticized to a large degree. On the one hand, applicants are paying a lot of money to get a patent and then once it is granted by the agency, another arm of the agency is invalidating that patent. To the extent that we can get the Board and the examining corps on the same page to the extent we can do that, I know there is going to be outlier cases, Bob, I 100 percent agree with you. But to the extent that we can get examination coordinated with what the Board judges are doing then the less there is going to be a disconnect and the more people can really rely upon the exam process.

MR. RUSCHKE: And I don't think we disagree with that. I would just add a comment on

that that not that I have any solid data on this. I think from an examination standpoint, a patent issues out of the patent corps, there is necessarily a limited amount of prior art that that was reviewed. So, if there is an inconsistency which when the patent is later found unpatentable by PTAB, it is likely because that was in litigation where thousands and thousands of dollars were spent finding new prior art and it is that reason. So, it is not necessarily that we're applying different standards or anything like that, it is certainly in the one on one instance. That is probably the more likely reason as to why a patent would issue but PTAB would later find it unpatentable.

MR. MATAL: David I would just like to add and Bernie, especially in the 101 area the vast amount of the discrepancy between PTAB and the examining corps, we blame the courts. The standards under which 101 is applied has changed markedly and we have to follow the latest judicial decision. There are things that are ineligible

now that were clearly eligible in the past. Again, it is a struggle for us just to keep up with the changes in the courts. The patent corps has done a great job. Every time there is a new court decision they immediately apply it and send out instructions to the corps. The Board's also been pretty good these days about following patent policy. Nothing like the terror of having someone from OGC running the agency for a while to enforce that compliance. Some of the issues, I think you saw in the past, have been resolved. To the extent the courts make it possible, we're all singing from the same songbook these days.

MR. KNIGHT: No, that's excellent to hear, so thank you.

MS. MARTIN-WALLACE: I would also like to add, I think David and Bob did a great job of explaining it so I'm talking specific of 101 but in general. We have programs that help bring awareness of the decisions being made in PTAB to examiners such as our post grant outcomes that funnels the information from the IPR's to the

examiners and helps them identify cases they're working on now, related cases. We also have periodic meetings between PTAB and our operations quality and DC Patent areas to discuss issues as well as there are programs going on in the TC's as the appeal decisions are being made that they are being analyzed within the TC's and that information is going out to all examiners and supervisors.

MR. RUSCHKE: Great. Let's move on quickly, I know we're a little short on time. Again, I do like to always put up our appeal inventory and the next slide will be on pendency. As you can see where we are right now with appeals, the inventory has come down significantly year over year. The FY17 data is, of course, only partial fiscal year data. We are anticipating that we will probably end up around 10 to 11 percent lower on inventory year over year. That is compared to about a drop of 26 percent from FY15 to FY16. If you recall, the reason for this again is that when we were modeling our workload,

we were trying to come in at a fairly soft landing so that we're not cratering down to zero. We are going to try to get to that year pendency, that is our goal. So, that's why you'll see a flattening in our overall inventory numbers year over year.

Also, I want to remind about two meetings ago, we announced that we had completely cleared the inventory of any 2014 cases or before. In terms of our progress on 2015 cases, of that 14,000 that is still pending, we only have about 662 2015 cases remaining. So, we should be able to finish that up within the next couple of months and hopefully be able to report that at the next PPAC meeting.

Again, this is the pendency slide that we've been using to talk about by technology center. The important thing is that you can recognize that the top number above the gray bars was the year back in FY16 and the color bars beneath it is the progress that we've made. In every single technology center, we have improved markedly, these are by months. You can also see

that the blue, the electrical and computer sections are by far and away heading directly towards that 12 month pendency which is our goal. We are doing better in biopharma and chemical of late, we still have some work to do in the mechanical and business method areas to bring that pendency down to the 12 month goal. We are actively looking at what we need to do to make sure that we're focusing on getting those down as much as we can. Again, I think it is a very big success story and the appeals side, again, two-thirds of our workload, two-thirds of our judges getting the inventory down and targeting that optimal appeal pendency of about 12 months.

Trial statistics. This has gotten a little bit of press. The first slide, of course, is the number of petitions that would get filed on a monthly basis. The top is, of course, IPR's in blue which is the vast majority of petitions that we get in. You can see that prior to January, the middle of the graph, it was fairly stable at around 150. Beginning in January, if you recall,

we had the spike, we thought that was an anomaly. It seemed that way in February, went up in March, down in April and now it seems to be creeping back up. This six month period from January to June is actually the largest number of petitions filed since the beginning of the AIA. This is something that, again, we're monitoring. We're not exactly sure why this is happening, if it's associated with additional litigation, particular petitioners challenging a number of patents. Not seeing a lot of correlation here. There is variability. Right now, we're handling this by moving as many judges as we can into some AIA work to handle these sorts of cases. A lot of these cases coming, as we've said before, are electrical cases. We are getting a lot of the judges who are electrically trained to make sure that we can handle this new influx from the last six months.

Again, looking at the two lower graphs, the only comment I have on PGR's again is maybe there is a trend creeping up month over month from zero to seven, we shall see. Again, remember that

it is some very low numbers compared to IPR and, of course, the bottoms are CBM's which again are fairly low as they have been for the last year.

MR. SCARDINO: I might just add that with this seeming anomaly in the filings, we've not changed our projections on how many judges we need to hire right now as has been mentioned at previous meetings, we're pretty much at the right size, just under 275 judges. We expect mostly backfills for the next several years unless this roughly 200 a month IPR's becomes more of a trend, then we'll have to revisit that. That also, if it does become a trend, until that hiring could take place, would have some impact on the amount of work that gets done in our exparte arena too. These two are interrelated.

MR. RUSCHKE: And that goes to, again, what we've talked about as sort of our one board policy that all the judges are trained to do all jurisdictions and that as the workload shifts from one side to the other we're able to move the judges around as effectively as possible to handle

whatever influx we have an any given point.

Institution rates, again this is actually all of the data that we have since the beginning of the AIA. We again seem to be stabilizing. This is all IPR's, CBM's, PGR's. The vast majority of this data gets swamped by the IPR numbers. Again, we're stabilizing right around mid-sixties, maybe two- thirds percent institution rate. That's where we are right now.

This is our final slide which gets all of our data together on a per petition basis, not a per claim basis as some previous data slides do. You can see that we've had a total of 7,168 petitions in the red. We get to the blue sections where we institute a trial. Our statistics are holding fairly regular again at about one-third of all petitions are not instituted on. So, we are only going forward on approximately two-thirds of the petitions. And then as you can see, there is a fair number of settlements before 883 before decisions to institute, 684 after trials instituted, that too is holding fairly steady at

approximately percent maybe one-third. So, one-third aren't instituted, one-third settle and then as I say before when I try to point this slide out. It is at that point, if anything doesn't take the petition out and there is a little bit of noise there because of requesting for adverse judgements and dismissals. By the time you get to the final written decision, it is only at that point where we've written 1,652 final written decisions out of a total of 7,000 petitions filed. It is at that point you see the statistics above where we find all claims unpatentable 65 percent of the time. 17 percent some claims found unpatentable and about 18 percent no claims found unpatentable. But it is only when we reach that final written decision that we get to that point.

I think that is the last of the data slides. Do we have any questions on data, otherwise, I'll move on to some of the other points of the agenda.

MR. THURLOW: Just a very quick

question. Joe mentioned the Hospira, I think it's a Genentech case, 325 G- Bar, I think that is going to be a helpful case. The JPO meeting that you had, I think they're great please continue but based on your background and experience, you have a very good understanding of those proceedings but you clearly know the concern is that the real truth with the claim amendments in the U.S. is the intervening rights. Even if you make it as easy as possible there is going to be extreme reluctance to do any claim amendments and so on.

MR. RUSCHKE: Absolutely. And that's the difficulty of comparing apples to apples. Their data, again, they are much more willing to amend both in the EPO practice and frankly also in JPO practice, the data is there. And again, I think that's largely driven by the fact that those are not damages cases, those are injunction cases.

MR. THURLOW: Right. Last point is in re Aqua and those very important to the patent office. Just tell me if a petitioner gets denied which has happened in one-third of the cases, do

they have any option? Is it to obviously --

MR. RUSCHKE: The can request rehearing.

MR. THURLOW: Yeah which 99 percent get shot down. So, is that request for hearing still heard by the same three judges?

MR. RUSCHKE: It is heard by the same panel.

MR. THURLOW: I know we've had years of discussion on that but in every case it is always heard by the same three judges?

MR. RUSCHKE: That's correct. They can also ask for an expanded panel though as well.

MR. THURLOW: Are they granted?

MR. RUSCHKE: We review all the requests and it is my discretion whether to expand the panel or not. And again, we have specific criteria as to when we expand or not, that's actually in our SOP one.

MR. THURLOW: Maybe in the next meeting we can just get some data on those requests since it is so important with the institution rates going down.

MR. RUSCHKE: Sure.

MR. THURLOW: Thank you very much.

MR. RUSCHKE: Sure. One of the other points that I wanted to mention, this is sort of a heads up for everybody. At our subcommittee calls over the last few months, and unfortunately our Chair, Julie Marr Spinola is not here with us today. I did want to highlight on the public record, some efforts that PPAC has asked us to become involved with that we, I think, are very supportive of. As I mentioned before, we had a judicial conference where we actually sat down and talked about specific scenarios, specific fact patterns, specific operational affects. That is something that I don't think has happened before. PTO has definitely gone out on what we have called listening tours when the EAA was first started. We have put out some RFC's in the past where we have asked for comments on specific proposals but I don't think what we haven't necessarily done is sat down and have a dialogue back and forth on specifics based on specific case scenarios.

So, what the Committee has decided to do and again, this is just in the formative stages, is to try to leverage what we did at the judicial conference which I think was highly successful where you have judges and practitioners together talking about not just high level issues which I think we were all well aware of all the issues that are out there but to get into the nitty gritty and actually talk about the scenarios. And say, that's a great suggestion but have you thought about the effect that would have on the Board in this way. Have you thought about the effect that it would have in this way. It is that sort of back and forth, I think, is a very educating process to the judges as well as for the stakeholders. There aren't really necessarily any easy answers here in a number of these very complex situations. As we've noted on multiple petitions, for instance, Joe pointed out the case that just came out recently. I really want to emphasize, that is not an outlier. There are a lot of cases. Again, one-third of our cases

coming in will get denied. So, there is a lot of cases that are denied because of either 314(a) or 325(d). That's, I think, a very, very important point and that is the evolution of our case law. That is the natural evolution of where the cases are headed here at the USPTO. So, I think that is really important to recognize.

On the multiple petitions though, the comment I wanted to make was, we have a case called Invidia where there is a number of factors that we use in order to try and determine whether we should move forward with a subsequent petition or whether we will deny moving forward with that. That decision is being interpreted and used by the judges, I think, quite a lot. But it comes up when we did it at the judicial conference, we focused in on amendments and these multiple petitions. We walked the stakeholders through under this scenario with this factor should the Board deny, institution. If you add this factor, should the Board deny. If this were the situation, should Board deny. I think it was very

effective to get the feedback from the stakeholders because there was definitely consensus on certain points. There were definitely situations that made everyone a little bit uncomfortable where it may not be as clear. So, what we're trying to do is actually look at that in this sort of situation. We have not figured out timing, size, location, invitees, but the primary criteria for these sorts of things going forward is this is not a listening tour, this is not an air your gripes session, this is a working environment where we educate you and you educate us. That's what we want to try and get at and get at that nitty gritty. So, that's what this is hopefully going to be targeted for. Hopefully we'll have at least one underneath our belt when we get together in three months. As Joe mentioned, we are waiting for a Senate confirmed director to do any major policy initiatives. As he said, we're not just sitting here, we are actually doing this work with PPAC and some others as well which we're excited about.

Precedential opinion process. Just yesterday we posted the first precedential opinion coming out from PTAB in quite some time. This was an AIA case dealing with assignor estoppel Athena v. Husky. This is one, an issue that has arisen. It has actually come up before the Federal Circuit. The Federal Circuit was not able to review it because it was associated with a decision to institute. So, at this point, we were really incumbent upon us to make sure that we were very clear to tell the patent community and the petitioners whether you could as an assignor bring a petition. We decided in a precedential opinion that yes, the statute 311(a) does control that any person other than the patent owner can challenge a patent via petition.

I wanted to give you a heads up, I had hoped this was going to get published before the meeting. It is in the works right now. We have another opinion that is coming out precedential very, very shortly. This will be in the exparte arena, again, a big part of our docket as well.

And what we've also done is I said up there, is this website revamp. We've gotten feedback from the stakeholders that we have all of the pinions published and again if you recall we have precedential, informative, representative decisions. That in and of itself can be somewhat confusing. But if you try to look on the website, it might not be easy for any practitioners to see exactly what precedential opinions we have or informative decisions. So, we're redoing the website with respect to precedential opinions to try to make that more user friendly. We're also going to take a hard look at whether some of those cases are frankly outdated and that we might end up designating those sorts of cases as precedential or even informative. We want to make that sort of guidance for the public as well as the judges as useful as possible. So, I think that's going to be something that is visually going to be important for the stakeholders but it is also going to be very, very important for the judges. Again, we are also, as I think Michelle

spoke before her departure, we are looking very strongly at our precedential opinion process and again the multiple levels that we have. We need to get more precedential opinions out. We've heard that, we encourage the public to also submit candidates for precedential designation. That again is accounted for in our SOP's. We have gotten a few in but we could definitely have more suggestions.

One other thing that we're doing more as well and we can follow up on this in the next meeting, is this notion of expanded panels. This is governed by our SOP 1. If you look at SOP 1, one of the big things there is if it's essentially trying to expand a panel to drive consistency to essentially make sure that it is like interpanel consistency, consistency between a panel's decision and agency policy, consistency between case law at the Federal Circuit or the Supreme Court or if there is something that is designated as particularly important that either the commissioner or the parties deem to be an

exceptional case, those are situations where we will go forward with an expanded panel. So, to your point, the criterion is kind of tight but we would like to explore the use of expanded panels to make sure that when it might not be designated precedential at least not immediately but by expanding the panel to go from a 3-0 to a 5-0 we send a signal to the public and to the judges, this is where the agency is headed, it may be precedential down the road or not but this is the direction that we're heading. So, that has actually been a very, very important piece that we've been doing at the Board. We've actually assembled a large number of suggestions for areas both substantively and procedurally where expanded panels and precedential cases would be of particular relevance. We've actually hired a few more lead judges who are going to be spearheading this effort to coordinate the expanded panel and the precedential opinions over the next six months so that when the new director comes in we will be ready to go and tell them exactly what levers we

can pull at the Board and where we're headed.

One of the things that we have heard that we are still working on that is still in the works is our SOP 9, that deals with remands. We are almost finished with that, that should be issued shortly. As I've said before on many occasions, our typical goal is six months from mandate and with one or two exceptions we've been hitting that goal fairly consistently. So, we need to get that document out to the public because we want to provide guidance on the procedures as to who contacts whom and when and what they can expect in different remand situations.

Last but certainly not least is something that Joe mentioned again at the beginning. We have an extensive study on amendment practice that is posted on our website that we update regularly. The import of that data, I think, is very important in that it is over 80 percent of those cases, the motions are not granted because they do not meet 101, 112, 102

or 103. If you were sitting in an examiners chair, the Board would not allow those claims to issue. That's the reason that they're not being granted. So, again when we look at any potential procedural changes to the amendment process that is an important data point. Why are the proposed amendments not overcoming the prior art and not meeting 101 and 112.

I really do want to mention the last piece too is the multiple petitions. We put out initial data last May and we are working diligently to try to get as much data out here as we can. Unfortunately, we are actually doing this manually. Our IT systems do not allow us to actually press a button and get data out on a per patent data. So, we're working through this. The key data that we released last May stated that 67 percent of the cases, it is one petition per one patent. And then it is an additional essentially 20 percent where there are two petitions per one patent. So, almost 90 percent of the patents do we see anything more than two petitions. Again,

the reason as to why they're filing multiple petitions is the tricky piece that we're trying to get into. So, what we're trying to do is look at the data of timing. If somebody is filing additional petitions before the patent or preliminary response or the DI there might be an assumption that at that point, they're being filed for page limits. We've recognized that we've heard that one of the frustrating things for patent owners is when petitioners use either the patent on a preliminary response or the DI as a road map in order to get a second bite at the patent. We can get at that data and I think we should have some of that very, very shortly. Right now, the data is showing one patent, one petition 67 percent of the time and almost 90 percent two or less petitions per patent.

CHAIRPERSON JENKINS: David, thank you. I have a question from the audience. Is it proper to have the Board making rules through adjudication? What about the public's right to notice and comment. What about the Administrative

Procedures Act and aren't you avoiding the whole process with safeguards?

MR. RUSCHKE: No, I think when we look at any potential reforms of PTAB and changes there is a number of different ways that things can be changed and addressed. One, of course, is through statute and some of it has to be changed via statute. If it is in the statute, we can't do anything to change that. If it is in the rules, we follow the rules, that's absolutely true. But as any judicial body, we do have the precedential opinion process, we have our trial practice guide, there also can be written guidance from the director or from the chief judge guiding the Board in one direction or another. Ultimately, the Federal Circuit will be reviewing our decisions and monitoring us to make sure that we are complying with the Administrative Procedures Act and the Supreme Court has not been shy taking cases. That is the ultimate authority.

MR. MATAL: I just wanted to add, there has been a lot of interest in amendments and

whether the PTO is going to revisit its amendment process. In addition to waiting for a permanent director, I'd like to remind folks there is a case that the Federal Circuit took on reviewing our authority to craft amendment procedures. I believe it was argued in December and we're still waiting for a decision. I'm very curious to hear the Federal Circuit tell us whether the statutory grant of authority for us to set standards and procedures for amendments allows us to set standards and procedures for amendments. So, we still don't have a decision there and we don't know how much of our regulatory authority to craft new amendment procedures will remain intact after that decision.

CHAIRPERSON JENKINS: Is there another question? No.

MR. RUSCHKE: Thanks Marylee, thanks everybody.

CHAIRPERSON JENKINS: So, we are running behind as everyone has figured that out. I am going to ask PPAC if you all would just go grab

lunch, come right back because we get to talk about the annual report. And then we break for everyone else and then we have a luncheon speaker at 12:30. Thanks so much, we'll be back soon.

(Whereupon, at 12:21 p.m., a lunch recess was taken.) AFTERNOON PROCEEDINGS

(1:05 p.m.)

CHAIRPERSON JENKINS: Hi, we're back for the afternoon session. We're starting a little late but we'll try to get back on track. So, our next topic is International. I know everyone from International is teed up and ready to go. I don't know who's going first, Mark is, okay, Mark.

MR. POWELL: Thank you, Marylee. I have the honor to reintroduce my colleague, Amber Ostrup, who manages the work in our work sharing, planning and implementation division meaning that in all award sharing type things involving examiners such as PPH, the collaboration pilots and whatnot, she's responsible for all of that. Amber was here right at two years ago at PPAC and

was introducing a couple of collaborative search pilots that we had begun with the Korean and Japanese offices. I believe that she today will give us some results of that and next steps as to future work there so, Amber.

MS. OSTRUP: Thank you, Mark, I appreciate that. Good afternoon, it is a pleasure to be here with you this afternoon. So, like most things in life, we like things faster and cheaper. Well, IP is no different. We want things faster, cheaper with greater consistency and certainty. We're hoping the Collaborative Search Pilot program will do just that.

We started two pilots, one pilot with two offices two years ago. One with the Japan patent office and one with the Korean patent office. The JPO pilot ended July 31st and the KIPO pilot is due to expire August 31st. With the JPO pilot, it was a serialized search, meaning that the examiners actually were able to look at the other search results from the other office. Whereas with the KIPO pilot program, it was a

parallel search where the examiner did not have an opportunity to see the KIPO search results unless the USPTO examiner noted an allowance.

So, how does the CSP achieve the goal of faster and cheaper. One, it's faster because once the petition is granted in both offices, the application is moved to the top of the list. It is cheaper, there is no petition fee, the applicant receives search results from two offices and gives the applicant more comprehensive art. In certainty, in regards to getting search results from multiple offices, the examiner would have more prior art for their examination and consistent results. With getting art for multiple offices, it provides the ability for similar actions.

To date, we've had 141 applications with CSP petitions. Of those, 125 have been granted. There are problems when we deny an application. That's because either they applied for both pilot programs or there was examination that had begun on that application and that's one of the key

requirements is that no search or examination could have started for the application. Of those, 46 have received an allowance. We're happy to say that the majority of those allowed, occurred within the 8 to 9 month timeframe and most of them, less than 12 months. The actions to complete prosecution from the time granted to petition to grant or abandonment is the majority 60 percent, over 60 percent was within one office action and no more than three office actions. So, we're hoping that this streamlines the prosecution.

So, 29 percent of the USPTO examiners modified their search strategy based on the results of the JPO search. 100 percent of the USPTO examiners gave a score of 3 out of 5 on helpfulness and 37 percent gave 5 out of 5 on helpfulness. 88 percent of JPO examiners gave a score of at least 3 out of 5 and 42 percent gave a 5 out of 5. Now, these are initial results but as you can see, both sides thought that this was helpful. At this time, we do not have stats for

the KIPO pilot. Again, as mentioned, the examiner did not review the KIPO search results before they were sent to the applicant, so we're still doing some analysis.

What we have found within the JPO pilot program is the combined effort from both offices, provided greater benefits to the applicant. However, we did find that the substance of the program was good but the process was challenging. For example, the USPTO would issue their action to the applicant and based on the process, they may not get the search results or the action from JPO for another month or two months. And that provided a time lag that was not helpful to the applicant, obviously, because then they had to go back to the application and review that a month or two after they received the USPTO results.

The KIPO finding we found, again, was benefit because they had the search results from two offices. But we did find that the applicant did not always follow up with the USPTO with the IDS noting the art bound from KIPO. And the

examiner did not always have the KIPO art to consider which made it challenging as well.

So, what we're doing is within the next proposed pilot program that we're hoping to start this fall, we're combing both. We're taking the lessons learned in what we found from the first pilot program and combining them into the next collaborative search pilot. Once the petition has been granted in both offices, we are going to send the application to the examiners to begin the parallel search. The examiner here at the USPTO will do a first action on the merits. Previously, they did a first action interview, a PIP communication form and that made I challenging. One, the applicants didn't always know what the first action interview pilot program was. Two, we came up with another form that they had to get introduced to so now we're going to do a first action on the merits. Those results will go over to the other office. The office will then provide their search results to us. The examiner will then look at those search results, put those on

the 892 to relieve the applicant from having to submit any ideas and then we'll send that out to the applicant. We hope by doing this, this will streamline the results and also provide compact prosecution.

So, the CSP framework, one, it's the same as before. The requirement is the all utility applications will be accepted provided that no examination has begun at any participating offices. No design applications at this time. Applications must share a common earliest priority date. Claims must correspond. Again, the timeline is for this fall, 2017. We have been coordinating with our POPA friends to ensure that we're working on the examination and the hours and other time and whatnot. So, we've had a collaborative relationship regarding this pilot. We will be preparing so that the heads can sign this at the general assembly's meeting, the MOC's and then the federal register notice will be shortly thereafter.

As you saw from our numbers, they were

very low. We really want to increase this pilot program. The attorney's that we have talked to that have used this program, that have received an allowance in less than a year, free to file a petition, they have loved this program. The issue is getting the word out and sharing the benefits of this pilot program. So before, we did 200 per office and this time we're going 400 with each office. So, we really need your help in marketing this. If there's anything that we can do, we can come to your site, we're happy to do conference calls. We'll have information on our website, we'll be sharing information and doing social media but really, we're happy to come to you at any time. So, with that, I'll turn it over to you to ask any questions that you have regarding this pilot program.

MR. THURLOW: Is there a way to just see like some of the biggest users of the IP system? Obviously, I think of Korea I think of Samsung. Japan I'm sure there are some big users. Is there a way to get that information and specifically

reach out to them?

MS. OSTRUP: If you don't mind, I'd like to follow up with that. I would like to check with our office on whether or not we can release the information as far as the top filers that we've had within the CSP program. To this date, we haven't provided that information currently, but I'm happy to go back and check with our legal office and whatnot that we can provide that.

MR. POWELL: Yes, I can chime in here, Pete. So, we've always tried to maintain the confidentiality of applicants, business strategies and so forth. We normally don't release that information.

MR. THURLOW: No, I'm not interested in the top filers from CSB I'm saying, in general, we know the users are from Korea or in Japan. I want you to find out and say are you aware of this great program.

MR. POWELL: Yeah, great. I also wanted to add that in the end, what we're trying to show here, is the value of obviously a collaborative

search. There is a couple of points here. Number one is, and we're conducting actually a rather large study in my office of a number of things such as what are the effects of having an Asian serge on a U.S. patent that has undergone an AIA trial and a host of other factors such as that. The main idea being one, a huge quality boost. One thing we have come to know over the years is that each of the three major offices is quite adept at searching all of the major offices prior art. So, you would have the value of a Asian search in a marrying case with a U.S. search, for example.

Secondly, what in the end, are the prosecution savings for applicant. For example, having all this prior art early, maybe getting it one and done with an action and move down to patent grant quickly so that both the officer can take up another new case and the applicant can afford to file another one. Those are things that we believe will bear out over time. And then, in the end, to what extent and by what means would we

implement this as a permanent program, permanently available program if it is shown to have such value. I wanted to get those points out, thank you.

MS. OSTRUP: Peter, if I may, we definitely want to take advantage of those top filers and I apologize for misunderstanding your question. We definitely want to touch base with those large applicants that file quite a bit because those are the type of applicants that are using this program. So, if we can really get in touch with those stakeholders, via you or anybody else, we'd be happy to do so, so thank you.

CHAIRPERSON JENKINS: But I thought you were going to do that last time? No?

MS. OSTRUP: We did but it was not to the scale that we want to do it this time. I don't think we hit on the marketing aspect and outreach aspect that we had hoped and now with us going to the second phase of this pilot, streamlined approach, we want to push the marketing even more so than we have in the past.

MR. POWELL: Right, and as we learned from the patent prosecution highway programs which we started a little more than ten years ago, we need to get some early adopters that found success with the program and get them talking about it. That's how the patent prosecution highway just took off. When we had people extoling its value on the private side of things then, of course, it took off. But the IP communities are somewhat conservative. One, they always want to get somebody else to go first and, you know, it takes time to introduce a new program such as this.

CHAIRPERSON JENKINS: But isn't also the concept of, is this works well and people understand it, just like PPH, the idea is to expand it.

MS. OSTRUP: Yes.

CHAIRPERSON JENKINS: So, it wouldn't just be for JPO, KIPO, it would be other offices.

MR. POWELL: Right and I'm glad you mentioned that. We're in the final steps of working out with all the IP five offices, a

collaborative search, an exam pilot in the international phase of PCT. I believe we're at or extremely close to the agreement and hope to have that kicked off by agreement this fall and then implement in 2018. It's a bit more complicated involving five offices. Again, we're trying to test the limits of do you need five offices or is three enough or what is the price point and quality and prosecution savings.

MR. THRULOW: When I started 20 years ago, I prosecuted candidate portfolios so they're in the top ten normally and you have Honda, Hyundai. I mean these are lists that I figure to reach out to.

MR. POWELL: Great, thanks Pete.

MS. OSTRUP: Marylee, also we are slowly dialing up CSP with other offices. We're currently in discussions with two other IP offices in hopes of them joining CSP. It might be a little bit of a smaller scale but our goal is hopefully to dial this up slowly and bring in other offices.

CHAIRPERSON JENKINS: Great, thank you. Karen is next.

MS. FERRITER: Thank you, it's a pleasure to be here. I'm representing my boss, Shira Perlmutter who is unfortunately on vacation. She regrets that she was not able to join you all today to talk about the patent related activities of the Office of Policy and International Affairs. Just to give you a very high level understanding of what we're working on right now, the WIPO Program and Budget Committee is coming up. We continue to be concerned about the disproportionate emphasis WIPO places on PCT fees to fund the organization. We're continuing our push to make sure that the revenue is more fairly allocated. We're continuing to work within the U.S. government to try to get our contributions released in the past. We had placed, the U.S. government had placed a hold on our ability to pay our WIPO contribution because of some concern such as regarding WIPO whistleblower practice. We are very comfortable with their current practice and

we're hoping that those funds can be released. We're preparing for the WIPO general assembly in October. We're continuing WTO, trade policy reviews and a session work. This is just steady state work for all of our attorney's reviewing those foreign government laws and making sure they comply with the WTO trips agreement.

We've been gearing up for some time to prepare for the NAFTA negotiations. That's really just now getting started at USTR. And, of course, we have a lot of interagency agreements such as science and technology agreements and proposed UN declarations that we're constantly reviewing. That's kind of all the behinds the scenes work that we do but probably the most important work that we're doing is the training of the foreign government officials and the U.S. Inventor community about foreign government laws.

Today, we wanted to focus on some of the China Road Show's. I'm fortunate to have Conrad Wong come here to talk about the China team and their activities and the China Road Show.

MR. WONG: Thank you, very much Karen, and thank you all ladies and gentlemen for being here and also for tuning in remotely. As Karen spoke about our China Road Shows and all, I just want to give you all a quick overview of what the China team is here at headquarters at the Patent and Trademark Office.

We are led by Mark Cohen who is the senior counsel for the China team. It is the country specific team within policy and international affairs. As many of you know, OPIA has a patent group, trademark group et cetera. All the attorney's, my colleagues, cover different geographic areas. But those of us on the China team specifically, deal with China, some of us are language capable so it also facilitates a lot of the communication back and forth, not only with rights holders here but also with the Chinese government over there.

We have seven attorneys on staff here in all the disciplines. We also have five Chinese attorneys at our posts in China which are Beijing,

Shanghai, Guangzhou. Mark, himself, served as the first IP attaché from 2004 to 2008 and I served at the U.S. Consulate in Guangzhou in Southern China from 2007 to 2012. So, we actually have not only a number of people who are specialized in this but we have very diverse and very deep understanding of the issues effecting both of our countries from an IP perspective.

Going to the China IP Road Shows themselves, this is where we do try to bring together policymakers and leading experts basically to have a colloquy. To have, not only an outreach to the White's holders but also to have exchanges between the panelists themselves. Reflective of this administration's priorities, we are working and targeting more and focusing towards American rights holders, particularly small and medium sized and micro enterprises. We also try to, of course, listen to their concerns, bring it to us. Also, if we hear it is effecting a particular geographic area in China, we will touch base with out colleague at the embassy in

Beijing or the Consulate in Shanghai. The position in Guangzhou at the moment is vacant.

Just to let you know, we've had a couple of very interesting speakers. Representative John Culberson who represents the Houston area was at our Houston Road Show. Federal District Judge Victoria Roberts spoke at our Detroit program and Dallas Mayor Mike Rawlings spoke at our Dallas program. So, they each brought something very interesting regarding their particular geographic location and the involvement of China and intellectual property issues as they effect that specific area.

One of the things I will say about the Road Shows is that we do try very much to target, and I'll be putting up a listing of all the cities, but we try very much to work and target with our regional offices. So, we have not only synergies but also economies of scale, we don't have to fly people back and forth. We also try very much to feature hometown people so that the audience has a connection with the speakers

themselves. I think it is very, very important also, just so that each region in the country has different IP concerns and focuses. Some are more patent focused, some are more IT focused. Trademarks, of course, are always something that is going on across the board.

Here are some of the topics that we cover. Just from a patent perspective on bullet point one, IP portfolio and management, as many of you know. Utility model patents, design patents and invention patents, they are the main three. Only invention patents are substantively examined. Utility model and design patents are not, it is almost like a recordation system, I don't want to simplify it too much but essentially, that's what it is. So, when we have speakers that are up there speaking to our rights holders and then essentially opining on what the effective strategy for protecting a patent related invention or service might be, they would say well, you should go with an invention patent as opposed to a utility model patent. Or, they may say, you know

what, get something on paper, get something registered so that at least you have something on record and then we'll figure out everything from there. So, for instance, you can file for a utility model patent and an invention patent simultaneously and then when one matures, you can drop back from the other one. So, it's these helpful tips that help our folks navigate through the system over there.

Of course, with brand protection and anti- counterfeiting, the main issues right now are e-commerce, for China IP resources and databases. We here at the Patent and Trademark Office have the China resource center. My colleague, Larry Lian who is right here, is leading that group so we have very much a data focused and data analytical type of analysis that drives a lot of our arguments because frankly, China is a very data driven environment.

With regards to enforcing IP rights of the United States, we have a very good relationship with the IPO Center so we work and

have had in our Road Shows, speakers from the FBI, Customs and Border Protection. We also have very good contacts with the Justice Department's Computer Crime and IP section. So, if we are unable to have a CSIPs attorney come out, they will appoint a CHIP, Assistant United States Attorney. Each of the 94 offices apparently does have or at least most of them have, I should say, a computer hacking and IP attorney. So, someone who is dedicated to IP issues in that particular region. So, they also work with their local federal law enforcement counterparts so that actually brings a nice local focus to the Road Shows.

MR. WALKER: Conrad, excuse me. Can I ask a question?

MR. WONG: Yes sir.

MR. WALKER: So, what about trade secrets because when you mentioned U.S. attorneys, I mean there are some very high profile cases, one including around the genetically modified seed theft where someone was sentenced to prison for

three years.

MR. WONG: Right.

MR. WALKER: So, is trade secret enforcement part of this and are the U.S. attorney's being exposed to trade secret issues in addition to the cyber security issue you just mentioned?

MR. WONG: We do raise that as well, yes. It's not, as you all know, Defend Trade Secrets Act is relatively new. We still have the Economic Espionage Act out there. They are seeing some cases, some as you noted, more than others. I know there was the case, I believe, it was in Iowa where Chinese defendants apparently literally just pulled up corn plants and just threw them in cars to try and work backwards as to the genetic code. So, they're aware of it, I don't know that they're seeing a lot of it. We have indicated to them, look if you're seeing trade secret matters, let us know. And that we're also, just so you're aware, following China's trade secret issues over there as well because both countries have, of

course, rights holders with the trade secret issue so they're really, really important to us but we do mention that.

MS. FERRITER: If I can just jump in, our enforcement team has a number of people who became really experts on the Defend Trade Secrets Act. We have started to do a lot of government official specific training whether it's trademarks, trade secrets, trying to do that for government officials and judges and others. So, also again, going out into the U.S. community to make sure that people understand what the laws are and to try to help with that.

MR. WALKER: Well, that's outstanding. Because I think one of the issues is with everything that's on a U.S. Attorneys plate, to bring a case around trade secrets, really requires a pretty high priority put on that. But these are incredibly important cases at the same time to the parties involved. This education effort sounds outstanding.

MR. WONG: Sure. Actually, just a

point, Judge Roberts, when she spoke at our July 10th Detroit program, spoke on a trade secret matter that she had been handling. So, it's still in the preliminary stages so to the extent that she could talk about it, she did. But it is definitely on everybody's radar.

Just going on very quickly, enforcing IP rights in China, one of the things we do try to have is speakers coming from Chinese firms to speak to our rights holders so that they're aware of the landscape out there. One of the things, from the trademark end of the house, is bad faith filings which has been a constant source of irritation for the rights holders. It has been something, a conundrum that we've been trying to work on between Commissioner Dennison on the trademark side of the House and the China Trademark Office. With regards to local companies experienced in China, we are very fortunate in our Grand Rapids show on July 12th to have Bissel Home Care, the folks that make vacuum cleaners and floor sweepers talk about their collaborative

efforts not only to work in China but also to defend their intellectual property.

And then, very lastly, the U.S./China Collaboration and Competition piece. This is one where we want to learn from the folks that are collaborating. There is a lot of collaboration going on as you can probably guess, so we were able to have for our Michigan program, folks from the tech transfer offices of the University of Michigan, speak to how they collaborate but also how they defend as well.

Here, just very quickly where we have done our programs, you can see that geographically, we're sort of literally all over the map, Boston, Dallas, Houston, Detroit and Grand Rapids. A couple of action shots, this is the incomparable Mark Cohen up there who actually, you can't tell but I was there because I took this picture. This program was entirely in Mandarin. We originally budgeted to have 45 people attend this program, we had 70. And this is in the Houston area and to be frank with you, being of

Chinese descent, I didn't think there were that many folks down there of my heritage but there you go. And it was entirely sold out and was entirely done in Mandarin. Here's Mark and a couple of other folks speaking in Houston and they are talking, actually about trade secret enforcement, how about that. Last again, here's Mark again at the Mandarin language program, us talking about our regional offices. So, you have an idea of how we tried to get our message across and also all the resources of PTO.

Here are our upcoming programs. It is September 14th here in Alexandria we'll be doing one of the Road Shows and then you can see, Denver, Salt Lake City, Indianapolis, Chicago. The week of November 13th, it says Portland, Oregon, we've also just added Seattle, Washington. And then in early December we are hoping to do a program with John Tribeca and the San Jose office in the San Francisco Bay area, so we have that. And there's our contact information but before I relinquish the mic, we did receive a query from an

audience member to the PPAC members so I thought I should address this. The comment reads as follows, "it is very difficult to go forward when your partner, China, won't even admit to there being a problem to solve. My hat is off to the PTO for trying to bring this young country/ancient civilization to the modern age by proving to them that innovation can occur anywhere on earth and it pays to recognize it with a patent even for standard essential patents. Ask them for input, concentrate on big versus small and all countries. Praise them for what they are doing well, such as non-standard essential patents. Have you tried to provide them with data that demonstrates the disadvantages to China for continuing to do what they are doing". I can just tell you that again as I was saying earlier in my remarks, this is a very data driven country. Promotions and economic well-being are all dependent upon the numbers in that country and we track those very, very carefully. I just, we with the China resource center and also working with the Chief Economists

office, do answer a lot of China's behavior or points that they try to make with data driven analysis so they do have an understanding of where we're coming from, that we're not just sort of flailing away and throwing up high in the sky or anything but that we actually do have substantive evidentiary basis for our points. I just wanted to let you know. With that, thank you very much.

CHAIRPERSON JENKINS: Great. Any other questions? Peter, I just want to make a comment first, sorry. One of the things that was discussed by Dom at the last PPAC meeting in May was the lack of designation for the attaché's in the different countries and the effort being put forth to get recognition to have appropriate designation. So, I just want to call out and thank the Senate SGAS sub-committee on appropriations. In their report, they specifically said that the U.S. PTO, the Department of State should all work together. In theory, of course, we always want it stronger but that they should lead to discussions and

negotiations regarding the counselor ranking. So, this is for us to be able to protect stakeholders and get the correct information out, we need to be able to negotiate with the counterparts in the various countries the attachés are in so this is really a very important aspect. So, I encourage all of your efforts and hope there will be more for recognition for you as PTO folk doing this.

MR. WONG: And if I could, thank you very much for your support of PPAC and the members at large. Just to point that out and for folks who don't know this particular issue, the ranking of an officer in a consulate or an embassy is very, very important because it dictates who we speak to on the other side. If our rank is not that high, they're going to not send somebody higher than that. So, one of the ranks you may have heard is Minister Counsel which is fairly significant in the diplomatic world. If we're able to get that rank, then we will see somebody of equivalent rank on the other side. If we are not accorded that higher rank, we see somebody

lower, generally somebody who is not necessarily in a position to do very much except to report back to their bosses. So, that's the reason why the issue is so important, so thank you.

MR. LANDRITH: Can you speak to how USPTO attaches rank in comparison to other government agencies besides the State Department and military?

MR. WONG: I don't really know in comparison to like, if you go to any of our embassy's or consulates, you've got folks not only, of course, from the State Department but from law enforcement, from FAA and also the various commerce bureaus themselves. Whether it is the Bureau of Industry and Security or the Census Bureau or NOAA or something like that. The rankings, as you can probably guess, are very closely guarded in terms of the higher versus the lower. So, that makes it a little bit tough us being sort of appointed versus career people.

MS. FERRITER: But Dominic Keating, the head of the IP attaché program did do some

research. Of course, since this is mostly determined initially by the State Department, the State Department not surprisingly has most of those higher titles for themselves. For foreign government officials, we also see a bit of a mix. I was posted in Geneva for a while. They weren't so proprietary as to who they would meet with, understanding that the U.S. PTO didn't have a job title that reflected our responsibilities so we could get those meetings. But in foreign government such as China, Russia, they are really very proprietary. Again, it is a disservice to us that within the U.S. Embassy, our mission, that maybe our colleague, the health attaché has the Minister Counselor rank but we the IP attaché just have IP attaché. There is that perception that since we have that lower ranking that we're not as important. But it is just really a matter of historical -- it's not a matter of pay, it's just a matter of the ranking and agency's ability to advocate for that job title.

MR. THURLOW: Just to comment and see if

I need to figure out if there is a question here but I just want to bring you into my world a little bit. All commerce, all the work we do is, for the most part, global. And these days the last couple of years I've been doing a tremendous amount of work with startups. Every startup needs capital. Where they get the capital from, the U.S., it would be perfect if we got it from the U.S. but that capital raise is normally global. So, one of the biggest areas of capital is we work with VC's in China and I'm trying to figure out if this is a bad thing or good thing just based on the state of politics that you can answer to. So, we have a VC in China, $10 to 15 billion. 20 percent of that funding is provided by the Chinese government. They'll invest a certain amount of that money in the U.S. to grow that company in the U.S. then use the IP or take the IP to China and grow the company in China. That's just a very basic emanay kind of corporate transactional thing that we do. There is money raised in the Middle East and so on.

The second part, just a story, is in New York we get a lot of Israeli VC's come in and they have a very close relationship with China because as you're well aware, the trade policy between the U.S. and China, the high technology and so on, Israeli's tell me they actually love our policy because they have very high trade with China, very good dealings and so on. To me, in the global commerce business, some of us think from a big perspective, I guess I question some of the whole policies, you know. You can't answer it but I just want to bring you into my world a little bit where trade is global.

MR. WONG: Well, we certainly take that into consideration. It's one of those things where we are very aware that money makes a lot of things work but we also have to work also to ensure that we're cognizant of the laws over there that we're essentially, to be frank, not being played for suckers and that we are working, of course, within their framework. And where we think there might be some issues, we talk to them

about that and say, you know, this is not necessarily how we would do it, perhaps there might be another way, for instance licensing and things like that. So, not everything flows smoothly. We do have our issues and we also work closely, of course, with the U.S. trade representative's office, with the folks over at the Department of Commerce, Secretary Ross, they've got a pretty good handle on all this. So, when they ask us for our expertise we chime in. But we certainly are keeping a very, I don't want to say a wary eye but we're certainly very conscious of what's going on.

MR. THURLOW: Yeah, thank you very much.

MR. WONG: Certainly.

CHAIRPERSON JENKINS: Great, thank you. So, we will move on to IT.

MR. OWENS: Good afternoon. Thank you for having us here today. I'm going to turn it right over to David Landrith, who will run through the slides and of course answer any questions that you have. Who has the clicker?

MR. LANDRITH: So looking at a summary chart at the top, we have the document application viewer. As we've gone over the last two quarters in December, we had a brief series of issues with the document application viewer on count Mondays. We've been monitoring since then, and we have not seen any continued problems. And we are also continuing our work towards the MADRAS parity that we hope to achieve in first quarter of next fiscal year.

With the official correspondence application that was released in training commenced in April, it shows here the training commenced in July for TC1600 and 3600. We have an update on that. The training for 3600 is complete and 1600 will end this week. The next steps for that is continue to monitor the training and make sure that we're supporting that and the needs of the new users.

With the examiner search we're continuing the production bug fixes in order to prepare that for training. This week we were able

to demonstrate a level of resiliency and performance and some stress tests that I think we're evaluating for justifying expanding the pilot to more users next week. With cooperative patent classification we are still doing the quarterly releases in cooperation with international partners, mostly ramping up to what we envision in FY18 as an expansion of CPC to additional IP5 partners.

We've already gone over this a little bit and what we say under July, the 3600 tech center is already completed and 1600 is underway. We project that training will be completed in December of 2017. There may be some variability within that schedule if we need to work around tech-center specific constraints.

Yeah, at this point we do not have usage charts for OC, and we're working with OPIM in order to make sure that we're going to be able to provide those going forward. Many of you who saw the document application viewer rollouts are familiar with the high quality information that

OPIM was able to aggregate in concert with OCIO in order to demonstrate usage over time, and hopefully we'll add that by the next meeting. In terms of Legacy System Retirement we're very much the same place that we were last quarter where we planned to do IFW and MADRAS in FY18, as well as OACS and then in '19 moving into East/West Retirement and also the CDS retirement that handles the USPC portion of our flavor of CPC.

MR. OWENS: I will point out that the retirements for eDAN and everything that was scheduled for this year did happen on schedule, and that we have agreements with POPA to make sure that there is enough overlap between legacy systems and the next gen systems -- that there is at least a year time just in case that we could roll back. So the important thing to note is we are on schedule to plan.

MR. LANDRITH: Thank you, John. If Role-Based Access Control right now all fee collection is being protected by RBAC, the Role-Based Access Control functionality using a

single factor. Patent Center will use RBAC in -- it uses RBAC in the July 2017 alpha production that we released this past weekend, and we'll continue to do so in subsequent releases.

Regarding NIST, Dave expressed concern with the second factor authentication possibility of using that with SMS. So we're looking at making sure that we are NIST compliant for security needs, specifically look at other options including voice or email for identify assurance with the second factor that we require.

The next steps in this are to consolidate the grant system as well as activate additional components to improve the system availability across the USPTO. And by grant system, I mean the provisioning system whereby administrators provide users with their information and credentials.

With the Patent Center, as I mentioned in the last slide that our July release was successful, that release is to in-house users. We were evaluating that. We're looking at taking

that to a larger external pilot audience in October and in the meantime in September, we're looking to release the Patent Center functionality that is currently in our larger external audience. And we're looking to incorporate that with an EFS web and private PAIR, so that that will allow for text filing of initial application for non-utility patents in the current web filing tool that we offered applicants.

With Global Dossier we've made some good headway in terms of testing the document sharing and then also establishing a back file database for DocDB. The next steps are to deliver the consolidated citation list and export functionality for external users, as well as some additional examiner tools. We're also looking at ways that we can store additional information and provide it, as well as accommodating patent number expansion and new forms. Did you want to --

MR. OWENS: Yeah. So it was brought up in the private session yesterday that the folks that were using Global Dossier experienced, last

week while I was on vacation, a slowness. I didn't have anything to do with that, but I wasn't aware of the slowness until yesterday. I did get the report this morning and I evaluated it. There are four virtual servers that handle the traffic here. It's usually more than enough. Two of them experienced an operating system level corruption that we have not identified the root cause with, but we have replaced those server images. So the problem has been circumvented. We are monitoring those more closely than we had before for the slowness issue that folks saw.

So the way it works is, there is a cluster of computers that randomly handle responses to each and every person's query, and if you were rotated around all four of those for any of the requests that you made when you were on two of the servers that were in a corrupt state and responding slowly, you would have a poor experience. So, we have upped our level of monitoring significantly. We've added two servers. We're going to replace those two, and

we're adding two more for further redundancy. I don't expect there to be any other problem, but when we finish the forensics to find out why those two images corrupted themselves, we will let you know.

MR. SEARS: Thank you very much. I really appreciate that. From my experience Global Dossier is a fantastic program, really incredible access to the USPTO's files and foreign files. And I know I speak for many users when I say thank you for ensuring that the access is maintained at such a high level.

MR. OWENS: With the launch of any new system you do hit small hiccups, my apologies there. What I can guarantee you is when we do figure it out it won't happen again.

MR. LANDRITH: Thank you, Jeff, for the feedback. The CPC management tools, as well as the CPC IP collaboration tools -- the move for both of these projects is to continue to automate the workflow as well as increase the traceability of operations that occur within the system. As I

mentioned, in order to facilitate the projected expansion of CPC to additional member IP5 offices in FY18.

The PE content management system has (inaudible) consolidated content storage for patent documents which is currently rather diffuse. The next step that we have for July, which was scheduled to be completed last week, is actually overdue. We're currently developing contingency plans to deal with this and hopefully that is something that is resolved by our next meeting.

MR. OWENS: We have just solved some important prototyping work on this product, just to let you know it is not stagnant. We completed required database and performance work to meet the service level agreements to our customer on things like quick data retrieval to support flip rate and so on and so forth. And those were completed, and

we have overcome some of the major obstacles on getting fast enough storage and breaking our data apart in a way that allows us to access it very quickly. That shouldn't be discounted. It was a major initiative and a major change, one that the agency has tried to crack over the last decade or so and has not been able to, so that was a major win. I believe with that we are open to questions.

MR. GOODSON: Well, there okay. Question from the audience. And that could be the feasibility, possibility of making the search tool available, the same or similar caliber for the public to use, you know, do a download or something that is available for the examining core.

MR. OWENS: So the good news is when we built EST, which is the new search tool that we just talked about, we built it to be deployed on the Cloud and the public. It, of course, would have a different set of data, a complete duplicate of our data, but only the published data not the

private data for obvious reasons, right? Of course, anything marked "Private" or "Held back" or "Non-disclosed" for any legal reason would be not transported to the Cloud. But the product itself would run in several Clouds including the Amazon Cloud without changing of the code at all. So we have that, of course we haven't specked it or scoped it. We have a plan to actually do something like that post FY19 and the late FY19 calendar year/FY20 fiscal year.

And hopefully, we will be able to keep on track because at least here we believe that the best way to get a quality application is for people to head due quality searches. And the easier we can get that done and provide that same facility with all of the same data to the public, of course we're interested in doing that.

Now, not all the data, as I mentioned, would be available to the public because it's available to the examiner. We do pay for datasets. We couldn't afford to pay for the public to use them. Some of them are quite

expensive through third-party agreements. Whether or not they're from other governments and/or companies such as Derwent. And of course, none of prepublished data would be available to the public. Other than that though, the system is capable of running in the Cloud and could be available to the public once it's complete, obviously it's not yet but we're close.

MR. GOODSON: So that I understand you, we could search applications in patents that have been issued. However, access to say the IEEE database for their journals, that would be private to the agency, USPTO?

MR. OWENS: That is correct.

MR. GOODSON: Okay.

MR. OWENS: Because I have to pay for each one of those queries --

MR. GOODSON: I understand.

MR. OWENS: -- and that could add up really fast.

MR. GOODSON: I understand. Okay, and then IFW is on its way out.

MR. OWENS: Yes, it is. It's scheduled for retirement, but it's tied into several legacy back-end systems, so we have to wait until those systems are completed and offline. But yes, the major portion right now of waiting IFW's retirement is the content management system we just spoke about and transferring all of the data out of that in a product called Score, which is another database collection and several other smaller collection areas into the new content management system.

MR. GOODSON: In terms of user experience throughput, however you would like to put it, do you see a dramatic improvement compared to IFW?

MR. OWENS: Stability certainly, it's at least or better than IFW. There are some fringe cases for some datasets that are quite large -- biometric data for example out of score that will be in the content management system and downloading that size of a file will not be much faster.

MR. GOODSON: Okay. And then text entry, that's, I see that's --

MR. OWENS: That's huge, yeah.

MR. GOODSON: That is huge.

MR. OWENS: It is huge. It's in Patent Center. It's the basis for Patent Center and as discussed, we are migrating those features for text submission into the current system as well EFS-Web. So you will get -- first, if you are not part of the beta or any of the folks here or your friends are not part of the beta, we are bringing those features and functions to EFS-Web, as well as the beta and of course, Patent Center will replace EFS-Web on its schedule. I think that's, what year?

MR. LANDRITH: 20.

MS. STEPHENS: And just to add, in the internal test for the text receipt and processing has been going pretty well. So we anticipate in the next two to three weeks providing a patents alert message indicating, as John mentioned, that EFS-Web and private pair is able to accept text

and we're encouraging all users to take advantage of that.

MR. GOODSON: Then essentially the digitization that remains will be that essentially of drawings.

MR. OWENS: Well, the applications themselves will hopefully, any part of them that are text -- obviously, you can't turn drawings into text, but any part of the application that is text will continue to be text because we'll get it submitted as text, right? I don't know if we're going to dynamically OCR an embedded graphic with texts, are we? That's a good question, do we know?

MS. STEPHENS: I don't think so.

MR. OWENS: I'll have to get back to you on that. So if you -- if there is a non-vector image or raster-based image with text in it, I don't know if we plan on OCRing that. Though there are tools on the desktop today that allow examiners to OCR that, but I'll get back to you on that.

But obviously, if it's a vector drawing with text, it's identified as embedded text. But yes, the more we get in text the less we have to OCR, the less error introduced through optical character recognition, that's what OCR stands for, would happen and of course we can save money on the front end, as well as publishing because we get text, and we don't have to convert back and forth like we've talked about before.

MR. GOODSON: I'm just looking at the throughput. It's got to be much higher.

MR. OWENS: Certainly speedier.

MR. GOODSON: Thank you.

MR. OWENS: Yes, sir.

MR. LANDRITH: And obviously we'll continue to be accepting applications in traditionally filing format.

MR. OWENS: Yeah, we don't reject anything, so --

MR. LANDRITH: We hope that those numbers are eclipsed by text filings.

MR. OWENS: Very much. Other questions,

they seem to have given me plenty of time today, but you may want to make up some time. I'll be happy to give my time back.

MS. STEPHENS: You know, believe it or not, the scheduling is not the easiest thing and we --

MR. OWENS: Oh that wasn't a complaint.

MS. STEPHENS: And we really wanted to give you more time because I often take time away from you. So yeah, you guys are always very accommodating when we're running behind. So, anyone else have any other questions?

MR. GOODSON: I just have one clarification, John. So when you talked in response to Mark's question about the availability of the patent search tool, new patent search tool for the public, is the deadline of FY19 calendar year 2020 for the examiner access too? Is it the same timing?

MR. OWENS: No, the examiner access, we are behind with EST for examiners, but I made a commitment to POPA to not release a product that I

couldn't guarantee was as fast and as quality as the one they have today. Over the summer we have overcome those hurdles, some of those hurdles, the major parts of those hurdles. And over the last two days as a matter of fact, we went through a stress test with OPIM and representatives from POPA, and I am looking forward to the results of those tomorrow or Monday. But I heard that they were good, she's nodding good, nodding good? Okay. Once that product gets completed and we are confident just like OC and DAV, we will start training. We will roll it out. The examiners will be compensated for time, and we will replace per the current schedule, East and West with the current EST product.

Only after that is done according to the schedule we have today, as long as nothing changes, will we roll, will we be in a position to roll it out to the public. First test to come, the examiners, and to be honest the examiners are going to bulletproof it because these folks are really good at searching. To be honest, they are

going to work the heck out of it and find all the issues, and then we'll fix them. And then in the end of FY19 calendar year, which is really the FY, I'm sorry. In the 2019 calendar year FY20 is when we have the project to do the scheduled. Lots of things could happen with projects between now and then given money and so on and so forth, priorities by the administration and so on and so forth, but it's on the books now. But the EST release to replace East and West comes first. Does that answer your question, sir? Okay.

CHAIRPERSON JENKINS: Okay. Great. Thanks, John, I appreciate it, thanks John and team. Okay, guess what? We're on time, yeah.

MR. OWENS: Yeah. Well, thank you very much.

CHAIRPERSON JENKINS: Tony is next to provide finance budget update. I realize you have two titles. I just confirmed that with Joe. I'm sure you have more titles than that.

MR. SCARDINO: But they're still shorter than Joe's, put them both together and it's

shorter than Joe's.

MALE SPEAKER: Tony you got 45 minutes today, so.

MR. SCARDINO: I see that. I mean, unless I start reading the dictionary, I don't think I can take 45 minutes. I'm from New York. I speak quickly. And my boss took some of my thunder away earlier today and spoke on shared services which was my first thing. Thank you, Joe, I appreciate that a lot. So I have a presentation and unless you have any questions for clarification on issue number one, I can move to --

MR. KNIGHT: I have a question, Tony.

MR. SCARDINO: Sure.

MR. KNIGHT: So what is the -- can you say publically what is the seed money, the additional funding that the department now wants for shared services, and if this shared services were to, or enterprise services, were to go forward where would it be located?

MR. SCARDINO: So seed money, startup,

standup -- it's called a lot of different things. We paid about $3 million to date, somewhere between $3 and $3.5 million for basically the assessment of our current services versus what the new construct or enterprise services or organization would possibly provide. For this year we then got an outstanding bill for roughly $8 million for additional standup and startup for the (inaudible) Services Center, an organization. That's a proportionate share so we would just be paying our part, and we haven't done so yet. And then an additional amount for 2018 which is closer to $15 million. 18 million is the total cost, but we've actually received some services for a part of that, what's called HR connect and some other small services. So the standup, startup probably will be closer to $14 to $15 million.

As to the location, that hasn't been fully decided. I think there is actually a reprogramming action that Congress will have to act on. I believe they've got a site selected somewhere and, you know, not in Washington but

somewhere, you know, outside the Washington Area. So that's unclear definitively. To be honest, I don't know.

MR. KNIGHT: Okay. And when you talk about the $8 million that they want currently, the standup Enterprise Services, do you project that the PTO would have a need to buy $8 million of services from Enterprise Services?

MR. SCARDINO: No, there is no connection there. For the $8 million we wouldn't receive any services. That would be for it to stand up the organization, have people work for the Enterprise Services organization, as well as -- I will call it enabling technology. So if you eventually go in and order on their technology site -- either higher or you wanted to buy something that's -- they are calling that mission enabling technology, which would be just to support the Enterprise Services Organization. So we would not be participating, we wouldn't receive any services in '17.

MR. KNIGHT: We would not. So, I mean,

just as the, you know, prior general counsel of the USPTO, just from a legal perspective, I would be a bit concerned how we could use USPTO, you know, funds that are appropriated for something where we don't know we're going to get services equal to the amount of money we're going to be spending.

MR. SCARDINO: Right.

MR. KNIGHT: Is that an issue that has been brought to the department's attention?

MR. SCARDINO: So let me start with -- as you know, I've never been an attorney. I have never played one on TV. I don't know all the details there specifically, but my limited understanding is that if we receive services it's legal for us to pay just about anything in the sense that we consider those to be services of good value. So if we paid for the standup in '17 and thought that we were going to receive services at some point in time that added enough value, I look at total cost, not unit cost. So my point of that is that if somehow this Enterprise Services

Organization could get us cheaper goods and services, when I say cheaper, less expensive, but bring in the same value, then you could make that cost benefit analysis. We just haven't seen that yet, so it's hard for us to pony up the standup dollars when as Joe's mentioned, a lot of our needs are so specific. It's hard for someone else new to come in and do it to the level that we do.

MR. KNIGHT: And then when you look at what's contemplated for Enterprise Services, is it just to buy goods like computers or would Enterprise Services also take over management of the USPTO's human resources function or the USPTO's IT function?

MR. SCARDINO: That's a little hard to say in the sense of, you know, it's going to be an organization that matures. So I think in the beginning it would be certain functions they would take over. So for IT I think they'd be buying commodities, network services, laptops, printers, things like that over time. It's unclear as to whether they'd delve more into your hardcore

development. I don't think anybody knows that answer.

MR. KNIGHT: All right, and then for human resources what would be contemplated for Enterprise Services?

MR. SCARDINO: That's a little more difficult to say, well not more difficult. They are a little further along there in terms of actually providing services. Accenture is the provider that the Enterprise Services Center has gone with, and they're starting to already doing some hiring for NOAA and doc rockets a lot of the smaller organizations or bureaus within commerce. I don't know to what level they'll do beyond hiring. They certainly are never going to make a hiring decision, but they're certainly going to provide candidates for NOAA and others to consider. So I'm not sure when you say about management, like take over all HR functions?

MR. KNIGHT: Well, what I'm concerned about is the American Inventors Protection Act -- when it was enacted gave the USPTO director

authority over the administrative functions of the agency. It really set up the department as a separate agency within the Department of Commerce. And what I'm concerned about is that this Enterprise Services, even if they could get us computers that were super cheap, and we couldn't buy them anywhere else, I would be concerned that it would take away the autonomy and the authority of the USPTO director to control IT and to control human resources. And just having worked here I have a really keen appreciation for how the director has utilized that authority to the benefit of the patent and trademark systems and how the Department of Commerce does stuff in a completely different way, and in a way that really wouldn't further the patent and trademark systems. So I'm just concerned about the authority being taken away from the director and given to the department's Enterprise Services Organization.

MR. SCARDINO: So, as Joe mentioned this morning, this has been a project that's been ongoing for three years now. I know former

director Lee had no interest in giving up the authorities granted by the AIPA and I can't speak for Joe but, I mean, he's been consistent in all of the conversations I've had with him and so that's not the interest here at all. And I've never heard that from commerce either. I think their goal is to take away some of the challenges of doing things like hiring that a lot of bureaus have had, so that we can devote our resources towards more mission services.

MR. KNIGHT: Right, but the only thing I would say to that is that I don't think that the PTO has had issues hiring and I think Fred Steckler and his team really -- when I worked with them, they really did an outstanding job. And they were also sensitive to the needs of the Patent Organization with respect to technical qualifications, where to find those people. Also, you know, very sensitive to the hiring needs and the training needs of the patent core. So, they were, you know, they responded to the needs of the commissioner really in real time to bring people

on when the commissioner needed people and they could turn that and turn it off.

And I'm just concerned that you're not going to have that level of service, that level of sensitivity to the needs of the commissioner for patents when it's, you know, sent somewhere else outside of Washington D.C. to be handled by this organization that knows nothing about intellectual property, really knows nothing about the patent and trademark systems. And to me it's really contrary to the legal provisions in the America Inventors Protection Act. And I'm concerned about it from an appropriations law perspective too. If we were to give $8 million of user fees today without even knowing what we're going to be getting for that, I don't think it's good enough to say, "Hey, we might have a need for $8 million of services in the future." I don't think that's good enough under appropriations law. I think you have to have something more finite that you are using the fees for. So, you know, I say all of that just because I'm concerned where this is

going and concerned about diverting user fees to other commerce bureaus and also the director, the next director, losing a lot of autonomy over the administrative functions of the agency.

MR. MATAL: Bernie, there is a simple, clear and direct answer to a lot of your questions about the intended scope of this program and that answer is, we don't know. We've seen different plans drawn up, just on the IT side, for example. The CIO's office has shown me, Enterprise Services plans that envisioned this center taking over IT security for all of the bureaus including USPTO. We currently provide all of our own IT security. We don't have an affirmative need to fill any gap or anything, but these are the types of things we're studying now. It's, you know, to figure out how would this work and could it work in a way that continues to provide the same quality of service.

You know, the legal question -- I am a lawyer, and if we were a more pedestrian agency with more pedestrian needs -- a lot of these

agencies all they really need on the IT side, for example, is word processing and email and internet access. You know, you could plausibly say how big -- especially if we were a small bureau, a big center could provide a cheaper and would be, you know, perfectly adequate, good enough for government work. But we're not that, you know, we're not that kind of a bureau. We have 8,300 examiners who need access to this high end, you know, search and docketing and databasing system, 24/7 across the country and it's -- these are the operational issues that we're looking at now to see, you know, how could this plausibly, how could this plausibly work? And you're right. Yeah, if we don't anticipate being able to use the system then, you know, we shouldn't start investing in it in the first place.

CHAIRPERSON JENKINS: Just to jump in and touch on some of Bernie's points, as well as yours, Joe, is on the flip side for the points that you're raising is that you need to have a stable, secure, non-cyber attacked or infiltrated

system that is not only valuable and working correctly for your users within the office, but also for our users outside the office. I noticed some of the comments earlier in the day about outside, and I don't know if you guys picked up on the comment outside. I feel if anything that we can do is, we should act as a team. It's not inside the office and outside the office and particularly with shared services. It needs to be a team effort. And so with respect to PPAC, I think we do have great concerns about the concept of the shared services, how much money is being spent. And, you know, the hope is that this administration will take a very deep and calculated look at really what is the advantage here? And we are a very specialized group. I mean, I was sitting here thinking when you were talking, Bernie, you know, we all just sit here and take a patent exam in order to be a patent attorney. So, you know, there are reasons why we do that. There are reasons why we hire the certain way we do. There are reasons why we have

this IT system. And I just feel that much of what is being discussed for shared services over the past three years is not of value to the user community.

MR. THURLOW: The thing that I, if maybe you could help us, we've heard, you know, Joe has done a very good job of bringing this shared services issue. You have been discussing it, so I think that your office has done a very good job in that and, you know, with the work, with the IP Bar Association in New York and throughout the country, everyone supports the position I think. Maybe one area you can help us is to the extent PPAC and other groups go on a letter writing campaign or something like that. There is numbers out there, million, 8 million, 15 million and 3 million. I don't know just maybe if you can direct this to where is the accurate information so that in these five or ten letters that get sent out, assuming that happens, there is a consistent certain amount of data so it gives all of us more credibility rather than having to go to the PPAC

transcript to get the numbers and so on because we all want to get the data right.

MR. SCARDINO: Okay. I'm trying to think quickly how that can be done. I can certainly -- any question you ask I can always give you an answer. It's just this is all part of what we pay into the working capital fund or The Department of Commerce. It's more of an internal fund that this is just a piece of it. So it's not something we publish anywhere or anything like that. Not that we're trying to hide it by any means, it's just that it's a fund that's got constant puts and takes throughout the course of the year. But we can certainly try to figure out a way to make this information available. I mean, '18 of course is something that's still in the can in the sense of it hasn't been appropriated yet. So depending on what's appropriated, what level then we'll get a bill from commerce, specifically. We know what they are planning for us to contribute. Now for 2018 it's almost $8 million on the dot, almost and that one's easier because

we're already ten months into the fiscal year. We know how much they have asked us to contribute, and we have not contributed so far.

MR. THURLOW: Thank you.

MR. SCARDINO: Sure.

MR. KNIGHT: I don't know if you know the answer to this question, but could the department stand up this enterprise services function without the PTO putting in its proportionate share?

MR. SCARDINO: As currently envisioned I would say no, but it doesn't mean that I can't have an Enterprise Services Organization. It's got a lot of components to it, and it's being built to service closer to 47,000 employees, that's what The Department of Commerce says. So I guess if you took our 13,000 out, they could size it differently. But, you know, again, I haven't looked at it from that perspective.

MR. KNIGHT: Right, fair. So what I was concerned about is, if they can't do it without the PTOs funds, if that would be the case, then to

me it's a clear argument that there is diversion of user fees because they have to be using the user fees in that situation to benefit the other bureaus because they couldn't do it without the PTO fees.

MR. SCARDINO: Well again, as I mentioned, they can't do it as currently envisioned because they envision us participating.

MR. KNIGHT: Right.

MR. SCARDINO: So if they envision us not participating, they could resize it, rescope it, and then they could probably do it without us.

MR. KNIGHT: Okay. Great.

MR. SCARDINO: But that's speculative on my part. So I didn't mean to just run through this slide quickly, apparently it didn't go so well.

MR. MATAL: Well, just to delve into, you know, one of the other issues, for example, about whether this would work, John Owens was talking later about our plans to implement this role based access control for access to our data.

One of the things that came up in one of our recent discussions, you know, with the other bureaus about this program is, you know, PTO needs to be able to provide people on the outside, you know, you all, a secure access to your data within our system. And that obviously raises a lot of tough security issues. We need to make sure you, the patent applicants and owners, can access this data, and then no one else can break in there. We have many attacks on our system every day. And it came up that no one else in Commerce needs that, and no one else has, you know, it's a fairly unique thing for a Federal Agency to need to be able to provide people on the outside secure access to data within the agency system. And so it raises questions about what's the value of this collectivized model of provision of these services. If PTO is, you know, unique in this way and unique in that way, then you start to lose a -- there are many economies of scale. We would remain this unique thing within this, you know, collective model. So these are the types of

issues we're grappling with now, and I'm beginning to discuss with the Commerce Department.

MR. SCARDINO: Moving right along, 2017, as I mentioned, as of the date of when we put this together, we were nine months through the fiscal year. Planned fee collections are running a little below what we'd anticipated, but not much. And we think that that's kind of according to plan because we tend to get higher fee collections in August and September, at least this year in terms of maintenance fees. So we think we'll be in pretty good shape there. See the spending versus collections are pretty much as we anticipated. So that at the end of this year, we anticipate we'd have $279 million in our operating reserve on patent side. Now, you may recall, the $300 million is our ideal floor. We have minimal and maximum operating level limits. $300 million has been our threshold minimum effort. We did this cognizantly, where we said we would spend a bit below that this year and make up for it next year because with the new fee rates we will be able to

collect more next year than we'll actually spend, so we'll put money back into the operating reserve. And I'll go through that in a little bit.

2018 budget -- of course with any new administration it's submitted later than normal. Statutorily, it's supposed to be the first Monday in February with the new administration that comes in. Of course takes a few months longer so we submitted on May 23rd. Secretary Ross then testified very, very soon thereafter in The House and The Senate. And our estimate at the time when the President's budget was submitted was $3.586 billion in terms of fee collections for the entire agency. And that budget mostly was a no major new initiatives, but it was continuing to what we call kind of a little bit of a soft landing in terms of patent examination hires. We have mostly higher attrition and then have a few hires in PTAB, Patent Trial and Appeal Board and then of course, you know, we spend money on people and IT around here. And we would have a lot of significant

investment in the patent IT portfolio to deal with a lot of the legacy systems that Joe mentioned this morning and John just did. Obviously, aging and they need to be upgraded so next generation investment continues.

And The House has issued its committee report a few weeks ago on our 2018 budget requests, and they have provided a markup of $3.5 billion. So that's $86 million less than we submitted. Mostly we believe that's because the fee rule package has been delayed. So they know that we won't bring in more fees as we had anticipated when we submitted the President's budget. I don't know what happened there. 2019 budget -- of course '18 arrived a bit late, but '19 we're trying to get back on a regular schedule. So the way this works is we submit a budget to The Office of Management and Budget by middle of September, they review it all fall and then eventually the President will submit a budget to Congress the first Monday in February. So we will provide a draft budget for review. I believe

it's August 11th, next week to PPAC for '19.

As part of the '19 budget we are incorporating guidance and direction from the administration -- what's been called the reform plan back in April. All agencies were issued a 14-page memo asking agencies to streamline workforce restructuring, eliminate redundancies, do away with maybe programs that no longer have a purpose. So we are in the process of reviewing things internally and also working with The Department Of Commerce and OMB to incorporate that as part of our '19 budget.

And last but not least, the favorable fee review -- we are still in the process of working through our 2015 fee review. The package is being reviewed in the administration, and then at the same time we're still in the process of every two years we have to review our fees, so we started another process earlier in 2017. So we're almost to the point of lapping ourselves but not quite. These things just take a while, especially with the change of administration where new rules

aren't usually approved the last four to six months of administration or the first four to six months of a new administration. That's common, so we knew we'd be delayed a bit. And finally, absent congressional action, our fee- setting authority will expire in a little more than a year, 2018 September. So that's my quarterly plug to remind people. Any thoughts, questions, comments, praise?

MR. WALKER: I have a question that came in from a member of the audience, from a member of the public, and it was around fees for micro-entities. So I'll just read the question as it came in. The question is, would the USPTO consider changing the requirement for micro-entity status from four patent applications to eight?

MR. SCARDINO: I believe by statute it's four, but Dana might be able to elaborate.

MR. COLARULLI: Yeah, by statute it certainly is four, and that was the intent in the AIA. This isn't something that we've seen necessarily a need to change. I'm sure a case

could be made, and I'm sure Congress would be open to it and we'd consider it as well. There has been some focus on other proposals to expand micro-entities, but not certainly on that number. The focus there has been on expanding it to address some issues that universities have had, but the intent was to have it small and have an income level as well and that's what we've implemented. Mark?

MR. GOODSON: Consistent with that, you know, you have a guy that's a prolific inventor. He works for a big corporation, ABC. He retires; he still can't be a small entity, can he? Because he is the named inventor on a bunch of patents. Is that right?

MR. COLARULLI: You can be a small entity. You can't be a micro entity.

MR. GOODSON: I'm sorry, well I was going -- I was going after micro. He would not be qualified for that under the statute; is that right?

MR. COLARULLI: Likely he could not

qualify for micro entity. And remember this is a two prong. One is an income prong, so they'd have to meet that and the other yes, is --

MR. GOODSON: The number of patents.

MR. COLARULLI: The number -- named inventor on the number of patents. So in all likelihood probably not, if he isn't named the patent.

MR. GOODSON: Okay. Thank you.

MR. LANG: So I'm thinking back to November 2015 when we had our PPAC hearing on fee setting. I think back then many of us would have been surprised to contemplate that the fee setting that was initiated is still not in effect over a year and a half later. And I think that the, you know, there are understandable reasons for at least part of that delay. But can you comment on the short and long-term impact of that delay on the PTOs finances both from a perspective of the missing dollars from, you know, the time from which the fee setting might have been expected to go into effect and when it actually will go into

effect. But also from the standpoint that we're now in a second fee setting period, and it may be that much more difficult to contemplate, you know, for the fee increases when the first set has not yet gone into effect.

MR. SCARDINO: Yes, I can comment. So when we were together in November 2015, our hope was that we would be through the process and get a final fee package enacted that summer, the following summer 2016. But we knew we were skating a very fine edge in the sense of, if we got, we bumped up to when basically they put a moratorium on new rules at the end of an administration. We were going to cut it close. And we did cut it close, and we got to that point where we tipped over. So they did this for all agencies; they just did not put any more rules through. So, if we would have gone into effect let's say July of 2016 versus pick a date just for argument sake December 1st of this year, which we're, you know, that's one of the dates we're hoping that we'll get the new fee package enacted.

That's, you know, almost a year and half. That's probably close to $200 million in patent fees that will not come in at the additional rates.

Again, you never know how that would have changed behavior and such, but let's just use that as a dollar figure. The main impacts of that, the main, are the operating reserve because as I mentioned, we've dipped into it the last couple of years, and if we have more fee income coming in, we wouldn't have dipped in. We would have just used the money that came in. I remember our goal was to get an optimal level of three months in the patent side, and that's about $800 million. We've got 279 in there. So if we had $200 million more, do the math, right. We'd be closer to half a billion dollars, which would still be less than two months reserve. So, and I'm not saying we haven't adjusted our spending to incorporate that because we have had to adjust it because we don't want to go much below that 300. So there are some things we've held back on, some hiring and certainly some IT projects, nothing

major, major, but we certainly held back on some things. I know furniture -- we were supposed to buy furniture for everybody that we had to hold back on. There was certainly some activities that we've had to curtail.

CHAIRPERSON JENKINS: We actually had a quite detailed exchange regarding furniture. I think the last PPAC meeting offline. So yeah, we are familiar with the furniture discussion. I think to tie into that, and I know Dana is sitting right next to you to discuss this important point, is your last point on your last slide, which I would have made bigger and bolder and probably underlined, is that fee setting is going to expire. And it's going to expire next year, and it will be here before we know it.

MR. SCARDINO: Yeah.

CHAIRPERSON JENKINS: And I think when you, in my viewpoint listening to everything today, and what we've talked about previously, if you add all of these things up, I mean, application filings are flat to some degree,

right? The money that you thought you were getting from RCEs -- RCEs are going down. Your appeals are going down, maybe PTAB is going up, you know, based on the increase that David showed us. You add in the whole question of enterprise services and how that will impact the office and if DOC will come back and ask for more money, sorry. So, you know, I think probably we need to start talking about this on a regular basis and more often is how this will impact us -- both the office and the stakeholders, us team, and how we will be impacted by this not continuing for us, that last sentence.

MR. SCARDINO: Yeah, I mean, simply put if we don't retain fee setting authority it limits our ability of course to raise fees if our operational requirements necessitate that. Now, what that would mean of course, is we'd have pendency and backlog, right? We wouldn't be able to hire as many folks. We wouldn't be able to do as many IT upgrades. I mean, again, it wouldn't be drastic like overnight. But that would be

degradation over time in our system, absolutely.

CHAIRPERSON JENKINS: Dan's point of and even with the ability to do so, it has now taken us almost two years to even get that accomplished. So, add in the fact you are not going to be able to do that, assuming they don't continue this, I mean, how long will you then take to get the money that's needed to keep the system running?

MR. SCARDINO: The rule making process in the Federal Government is never going to necessarily be the most efficient process, but there are many ways why there are checks and balances in the process and, you know, participation from the public. I mean, it's a very thoughtful process, but it definitely is dampened a little bit by a change in any administration. You're always going to have that point in time where you can't get a rule enacted as quickly as you would like to.

MR. THURLOW: Dana, what's the process? I assume you let the Congress know that we would like that extended.

MR. COLARULLI: We've talked to the judiciary committees. Frankly, it's still a bit far off for them. So we have, and there hasn't been a vehicle to either address that or a number of other, I think, helpful technical corrections to our statute that we've discussed in recent years. So we're continuing to talk to them, continuing to highlight both that expiring authority. We have a more near term expiring authority, which is the TEAPP authority, our telework flexibility. It affects about 40 percent of our full-time teleworkers. And then further out the CBM proceedings will also expire in 2020. So all three of those expiring authorities -- we're certainly looking at a slightly different message on each, of course, but they can be addressed by different vehicles, whether it's by the Judiciary Committee, whether it's in appropriations, so we're looking at all options.

MR. THURLOW: I know a certain stakeholder community wants the CBM extended. What is your role in that? Do you say yes or no?

Does the patent office say yes or no, or you make certain recommendations or --

MR. COLARULLI: There is no official administration position in the new administration. At the time that we issued a report required by the AIA in 2015, the Agency recommended to allow the proceeding to sunset as Congress had intended. This was intended to address a point in time problem for the financial services industry. And the thought at the time, and I think certainly the legislative history plays this out, having had lots of discussions around the time, I remember the conversation well, was that at the time that it would expire, the PGR and the IPR proceedings would be able to fully address the needs of that community that was previously in CBM. I know that the General Accounting Office, GAO, was asked by the Judiciary chairman to do a study on this. How the proceeding worked and should it expire? And they are in the process of doing that right now, and they have met with our team as well. We've highlighted that report. I've said the same thing

I just said to you to them as well.

MR. THURLOW: Yeah, and this is more leading into your discussion but, you know, you brought up a good point about the technical amendments. As you are well aware with the AIA there was technical amendments, handled some doughnut issues or some particular issues there.

MR. COLARULLI: Yeah.

MR. THURLOW: To the extent that you can maybe at the next meeting share those issues with us because obviously big issues like venue or other things we can't put in there. But there are some what is a technical amendment is subject to much debate as you are well aware.

MR. COLARULLI: Sure.

MR. THURLOW: But there are a couple of things, for example, PGR numbers have been historically low and stopped being used. So people believed that if you change the estoppel requirements to make them more like CBM, they'd be used, and they would be more of a quality focus rather than the IPR -- 80 percent of the IPR is

involving parallel litigation. That would be two different focuses. So it's an interesting discussion and maybe a kick starter for the PGR.

MR. COLARULLI: Okay. There is a number of -- the technicals that I'm referring to are much more technical. The PGR change certainly was a carryover from the AIA. I think the intent of the AIA was to have a different estoppel effect for PGRs appealed outside of the agency, not internal proceedings, but the District Court. So that's always been on the list. I'm happy to refresh that list and bring it to the committee.

MR. THURLOW: Sure.

CHAIRPERSON JENKINS: Any other questions for Tony? So I think we're actually -- Dana we're kind of in your presentation.

MR. COLARULLI: Sure. Well, I should start off saying, you know, Tony said he was going to try to be very efficient, so I showed up early because I assumed that he would finish sooner, and he failed to do that.

CHAIRPERSON JENKINS: Well, I was only

going to give you five minutes. He was looking very bleak this morning.

MR. COLARULLI: Good afternoon, I'm happy to be with you. I realize I'm closing out the session, so I'd like to have more exciting things to report. But what I will tell you is what we're looking at in Congress and where they are right now. It's August, traditionally this is Congressional Recess. Half of The Congress is out; the House left town last week. The Senate is still here. The leader had announced that they'd be staying through mid-August. I understand as about half hour ago talking to The Senate Cloakroom. Their hope is actually to leave, if they finish up work even today or tomorrow and leave town. So they may be leaving sooner than they expected. I know a lot of staffers that had bought non- refundable tickets for their vacation and then had to change them, now will be happy that they are leaving a little earlier.

But I'll start with that, the schedule for both August and September. They are back

right after Labor Day and generally September becomes the month that they continue talking about budget bills, appropriations bills with the hope of trying to wrap things up by the end of the month. If they are unable to do that, generally a continued resolution is passed and at this point although the House has done some good work in trying to move forward bills, the Senate has been trying to wrap up some as well, the progress doesn't suggest that they'll be able to do that again this year. So you can expect a continuing resolution at the end of the month. What that will look like, we're not sure how long it will be and whether after that the plan would be to create an Omnibus Bill of some kind or multiple small, so called "mini-busses," still up in the air. But September, that's the month when they'll come back and they will finally figure that out. 17 ends on the 30th. They have to figure that out. The debt ceiling also expires mid-October per the Congressional Budget Office. It's unclear how the Congress might address that and how OMB might

weigh in with their proposal. Expected legislative agenda, outside of the appropriations in the budget bill certainly NAFTA is being discussed actually from possibly a resurgence of discussion trying to move healthcare reform again certainly could happen. So again, consistent with other reports I've given, IP isn't a front burner issue, domestically for Congress. It certainly has been brought up in some of the international discussions, but again, kind of a backseat for -- but for the most part for the main Congressional discussions.

One exception is the reintroduction of Senator Coons' Bill. Senator Coons last Congress had introduced his Strong Patents Act. He has expanded it and called it the Stronger Patents Bill. This is the ER for economic resilience. It has a lot of the same provisions that we saw in the Strong Act, a number of additional provisions reforming PTAB, some additional provisions addressing infringement and enforcement of rights and the next couple of slides address that. But

generally, the Stronger Act is broader than the previous version and a bit more comprehensive on PTAB and infringement, and significantly adds in a proposal to overturn eBay, which we had seen in draft legislation in previous congresses as well since the eBay case came down.

So, same provisions -- PTAB changes the claim construction standard from BRI to District Court claim construction in PTAB cases, changes the burden of proof to clear and convincing, limits standing. You may remember the discussion around whether they should be standing in PTAB cases, came up somewhat in the wake of some of the Kyle Bass litigation that we've seen and others in the financial services industry.

And then language again, we had seen before on changing the composition of panels. There was concern about the panel that decides on initiating and the panel decides a case on the merits of the PTAB, whether we should change that structure. And PTO in fact even went out to his stakeholder community to seek opinions on that

issue. I mentioned the revolving fund, mentioned earlier legislative proposals to expand micro entity. And the bill in the previous Congress also pulled in separate legislation that we had seen in the House to address issues of demand letters.

The Stronger Act has additionally more changes to PTAB and I've listed a number there significantly and it's worth a deeper dive for those who are interested, limitations on initiating a PTAB proceedings based on claims. So it certainly creates a new process for amendments working from the bottom, new process for amendments of claims, it changes definition of real party interests, creates an interlocutory appeal of the institution decision. This has not been proposed in context with the PTAB proceedings, but it had been discussed as a interlocutory appeal of Markman decision in District Court in the lead up to the AIA. I think it's fair to say the impact of that would probably be the same, of this provision would be the same

as that provision before, likely certainly delaying resolution of the PTAB trial potentially increasing cost than any other thing. Certainly that should be considered, but it is another way to get to the concern that folks had addressed about certainly the same panel deciding on initiation. And afterwards I think that was why this provision was placed in there.

And then going back to what I had mentioned before -- a limit on reviews based on one claim. So it's an extension of the idea of a one bite at the apple. It really limits a proceeding going forward -- a one claim for forever, for the life of that patent regardless of the petitioner seems very, very broad in scope. Again, as I said, worth more review. A few other provisions I mentioned the eBay provision, also some changes to 271F that would allow for a claim, even if a product is never, is covered by a U.S. patent, never re- imported back into the U.S. So it significantly broadens the scope in which you could enforce your right outside of the U.S. based

on a U.S. patent. So again, worth a good look.

It's significant to say the legislation is a collection of provisions that are certainly interesting to look at, interesting to understand what their impact would be. I think to note the -- when the bill was initially introduced as the Strong Act in the last Congress, it was in part introduced as an opposition bill to the bill that the chairman, the committee and the ranking member were pursuing similar legislation that we saw in The House.

The current bill also has about three co-sponsors. Also, like the last Congress legislation, there is no indication that the chairman of the ranking member support this bill. I don't expect it to move quickly anytime soon.

But again, it's the only piece of patent reform legislation that's out there, so it's worthy of looking at and considering the impact. Additional Congressional activity moving from the Senate to the House side. We've had two hearings in front of the House Judiciary Subcommittee on

Courts, Intellectual Property and the Internet. The first hearing primarily focused on reviewing what happened in the TC Heartland case. For many months the leaders of the Judiciary Committee on both sides had been looking at TC Heartland after a comprehensive approach to patent litigation reform had stumbled, and they said we'll wait to see what happens in TC Heartland, and at that point consider whether additional legislation is needed to address the concerns that we see in venue shopping.

TC Heartland came out I think a little in their perspective better than they may have hoped to address the problem that constituents were coming to them saying that there was a problem in venue shopping. This hearing really was to review that decision and by and large the members, both the Chairman of the Judiciary Committee, Chairman Goodlatte, and the Chairman of the Subcommittee, Chairman Issa, both said it was a good decision. They're happy that it addressed at least the concern that they were hearing. They

had continued to look at it, in fact Chairman Issa had expressed some interest in considering whether they are not, might be legislation that would be helpful to clarify principal place of business in the future, but wasn't necessarily advocating for legislation at that point. I think a follow on hearing that kind of continued the discussion with -- and I have said this before, in my view a very, a terrible title for the hearing. The impact of bad patents on American business failed to take account of many of the things that we've certainly done here at the Agency.

But it was a continuation of the discussion of should there be legislation to address venue? Should there be additional activity on increasing the quality of the patent, in addition to what the Agency has done. And it really did look at the PTAB proceedings. This really focused on what's the impact the PTAB proceedings and in light of proposals in the past to reform, should there be additional proposals to reform or make some significant changes to PTAB.

At the end of the hearing, certainly there were views from both sides, Judge Michele raising a lot of concerns about the impact of the proceeding. Julie Samuels from Engine talking about the value of the proceeding for the industries that she works with both agreed at the end that legislation right now wasn't necessary, but it's something that they wanted to continue to look at.

So I think that's where they left the discussion, but Chairman Issa at the end said a couple of interesting things. Number one, he reiterated that continue to look to see if there should be legislation to address venue. He expressed support in general for IPR, and he expressed a lot of concern about the Supreme Court taking up the oil states case. He reiterated that he thought certainly the proceeding was constitutional, certainly it was a value, and he suggested that he personally even would be filing a brief in the case, which we haven't yet seen drafts of, but I'll be eagerly watching for it.

So I think at the end of the day there

may be some room for legislation, but they are waiting to see what may happen both at the PTAB and, you know, in the courts.

Issa, who is currently the chairman of the subcommittee may also be a candidate next Congress for chairman of the Judiciary Committee, which should have a much, more powerful seat to address some of these issues that he is interested in. So again, we'll watch that closely. So the slides go a little further into the witness statements. I will mention that last one. Peter, you had asked about CBM. There was some comments from witnesses who said we'd love to see CBM continue. Chairman Issa said he'd want to try to address some of those concerns with fairness, but recognized it was a transitional proceeding, so again something to watch. The chairman will also certainly read the GAO Report as it comes out. We'll be watching to see what that report says as well on that issue.

MR. WALKER: Dana, just to interrupt for a second.

MR. COLARULLI: Sure.

MR. WALKER: Now, it's interesting the CBM because when we looked at the data this morning from David for this fiscal there have been, I think 40.

MR. COLARULLI: Yeah.

MR. WALKER: So, I mean, to make a legislative change for something that's 40 CBM just seems like beyond overkill. So, I mean, hopefully that's being taken into account by someone.

MR. COLARULLI: Hopefully, and you know, both David's team and my team both met with GAO when they came in. David gave that kind of history of filings, and you're right. From when the proceeding was first available to now, we've seen a decline in those filings. I will say I think one of the reasons why Congress felt they had to create this transitional temporary proceeding was because the prior art that could be used to really make the case wasn't necessarily in traditional places. It wasn't in patents. It

wasn't in printed publications. I would argue that much of that in the last few years has changed both as a lot of companies in the financial services industry have proactively engaged the patent system. But also there has been a lot more writing about the technology in that area. So it very well may be as I had suggested that we're now either at a point or soon will be where PGR and IPR could fully serve that community and address the needs of the Congress to try and address at the time.

MR. THURLOW: I'd only add to what Michael said. I mean, the Federal Circuit knocked down or are really now at the scope of the CBM too. But I think there is still desire just because of the specific circumstances, you know, it does have unique circumstances. There has to be a litigation and so on. So I think they want it for the option, but Michael brings up good points.

MR. COLARULLI: The last thing I'll highlight -- as I mentioned, IP issues at least

for Congress haven't been on the front burner. The staff have still been interested in a number of issues. We were able to bring up Nate Kelly, our solicitor, David joined us as well with a couple of others to brief Senate Judiciary staff cases in front of the Court this term. We also talked about some of the issues that the Court would be taking up next, would likely take up next term related to PTAB, all interesting topics that the staff are going to need to address at some point. We got some very good engagement with staff and tried to educate them. At least give them the language -- both highlight the issues that are being discussed and what kind of the language that we use to talk about them.

We have also done a little bit softer events trying to educate folks of particular Congressional caucuses. In this case the Congressional Manufacturing Caucus on the value of IP, how IP is used. We were able to put together a panel for the Manufacturing Caucus sitting next to the SBA and the SBIR program representatives to

talk about how IP and SBIR program can help a small company actually bring a product to market and then be successful as well. So again, trying to show the value both of the work that we do here, the work of SBA, lots of other opportunities like that. I think we will be up to do more staff briefings on issues like geographic indications, other trademark issues next Congress. We're also looking to do some more caucus events on issues like stem education and what the Agency has been doing and investing in those activities. With that --

MR. WALKER: Dana, there is another question on that.

MR. COLARULLI: Sure.

MR. WALKER: Can you use those opportunities, these Congressional events obviously is focused on manufacturing, but great opportunity to the number of asks that the office will have in terms of legislative changes, fee setting, authority extension. Did you mention those issues?

MR. COLARULLI: Yeah.

MR. WALKER: During these or worked them into the conversation somehow?

MR. COLARULLI: To the extent they land the audience that would be minimal to those absolutely. So, the briefings are a good way for us to go up and talk to them about an issue that they have asked us to talk about, but then highlight. And by the way there is some operational limitations, so certainly on the fee setting authority we've highlighted it frequently. On TEAPP as well, in the wake of a lot of discussions we had about PTOs, time and attendance policy on some of the OIG reports and the hearings leading late last year. We were able to transition the discussion to -- and by the way telework has been a really good business model and that authority expired. So some of those issues we're able to highlight. Other issues, are in the package that, you know, I think there is actually language for even for PPAC to clarify some of the ethics rules around PPAC members. There is --

what's that?

MALE SPEAKER: We like that.

MR. COLARULLI: You like that? There is also some language to clarify some of the flexibilities for the PTO on dealing with situations like the power outage last December. Those are issues that we can try to work into discussions, but certainly we couldn't do a whole briefing. And so yeah, absolutely Mike, to the extent we have the ability we try to raise those issues.

CHAIRPERSON JENKINS: So also quickly, we have another question from the public about a little bit more detail on the telework, upcoming deadline for extension. You mentioned it briefly during Tony's presentation, but maybe a little bit more detail?

MR. COLARULLI: Sure, so the 2010 Telework Enhancement Act gave the PTO specific authority to allow its employees to waive their federal right to reimbursement for their travel when they're asked to come back to the office for

training or any other engagement. The folks that are currently on the TEAPP program, the Telework Enhancement Act Pilot Program, which is created under the act are full time teleworkers and are not required to come back every -- about twice a bi-week which turns out to be 13 times a year. We can change their duty stations to where they are and ask them to come back for training, a limited period of time which we've negotiated with the unions. When they come back they are paying their own way.

So I mentioned it's about 40 percent of our full- time teleworkers across the agency. The other component or folks that are either full-time teleworking in the 50-mile radius or there are full-time teleworkers that do come back to the office, you know, every twice a biweek. The agency has seen a lot of benefit from the TEAPP program. It allowed us to expand our full-time teleworking workforce considerably since 2010, which really was Congress' intent. We're now at a point that I think both patent operations,

trademark operations or PTAB and our TTAB, all which will have (inaudible) have now gotten to the point where they have figured out how often they might want to bring people back for training and engagement. We're at a point where we could really estimate those costs, but another three years or so would give us additional time to incorporate that fully into our budgeting.

That's what The Hill has reached out to us and asked -- would a short-term extension be helpful to us? We've said yes. Over that three years, it's about a $3.5 million cost expenditure, which certainly is a small percentage of our overall budget. It's a larger percentage of the discretionary funds that PTO has. You heard Tony say we fund people and we fund IT. Those are our big expenditures within IT and our discretionary funds. You know, that would be 3.5 million we could put to other things. So, we've been very supportive of extending it. We haven't seen it introduced in any legislation yet, but there certainly has been interest and we've been fueling

some of that interest.

CHAIRPERSON JENKINS: Great. Any other question for Dana? Okay, Drew? Nothing, close, what a great meeting? Nothing, nothing, come on Drew.

MR. HIRSHFELD: What a great meeting. No, thank you everybody. As always, it was a great meeting. I know we fell way behind in the morning and we caught up in the afternoon. Thanks very much to -- I will thank both all the PPAC members for all of their hard work and everything they do to not only put this event together, but also behind the scenes to help advise PTO and thanks to all the PTO staff, many of whom come in and out, some of whom like the folks to my right stay here the entire time who help not only put this event together, but run the entire agency and thanks to everybody.

CHAIRPERSON JENKINS: Thanks, Drew. I echo all of that, a great meeting, great discussion. I know Peter said to me earlier, you know, you always learn something -- I'll

paraphrase, you always learn something new coming to the meeting. You know, we learned so much, we've been on the committee, both Peter and I have been on for a long time, but there is always new challenges, new things to address. I want to thank -- we had a great audience here and also online. We tried very hard to address the questions that we were coming at from all angles. I appreciate the team effort on that. That was great and please continue to ask us questions. I also want to thank AIPLA they sent in comments to us a couple of weeks ago. I appreciate that as well and look to continue the discussion. So with that I would like to move to close the meeting. Do I have a second?

MR. THURLOW: Second.

CHAIRPERSON JENKINS: Second, okay great. So we close. Thank you so much everyone.

(Whereupon, at 3:01 p.m., the PROCEEDINGS were adjourned.)

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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