PARTICIPANTS:

PPAC Members:

MARYLEE JENKINS, Chair
BERNARD KNIGHT
JENNIFER CAMACHO
MICHAEL WALKER
PETER THURLOW
DAN LANG
JULIE MAR-SPINOLA
MARK GOODSON
JEFF SEARS

Union Members:

PAMELA SCHWARTZ
CATHERINE FAINT

USPTO:

THOMAS BEACH, PE2E & PTAB Portfolio Manager
SCOTT BOALICK, Deputy Chief Judge, Patent and Trial Appeal Board
MELANIE CANTER, Staff Attorney, Office of Enrollment and Discipline
DAVID CHILES, Acting Chief Information Officer
DANA COLARULLI, Director, Office of Governmental Affairs
PARTICIPANTS (CONT'D):

WILLIAM COVEY, Deputy General Counsel and Director of OED

ANDREW FAILE, Deputy Commissioner for Patent Operations

DAHLIA GEORGE, Staff Attorney, Office of Enrollment and Discipline

DON HAJEC, Assistant Deputy Commissioner for Patent Operations

GARY JONES, Director, Office of Patent Training

DAVID LANDRITH, Portfolio Manager

JERRY LORENGO, Director, Technology Center 3700

SHIRA PERLMUTTER, Chief Policy Officer and Director for International Affairs

MARK POWELL, Deputy Commissioner for International Patent Cooperation

DAVID RUSCHKE, Chief Judge, Patent Trial and Appeal Board

ANTHONY SCARDINO, Chief Financial Officer

DEBBIE STEPHENS, Associate Commissioner for Patent Information Management

DAN SULLIVAN, Director, Technology Center 1600

KAREN YOUNG, Director, Technology Center 2900

VALENCIA MARTIN WALLACE, Deputy Commissioner for Patent Quality
PARTICIPANTS (CON'T):

Other Participants:

JOE MATAL, Acting Under Secretary of Commerce
BOB BAHR
MARY CRITHRIS
DREW HIRSFELD
BERNARD KNIGHT
LARRY LIAN
CHARLES PEARSON
RICK SEIDEL

* * * * *
MS. JENKINS: Good morning. Good morning, everyone. We're going to start our PPAC quarterly meeting of February 1st. I'm not sure where last year went to, but we're not in February and so it is the first meeting of PPAC for the year. Hi. I'm Marylee Jenkins. I am Chair of PPAC and welcome, everyone. Thank you for attending. Thank you for attending via the web. It is live. So we're going to start. We have a lot of topics. Very interesting developments at the office and always a good source of information for folks who are logging in or sitting here in the audience of what is going on at the moment at the USPTO. I encourage you to also recommend these meetings to colleagues and friends because you learn so much about the activities of what we do with the PTO, as well as what is going on here. So I'm also going to warn you that my voice is kind of coming and going so Mike may have to interpreter later on. He said
not a problem earlier. So with that, I would like to introduce Joe Matal. He is preforming the functions and duties of the Undersecretary of Commerce for Intellectual Property and Director of the USPTO, and I always call him the interim directors, so.

MR. MATAL: Thank you, Marylee, for that introduction. First of all, I'd like to acknowledge our three new PPAC appointments. All three of whom are reappointments and are serving a second term: Mike Walker, Dan Lang, and Mark Goodson. Welcome back to PPAC and we look forward to your second term of the committee. A few updates. The President's nominee for director Andrei Iancu is locked in to get a vote before the U.S. Senate on Monday at 5:00 so you'll be able to watch that on TV. We don't expect the vote to be, contrary to some of the press accounts, it's pretty clear the reason they scheduled this for a vote is the Senate periodically does bed check votes on Monday night for some of the senators to show up, and that appears to be the reason this
was scheduled for a vote, but we expect him to be confirmed overwhelmingly. After the confirmation it typically takes a couple of days for the President to sign paperwork, so Andrei should be sworn in as director within about a week. A couple more updates. We recently went through a brief government shutdown, but in the course of that shutdown OMB authorized PTO to use its reserve funds. We have funds reserved from -- user fees reserved from past payments that allowed the agency to remain open for a period of time. There are threats of shutdowns looming in the future. The CR that was agreed to is pretty short, but given this recent precedent we're confident that it seems likely we'll -- again, we wouldn't be affected by a brief shutdown. We'd be allowed to use our reserve funds to continue to operate. Some brief update on patents' issues.

For the first three months of this year compared to the first three months of the last fiscal year we've actually had a 5.4 percent increase in serialized patent filings, new patent
applications. That's our first substantial increase like that in a while. It came as a bit of a surprise to us, but patents are popular again. They've come back into style and we're heartened to see that rise. This has also been accompanied by a 9.1 percent decrease in RCEs which is also a good thing. RCEs are effectively do overs, and various programs we're instituted seem to have some success and leading to a decrease in RCEs. Also, an update about matters before the Patent Trial and Appeal Board. Our ex parte backlog continues to go down. The board's made great progress in reducing the pendency of ex parte appeals which still make up about two thirds of the board's work, and the board continues to comply with all of its statutory deadlines. For the first time ever it did make two exceptions to that deadline. After the Aqua [phonetic] products case came down, vacating our rule governing amendments and IPRs the board did extend the deadline for two pending IPRs that involved amendments until the agency was able to issue
guidance across the board as to how to handle
amendments on those cases. Both of those cases
have since been disposed of now that the guidance
has been issued. The Supreme Court had oral
argument in the oil states case involving the
constitutionality of AI trials. Several of us
from the agency managed to get tickets to attend
that argument and heard the Justices' comments.
I'm sure you've all -- many of you have probably
read the transcripts or followed the cases well.
The tenor of the argument reinforced our optimism
about the outcome of the case. We also had a
decision in the Wi-Fi one case involving the
appeal -- ability of institution decisions, an
issues that we won in (inaudible), but, you know,
agency has taken the view that the statutory
provision that institution decisions are final and
non-appealable means that they're final and can't
be appealed, but we got an adverse result on that
in the federal circuit. We're not sure this will
be the final word. There are still two cases
pending in the Supreme Court that also raised this
issue Anser Sharari secure access and unwired
planet cases, and it's possible this issue will
come up again. And then just a brief note about
the shared services, an issue which has been
discussed in the past. We're still in
negotiations with CFO staff at the Commerce
Department over the scope of a contract to
evaluate the shared services project, have an
outside auditor look at it. Outside auditor look
at it and see if it would make sense. And then,
finally, I'll just note that we have an exciting
and jam packed agenda for all of you today. We'll
get updates from the patents organization,
including the patent quality team for our
international office. Later the Patent Trial and
Appeal Board will present on its issues. We'll
have an update from the office of gov affairs as
to what's going on on Capitol Hill. Not a lot of
activity on big patent legislation like we saw in
the past two Congresses, but some small but still
significant things going on. And then, finally,
our Office of enrollment and Discipline will cap
it off with a discussion of their near diversion
program. So I look forward to attending this as
much of it as I can. Unfortunately, in the
afternoon I'll have to leave for a trademarks
matter. So I'm sure it's one of those exciting
moments when trademarks gets to trump patents.
Unfortunately, I won't be able to attend the
afternoon because of that, but I do look forward
to the rest of the presentations.

And with that I'll had it back to you,

Marylee.

MS. JENKINS: Thank you, Joe. On a
personal note I just want to say how appreciate we
are. Obviously, we're going to be transitioning
to a new director, but we just want to thank you
for all your support, your guidance, your
encouragement, your communication. Myself, and I
think I speak for the rest of the committee, we've
really appreciated the interaction for the, I
guess, seven months now.

MR. MATAL: I think almost eight.

MS. JENKINS: Almost eight. Yes, he's
saying eight.

MR. MATAL: Really kind of stretches the definition of interim director, huh.

MS. JENKINS: But really I thought it's worked very well, and we're certainly trying to, as an advisory committee to the U.S. Patent and Trademark Office, to be more interactive with the office and try to get messages out from the user community, and you have only been supportive and helpful, and committed, and we all appreciate that. So with that, we usually do a roll call.

So, Pam, you want to start us off?

MS. SCHWARTZ: Pam Schwartz. I'm with the Patent Office Professional Association and PPAC.

MR. GOODSON: Mark Goodson, PPAC.

MR. KNIGHT: Bernie Knight, PPAC.

MR. SEARS: Jeff Sears, PPAC.

MS. COMACHO: Jennifer Camacho, PPAC.

MR. LANG: Dan Lang, PPAC.

MR. THURLOW: Peter Thurlow, PPAC, and this is Julie Mar--Spinola. She stepped out.
MR. WALKER: Mike Walker, PPAC.

MS. JENKINS: Hi. Marylee Jenkins, PPAC.

MR. MATAL: Joe Matal, USPTO.

MR. HIRSHFELD: Drew Hirshfeld, USPTO.

MR. FAILE: Andy Faile, USPTO.

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

MR. SEIDEL: Rick Seidel, PTO.

MR. BAHR: Bob Bahr, PTO.

MR. POWELL: And Mark Powell, PTO.

MS. JENKINS: Great. We're now going to go to the next topic. We're actually a little bit ahead, but I did see, Tony, yeah. So we're going to Tony Scardino is, I won't say acting, but he's chief financial officer. You've worn many hats over the past year.

MR. SCARDINO: I'm not a very good actor, actually.

MS. JENKINS: So you're going to give us the finance budget update, please.

MR. SCARDINO: Good morning, everyone.
As usual, going to go through a couple fiscal years and the status thereof, and then talk fee, fee rule making and fee setting authority. So if we can turn to the next slide. As you probably are aware the federal government experienced a lapse of appropriations last week, officially at midnight or 12:01 on January 20th. There was a failure to either pass appropriations bills or enact another continuing resolution which is basically a stopgap appropriations bill. So as Joe mentioned, we stayed open while most of the rest of the government closed for roughly, literally like a half a day on that Monday. But not so coincidentally we actually on boarded 120 employees that Monday. So that gives you some idea of the benefits of having an operating reserve, as well as having support from this administration during the lapse of appropriations.

Those are the two things we need as a federal agency. We need funding which is prior year monies which we call the operating reserve, and then we need approval or support from the
administration to stay open during a lapse. And we got both, so we stayed open. Now, all they did in restoring the appropriations was pass another continuing resolution until February 8th. So this is the fourth continuing resolution that the government’s been operating under since October 1st. So it’s anybody’s guess what’s going to happen after next Thursday. However, as Joe did mention, we have the ability with the operating reserve to stay open, and we think we would be able to stay open for roughly another four weeks or so. Hopefully it wouldn’t come to that, but hopefully that means we could continue to hire people and do everything else that we need to do during normal course of business. So that’s the benefits there. So far through the first quarter of the year plan fee collections and year to date collections are almost spot on. We’re a couple million dollars above on the patent side because, as Joe mentioned, filings are at a little above what we planned for the year for the first quarter. Spending is higher than fee collections,
and this is normal for the first quarter. We have a lot of payments that we make during the first quarter so we always spend more, and then throughout the rest of the year we collect more than we spend so it all balances out, so that's why you see the difference there. And, finally, for end of year projections if spending goes as we project, and if fee collections come in at the rate that we project we would end the year projected spending pretty close to projected fee collections for the agency, and then the operating reserve would be roughly almost $270 million. Again, our recommended level is $300 million, and we could possible get there, depending on what Andrei wants us to do in terms of spending and how fee collections come in, and whether filings continue to be above what they've been planned.

MS. MS. CAMACHO: Could you talk a little bit about what happens to the operating reserve after a lapse in appropriation? Is it restored then? Are you able to bring in the money and restore that reserve?
MR. SCARDINO: So what happens during a lapse of appropriations, we continue to collect money. We still continue to get filings, money comes with filings, people continue to pay maintenance fees. A lapse means we no longer have the authority to spend new money. Anything that came in after January 20th we could not spend, but we still have the authority to spend money that came in through January 20th, as well as prior years. So if the shutdown had been, let's say, two weeks all that money would have collected, and then once we have an available appropriation we could spend it. So it's just a cash flow in terms of access to the money.

MS. MS. CAMACHO: So the lapse has no long term impact on the projected timeline in which we would actually reach the desired minimum --

MR. SCARDINO: Not at all, no.

MS. MS. CAMACHO: Thank you.

MR. SCARDINO: Any other questions on our projected end of year operating reserve?
Moving on 2019, I don't have too much to say here other than I believe due to the shutdown and everything that was going on the President's going to release his budget to Congress a week late. Usually it's the first Monday in February. This year it's going to be February 12th which is the second Monday in February. PPAC's received a draft to review of our budget for 2019. I believe we requested comments by yesterday, so thank you. Once the budget is released on February 12th Secretary of Commerce, Secretary Ross will be testifying on our behalf at some point in time. We don't know the dates yet, but typically the Senate and the House have appropriations committee hearings, and we brief the Secretary, and then he handles any questions on PTO related budgetary matters. And, finally, as you all are aware the new patent fee rule went into effect on January 16th. A full year. We think that the new patent fees, the schedule, will bring in about $130 million in additional revenue. Of course, not going into effect until January 16th that will
probably bring in closer to $90 or so million. And then absent Congressional action our fee setting authority expires on September 16th of this year, as you know. AIA had a seven year window for fee setting authority for USPTO. And that's all I've got in terms of prepared remarks today, but I'm happy to take questions.

MR. WALKER: So, Tony, just a general question because I think with this shutdown a lot of people had questions, and Jennifer asked one, but about the operating reserve and the fee reserve fund from AIIA can you just sketch that out --

MR. SCARDINO: Sure.

MR. WALKER: -- for the general public so people -- it's hard to keep track of that if you're not playing inside baseball. Just a quick summary of what those are, and then I have one follow up question to that.

MR. SCARDINO: Sure. So the operating reserve is a planned mechanism. That is an internal thing that USPTO created. We used to
call it carryover funding. It's any monies that have been collected, appropriated which means that we have the ability to collect and spend these monies, and we purposefully haven't spent them. So our goal is to have a $300 million floor for the operating reserve so that we can manage through things like a lapse in appropriations, things like fee collections coming in less than we thought they would come in so that we don't have this herky jerky stop and start throughout the year. For instance, we hired 120 people on January 22nd. We would have not hired them if we didn't have the operating reserve. So that is us, USPTO created it. The user community has supported it. The patent and trademark fee reserve fund is different. That was created through the AIIA six and a half years ago, and what that is, is almost like an overflow fund. So if Congress appropriates $3.5 billion to USPTO and we collection $3.7 the extra $200 million would go into that account, and that at the end of the year we can request it back through what's called a
reprogramming notification to Congress. So it's just a temporary holding spot. It's not an operating account. We've only used it once since AIIA was enacted. We had one year that we collected more money that Congress had appropriated. So, for all intents and purposes, it's not a fund we ever use or need unless absolutely necessary.

MR. WALKER: Okay. The follow up question I have, you addressed it a little indirectly there when you talk about the herky jerky thing around filing. But a lot of people concerned about IT and IT spending. So during this period when you're doing the operating reserve can you just talk about the impact or no impact on the ongoing investment in IT projects?

MR. SCARDINO: So the whole idea behind an operating reserve is to ride the wave of fee collections going up and down. This is true in trademarks and in patents. So the idea is we should set out our operating requirements for the year, and then we should be able to spend to plan.
So some years we'll dip into the operating reserve and we'll still spend the same amount of money, even though fee collections came in a little less. Other years fee collection will come in higher than we thought and we'll still spend to plan, and we'll put money into the operating reserve. Or sometimes we know going into the year we're going to dip into the operating reserve because our operating requirements required it. We've got a plan to get back to the $300 million operating reserve limit to threshold bottom flow.

MR. WALKER: I guess where I was going with that is that even during that period when you're using the operating reserve you're not making decisions around ongoing IT projects to pull funding from them --

MR. SCARDINO: No.

MR. WALKER: -- during a period of time to extend the operating reserve. That you're continuing that investment so that the long term viability of these projects is not put at risk at all. That was my question.
MR. SCARDINO: Correct. In other words, the operating reserve is just one tool in our arsenal for planning, budget planning. So we plan far in advance. IT planning starts about two years before our fiscal year starts, so we have an idea of what we want to spend during the year. Now, I won't say that sometimes during a year we experience either unanticipated costs or we experience fee collections coming in less than we thought, and then we will make some adjustments to IT spending like we would with anything: Hiring, travel, anything that's controllable. Things like rent, we can't cut that.

MR. THURLOW: The general message from our project coming in next week is generally positive. I mean, from a financial standpoint, right, I mean, any CEO coming into a new position is positive, but as I'm thinking what Joe just said, if he gets confirmed next Monday and then it takes a week or so he may be taking a job and the government may be shutdown, so welcome to the government, I guess is --
MR. SCARDINO: Exactly. That would be very unfortunate for all of us. You're absolutely right. I mean, when you compare ourselves to other federal agencies the ability to have an operating reserve and weather storms like that it really makes a lot of the unpredictability out of the equation for us. If we ever had a shutdown for longer than a month I think, you know, the whole country would probably be in worse shape than just the patent system. We really need a government to continue to operate as efficiently as possible.

MR. THURLOW: But down a few years ago though, right?

MR. SCARDINO: It did --

MR. THURLOW: I mean it --

MR. SCARDINO: -- for 17 days back in 2014.

MR. THURLOW: And then how -- I don't know how much we had to --

MR. SCARDINO: We stayed open during that entire time, absolutely.
MR. THURLOW: Okay.

MR. SCARDINO: But, you know, we couldn't stay open forever. The operating reserve eventually would go down to zero.

MR. THURLOW: Right.

MR. SCARDINO: And then we'd have to shut down like everyone.

MS. JENKINS: I don't know, maybe this is a Tony question or an Andy Faile question. So when you were talking about the numbers and the increase in application filings for this quarter I was wondering, well, a lot of times you want to file and get things out of the way before fee increases occur. So is that a factor or not at all? Is that just something based on (inaudible)?

MR. SCARDINO: I don't think we noticed any of that.

MS. JENKINS: Yeah.

MS. SCARDINO: It's a little early.

But, I mean, January 16th I don't think we saw this huge bubble of activity before the new --

MS. JENKINS: Right.
MR. SCARDINO: -- rates like we did back in March of 2013. There we saw absolutely --

MS. JENKINS: Yeah.

MR. SCARDINO: -- a lot of activity.

MS. JENKINS: Yeah, yeah. We were quite busy at that time.

MR. SCARDINO: Yeah.

MS. JENKINS: Other questions for Tony?

MR. HIRSHFELD: Marylee, I'll only add to that. I think that the increase in the filings even started before the fee increase, so I don't -- and it was a while earlier. I don't see that there's a correlation between the two.

MS. JENKINS: Yeah.

MR. SCARDINO: And there was continuation rules, maybe, you know, years ago in the regulations. There was a big bump there and there was a lot of buzz in the industry about getting things on file before certain dates. I didn't hear a blip before this January 16th, so.
MR. LANG: It's been a long road to get the fee adjustment put into place, and it just highlights the need to, you know, extend the fee setting authority that's set to expire in September.

MR. SCARDINO: Well, thank you. We are hoping it will be extended before September 16th.

MR. GOODSON: If I could get a clarification of a remark you made yesterday. Track one you said there's roughly 10,000 applications and that basically covers your expense.

MR. SCARDINO: Correct.

MR. GOODSON: What expense? That's where I'm having a difficult time. Is it not just moving a application to the front of the line?

MR. SCARDINO: No, what happens is, okay, our whole business model is based upon low barrier to entry, so a patent filing application we lose money on it. It costs $1,600 and the costs are, I don't know them off the top of my head, but closer to $4,000, so we don't get full
cost recovery, with track one we do, at least
that's the goal to get full cost recovery.

MR. GOODSON: Thank you. That explains
it.

MR. SCARDINO: You're welcome.

MR. WALKER: Tony, I'm sorry. I have
one more question. This came from the public, and
that is long road to fee increase being actually
put into place, but could you talk about the
impact, I mean, you mentioned yesterday like the
monthly cost to the office, cost in quotes, for
the ongoing delay in that fee increase. Could you
just mention what that number is?

MR. SCARDINO: Sure. We started this
fee setting -- our requirements are to have a fee
review every two years, so we started our fee
review in early 2015. And then PPAC held a
hearing in November of 2015. Initially, we were
hoping that it would have been earlier. Anyway,
we would have hoped that the new fees would have
went into place before the last administration
ended. That was the goal. And for a variety of
reasons that didn't happen. Things dragged down a little bit longer, and then once a new administration comes in they don't usually put new rules through for a while, so we lost at year a year's worth of revenue from that increase. So if every month it's roughly $11 million we calculate it, say, you know, we do the math it was over $100 million that, you know, is lost in the sense of the same activity would have just brought in more revenue.

MS. JENKINS: Any other questions from the committee? Again, Dan, appreciate the comment about the fee setting authority. PPAC will look for ways to help PTO as best we can --

MR. SCARDINO: Thank you.

MS. JENKINS: -- get things done. Being on PPAC for, I guess now six years, it's always very helpful and instrumental in understanding how the backend works versus what we see on the front end, and finance, you've done a great job and you continue to do a great job, so we will do our best to try to support you to make sure you continue to
do a good job, so.

MR. SCARDINO: Thank you very much.

MS. JENKINS: Okay. We're early, I think too. Yeah, we're moving right along. We're going to end early. Oh, wow. So we're not going to segue way into operations and quality. We changed the agenda, if people noticed, in November to try to focus, have longer sessions for topics. One thing that we got very positive feedback on was the operation quality team presentation. People really liked the way that flowed so we're doing it again. Who's going to start the team presentation, Valencia or Andy? Andy? Jeff. Oh, that's right. Okay. All right. I forgot. You told me that last night. All right. Jeff's starting.

MR. SEARS: Okay.

MS. JENKINS: So we're doing something new today, so.

MR. SEARS: Something new. Thanks very much, Marylee. We've been working in subcommittee with Andy and his team on the review of after
final programs. As a really quick refresher, the programs are traditional 116 practice, the after final consideration pilot (AFCP) 2.0, the pre-appeal brief conference request, and there was at one point a P3 pilot. The goal of our review has been to determine whether to collapse the alternatives to traditional 116 practice into a single alternative, and if so, to determine what that alternative should look like. Andy is giving a presentation today on that very topic. To motivate the topic, I'd like to begin by sketching for the committee's consideration the goals of after-final practice and the factors to consider when designing an after-final program that could be the sole alternative to traditional 116 practice.

MS. JENKINS: Jeff, get a little closer to your microphone there.

MR. SEARS: Sure.

MS. JENKINS: Or vice versa.

MR. SEARS: So, for the committee's consideration, I suggest the following goals for
after final practice: Reduce the need for RCEs, because RCEs just extend prosecution and increase cost for applications; provide an alternative to ex parte appeal, because ex parte appeal requires sometimes expensive briefing and the pendency can be long; Reduce the time and cost burden on the patent office: As we involve more examiners, the cost on the office goes up (oral hearings, for example, can be very expensive); and, provide a procedure that's very familiar to examiners, and give examiners proper compensation for the activity (examiners already have RCE credit). Some of the facts we could consider when designing this single alternative could be the RCE rate that's engendered by the alternative, the reopen rate, the rejection maintained rate, the allowance rate, the cost on the office, and also how frequently are applicants taking advantage of the already available programs. So as I turn the floor over now to Andy and his team, I would encourage the committee to consider what the most valuable aspect of after- final programs is to
applicants and practitioners. What would you really like to see? I'll turn it over to Andy.

MR. FAILE: Okay. Thanks, Jeff. So what we thought we would do would be to walk through each of the programs that Jeff mentioned. At one time when we had P3 we had a number of different alternatives available after final. Just for everyone's kind of baseline knowledge, we're going to have our team walk through each one of those, talk a little bit about how we evaluated those programs. Particularly, we have a slide where we are comparing the outcomes of those programs, so you can kind of see one program compared to the next, and then talk about a little bit of the cost of each of those programs. I believe this is scale more on the office cost, but there's obviously applicant cost as well. After that, after everyone gets a good baseline of the programs we would open it up for discussion, and along with Jeff's goals and guiding principles maybe try to get some discussion about what would an alternative be. What are some of those facets
we'd want to build in? So with that, I'd like to introduce Dan Sullivan and Jerry Lorengo. Dan Sullivan's a TC director in TC 1600. Jerry Lorengo's a TC director in TC 3700. They're going to walk through the presentation and then we'll discuss after that. Okay.

MR. LORENGO: Thanks, Andy. I am going to go over kind of a review of the after final options. It should be review for everybody so I'll go relatively quickly. Then Dan will talk about the meaty stuff. All right. So here's a recap of the after final programs. So first up is traditional 116 practice. This is the one practice that everybody pretty much knows. This response is filed after final. It can include remarks, amendments, or both, and you can also request an interview with the examiner. Generally, examiners make determination of whether or not to enter amendments and whether or not to grant after final interviews. We've seen some stuff that examiners are granting after final interviews, and Dan will talk about some
statistics on the outcomes on those two. So the
after final consideration pilot AFCB 2.0. This
was initially a program built based on feedback
that we got that there were many programs, many
applications but for a little more time and
consideration on the examiner's part could put
them over the goal post to get them to
(inaudible). Some things this happens and
sometimes not and we'll go into that a little bit
probably later, but really it generally includes a
request for consideration under the pilot. You
can file an amendment to at least one independent
claim, cannot broaden the scope, and it authorizes
additional time for the examiners to search and
consider those arguments and claim amendments if
present, and conduct an interview. The examiners
have the discretion to utilize their professional
judgement on what they will allow to actually
spend that extra time and consideration on. I
skipped this slide I think. Sure did, all right.
And then pre-appeal is another after final
program, and actually this is technically an after
notice of appeal program. This is where you have
a case. It's got a final rejection. You've
decided to put in a notice of appeal, and you can
request a panel of examiners to formally review
the case as it stands in place of five pages of
arguments or less. The request has to come in
with the filing of a notice of appeal. They can't
exceed five pages, and you cannot include any
amendments. The consideration is by the panel on
the merits, generally the examiner, the examiner's
supervisor, and not her person with signatory
authority. Often it's a TQOS or another
supervisor. And based upon that conference they
send out a form to you which says either this
application should proceed to the board, will be
reopened, or will be allowed. A problem on that
is it's just three boxes, not a whole lot of
context, and that's kind of the outcome you get.
Lastly, the post prosecution pilot.

This was an effort to look at the three
after final programs we have, to take from each of
them the things that the applicants thought worked
most well, specifically in interview style,
specifically another third party in there, an
increased information on the form of the outcome.
So under the post prosecution pilot the form came
in with a statement, the applicant was willing and
available to participate in a conference with the
panel of examiners. Again, no more than five
pages of arguments. And you can optionally, I
like, under AFCP, file non-broadening claim
amendments. These submissions were reviewed by --
we had points of contact within each TC who are
supervisors who are tasked with making sure at the
P3 request came in they met all the requirements,
and if so, they were moved on the examiners
docket, and then the panel would go with the
examiner, the examiner supervisor, and that third
person with signatory authority. And then the
applicant could come in, have the conference,
after the conference they would get informed of
the panel's decision in writing with one of three
outcomes: Final rejection upheld, allowable
application, or reopening of the application.
This also included context as to why.

This case is being reopened because of X, whether the rejection or the arguments or they are, or it's going to the board and here's the outcome, or it's being allowed because this has overcome the rejection of record. This ran from July 11th, 2016 to January 12th, 2017. It was limited to 200 per our eight technology centers. So it was only the utility areas. There was only 200. We kept a very close count of where those limits were so you guys could see, okay, it's getting close in 3700. I better get my request in if I want to do it there. We reached the max in ever TC except for 1600 which is a little below 200 on that. That is the overview of the four. I talk relatively fast, so if you have any questions let me know, but otherwise we'll hand it off to Dan.

MS. JENKINS: Just a quick question.

This was something that I thought was a good, out of the box idea to try to do something different, and we actually participated in it. The idea not
to continue -- I mean, obviously it had a limit,
but were there comments? Could you address at all
what people thought about it? I think both on the
examining side and on the stakeholder side it
might be a little bit of interest.

MR. LORENGO: Sure.

MS. JENKINS: Because that was your,
sort of, newest program that you did for after
final practice, right?

MR. LORENGO: Yeah. I can give a few
things and Andy can jump in too. So part of the
pilot, we wanted to make sure that we were getting
feedback from both the examiners and the
applicants. It was required for the examiners to
fill out a survey on, you know, what did you think
about the training? What did you think about the
process? You know, how did this go forward? Does
this advance prosecution? Does it shorten
prosecution time? We also gave a link and a
survey to every applicant, and we actually went as
far as having our office managers call every
applicant who had actually done a P3 and say,
here's a form, please fill out the feedback. And we had around, a little over 1,500 actual P3 panels occur. We only had about 107 external feedbacks. You know, I don't know if it's a time issue or, perhaps, that wasn't actually, you know, something they wanted to give feedback on, but we really tried and we didn't get as much feedback as we wanted. The feedback we did get is people did feel it was a good program and useful. Overall, we saw the -- you know, I think what people really like is interviews and I think that's kind of something that came out of it. We don't have specifically the survey data breakout, and Andy can speak to some of that too, or Dan.

MR. FAILE: Sure. So P3 was very interesting and very confusing in some sense as far as evaluation. As Jerry said, we did do surveys. We got a lot of internal input from examiners, and we really, really tried to get a lot of external input from applicants. We only got 107 responses and surveys, and we did a lot of outreach to try to get the 107. So one note I
would put out there before diving into it a little bit is if we could maybe brainstorm some ways to get better input. We really want to make data-driven decisions on programs like this. They're pretty big expenditures of time and effort on everyone's part, and we really want to see if people really like these programs, how they use them, how we can tweak them. And with only 107 responses we did not see a good data representation on things like the neutral third party, and the ability to make a presentation in front of a panel. We did not see those coming forth as very strong. Although, the confusing part, again, when Drew and I go out we get a lot of antidotal evidence that the ability to come in and make the presentation and have a neutral third—party involved in the conference was a big part of the program. We didn't see that in the data, but we get a lot of antidotal feedback to the contrary. So in evaluating this, you know, you have a dataset and then you have what we hear almost every time we go out and talk. So in P3
was a pilot. We negotiated with POPA. That pilot had an end date. We've evaluating it, and right now we're kind of in the middle of, okay, what would the next thing we want to do be. Thus, the presentation here. So it is a pile that had an ending. We're evaluating that. It's a little bit murky on the evaluation of it. When Dan does his part of the presentation you can kind of see outcome based how each of the programs stack up against each other. But it was kind of different to evaluate, and one thing I would ask is if we could figure ways to get more public input into the things that we try, particular pilots. They're very important to us to try a concept, put together a number of factors, try a program. If we can get a lot of input data wise into that that helps all of us make good decisions about, you know, should we continue this program, tweak it, or try something else, so.

MR. THURLOW: I have questions. But, I guess, Dan, you're going to get into the meat of things --
MR. SULLIVAN: Yeah.

MR. THURLOW: -- so I can save my questions to afterwards. The main overall comment I'll make is having done this 20 years ago, remembering what it was like when we just had the traditional after final practice. I think this is a worthy review, and I think the discussion is very good. These programs may not be a perfect (inaudible) to P3, the pre-PO brief, the AFCP 2.0, but going back to the day where RCEs were going through the roof and we had no option but just to file an RCE was not the best system. So we change this, but this is a much better system now than it was many years ago.

MR. SULLIVAN: Right. Yes, so the goal of all these programs is to get more out of after final practice by providing an opportunity for more consideration, more communication after final. And so our hope for the programs is that applicants are going to benefit from having more information so they're able to make a more informed decision on whether to file an appeal,
file an RCE, or abandon an application. In some
cases the hope is that the additional
communication will lead to an allowance after file
that maybe we wouldn't have got to without an
additional round of prosecutions. And so we're
hoping that these programs would also provide a
cost savings to the office by reducing RCE
filings. So to assess the programs we looked at
allowances, reopenings, and RCE filings and
applications that had a submission either in
traditional after file or in one of these special
programs during a six month period that ran from
July 11, 2016 to January 12th, 2017. So
considering allowances first we found that 36
percent of applications were allowed in response
to a traditional after file submission. The
highest allowance rate for a special program was
in AFCP, and for a subset of those applications
where the examiner considered the submission. So,
keep in mind that the examiner has an option in
AFCP as to whether or not to give additional
consideration and take the additional time. Where
they did take the time the allowance rate was 38 percent, so only a couple of percentage points higher than what we had in traditional after file. If you include all AFCP submissions, so that's this bar over here, this includes both submissions where the examiner gave the additional consideration, and those where the examiner chose not to give additional consideration. The allowance rate was actually significantly lower than for traditional after final only, 26 percent. And this is one of a couple of pieces of evidence that we have that rather than using AFCP to get an application that's already close to allowance over the finish line what applicants seem to be doing is using these programs to get additional consideration, and maybe some of the more difficult applications in their portfolio. Allowances of P3 was also lower than traditional after final, 25 percent. However, note also that reopenings was lower in P3 or I'm sorry, reopenings was higher in P3 then in traditional after file or AFCP. Reopenings was also higher in
pre-appeal then in AFCP or traditional after file.

And the feature in common to pre-appeal and P3 that is not in traditional after file or AFCP is the presence of a neutral third party. So the presence of the third party does appear to increase reopenings. Allowance after pre-appeal was very low, 7 percent. Keep in mind that those pre-appeal is being filed with a notice of appeal, so that's sort of a selected group of applications that are already further down the road to appeal.

I also want to note the asterisk here. All of these traditional after file AFCP P3 the numbers were based on the actual next action by the examiner following the submission, the after file submission. We couldn't do that for pre-appeal because there's a relatively long lag between the filing of the pre-appeal and where the examiner could do a next action. So we're using the panel decision and historically what we've seen is that about 30 percent of the instances where the panel indicates reopening there's actually the next action's allowance, so I want to make a little
correction here that if this follows the
historical trend we'd actually have around 14
percent allowance and 17 percent reopening here.

MS. JENKINS: Dan?

MR. SULLIVAN: Yes.

MS. JENKINS: I have a question about
the discretionary programs, discretionary for the
examiner. The entry after the traditionally and
also the AFCP. How frequently are the requests
granted in the AFCP or the amendment entered in
traditional AF?

MR. SULLIVAN: I would say 60 to 70
percent of the time they do take the additional
time.

MS. JENKINS: And then my follow on
question is do you have similar data with respect
to RCEs? So if you compare this to someone --

MR. SULLIVAN: Yeah.

MS. JENKINS: -- went into an RCE.

MR. SULLIVAN: Yeah, that is in the next
slide.

MS. JENKINS: Okay.
MR. SULLIVAN: So we're actually --

MS. JENKINS: Thank you.

MR. SULLIVAN: -- excellent segue way.

We're on to RCEs. So looking at RCEs we saw about 40 percent of applications that got a traditional after file submission went to RCE. Lower RCE filings was for pre-appeal. Again, we're probably looking at an effect of a selected group of applications there. For AFCP 2.0 we found we got 57 percent of those going. This is, again, the total both considered and not considered. Fifty seven percent, again, sort of evidencing that this is a group of applications. The applicants have selected applications that are maybe more difficult, maybe higher priority, and so more likely to go to an RCE. Again, over here on the far right we have the considered AFCP. Those went to RCE less frequently, but still more often than what we got with the traditional after final. And then P3 also was a little bit higher than traditional after file going to RCE in 43 percent of the cases. So taken together we don't have
evidence that we can measure that indicates that these special programs lead to a reduction in RCEs.

MS. JENKINS: Dan?

MR. SULLIVAN: Yes.

MS. JENKINS: I'm sorry. To follow up on my previous question, so these are RCEs that were filed after each of the programs, but do you have -- is there any data to say whether, for example, if someone's filed an RCE if it was then allowed in the next office action?

MR. SULLIVAN: Yeah. We haven't looked at that yet, but I do agree that we should look at some of the downstream outcomes. We're still kind of waiting for cases to make their way through the system, but that's a good point. We'll look at that. Also, I think it's, in some of these reopenings, it would be good to see where they went. So, yeah, excellent point.

MS. JENKINS: I agree. I think that it would be helpful for the public to be able to see if they take the traditional route which is often
filed. The after final amendment, whether it gets
accepted or not, but if it's not entered then to
file the RCE so they can see if they go the
traditional RCE route, and at least the statistics
are comparable or not.

MR. SULLIVAN: Mm-hmm.

MS. JENKINS: It would be useful. Thank you.

MR. SULLIVAN: Okay. So the fact that
we really can't put a number on a benefit makes it
difficult for us to, you know, say whether the
benefits of these programs justify their cost.
The office does put a significant amount of
examiner and manager resources into these
programs, and that's shown here. We're looking at
the amount of time, additional house, or hours in
addition to standard prosecution that goes into
one of these programs. So starting with
traditional after final, the traditional after
final is part of standard prosecution. It's
included in standard prosecution. There are some
instances where an examiner may get additional
time to consider particularly difficult submission, but typically there's no additional
time, so we're going to say that on balance we don't have any additional man hours invested in
that. AFCP 2.0 has -- we put an average about 2.4 additional hours per case for that program. It's
the least expensive because there is no conferee in that program. It's just examiner time.
Pre-appeal costs us three hours of combined examiner and conferee time, and P3 costs us 4.7 hours of combined examiner and conferee time.
That is a significant amount of time when you consider the amount of time the examiners have to process an entire application on average. That is a significant percentage increase.

MR. KNIGHT: Dan?

MR. SULLIVAN: Yes?

MR. KNIGHT: Just curious, with respect to the AFCP 2.0 I think you said before that the examiners use their discretion to review the additional --

MR. SULLIVAN: Yes.
MR. KNIGHT: -- submission, about 60 or 70 percent of the time.

MR. SULLIVAN: Yeah.

MR. KNIGHT: And I'm just curious why it's not -- are you surprised it's not higher since they already know the case and they're given additional time or is the amount of additional time not enough to make it, you know, appealing to them or why do you think it's only 60 or 70 percent?

MR. SULLIVAN: According to the parameters of the program that decision is based on whether they can -- whether time is sufficient to do the work it's going to take to consider the submission. So, I mean, I think that that is the reason that they just don't feel that the time is sufficient. They make look at the submission and just decide that, you know, by looking at it this is not going to move things forward and decide well, there's no point in advancing, you know, doing an additional search. If it doesn't overcome the rejections in their estimation why
put additional time into searching, and they've made a decision to just go with a standard response.

MR. HIRSHFELD: Dan, if I can jump in a little bit. Maybe I'm just going to say the same thing, slightly different way, but these guys are the experts, so -- and they're doing a great job, so please tell me if you think this is correct. But I think that for AFCP the whole premise behind the program is that it's for those cases that are supposed to be, you know, close with just a little extra consideration can end up, you know, being allowed, and, hence, not going the RCE route. I'm not so sure that people are necessarily using it that way, but the way we trained examiners was for that purpose. So when they're looking at a case they're looking to decide do I think this is that close call that I can, in this extra time make that, you know, I don't mean close call, what I meant is close to being allowable and I can do that extra work in this given amount of time. That's their process, their thought process.
And, to me, not only is that, you know, an issue at this level, but it also highlights one of the challenges that we have with comparing all of these programs because they're all for slightly different purposes and they're used differently, so the subset of cases have different factors that have led up to that. So when we look at the comparisons one thing to keep in mind is it's not an apples to apples comparison, you know, of two programs for the same subset of cases. They're all, you know, very different. I know Jerry hit on some of that in his discussion. You know, for example, when you're in the pre-appeal you're way down the road in appeal. So, anyway, just some thoughts I wanted to add.

MR. SULLIVAN: From a practitioner's standpoint, following up on those points because I agree these programs, I know it's all after final, but they are different. So just two quick examples. I agree with Drew where on the AFCP 2.0 we really use that -- I think there's restrictions on doing examiner interviews after final, but most
examiners are very reasonable, 99 percent where they'll give the interview. If we agree on allowable subject matter we use the AFCP 2.0 and we'll get the case allowed and everything's beautiful. The reason why -- but on the other hand, after one or two phone discussions if we have an indication we're not going to get the case allowed that's when we go to the appeal route and we get another set of eyes, as we say, on it. The pre-appeal route is really important because, remember, the numbers are coming down now and the ex parte appeal is still high, you know, but they're coming down. They're much better than they were years ago, but there was cases years ago that the appeal would go on for, you know, three to five years or something so it was really unfortunate. So that's where the pre-appeal really came in handy, and that's why even today it's still valuable because you get the three panel, you get a different set of eyes to look at it. So we need, whether we go to one program, maybe we go to two programs, but I see both those
different programs, but important for different reasons based on the status of your case.

MR. WALKER: Dan, there's a question from the audience that I'll raise, and I just mention that if people have questions we have our email address, PPAC@uspto.gov. We get questions that way or on the web stream which I just lost. So the question came in from the public. What follow up, if any, is there on pre-appeal conferences that proceed to the board but get reopened when the brief is filed. Any comment on that?

MR. SULLIVAN: I don't have numbers of that. I think that we've looked at it, but I couldn't say, but that's something we could follow up with.

MR. WALKER: Okay.

MR. SULLIVAN: As I said, since we don't have a clear number to put on the benefit it's tricky for us to do cost/benefit analysis. We do feel that these programs have value, you know, looking at their popularity. So we get about 43,
you know, almost 44,000 in a six month period. We get about 44,000 traditional after finals. We had 24,000 or so AFCP 2 submissions where the examiner took the time and it's over 30,000. So we're approaching 80 percent, as many as we get in traditional after file. So this is a very popular program. Pre-appeal, less popular. That may be due to the timing. That may also be due to less information coming out of the pre-appeal program. And then P3 the numbers there aren't really an indicator. I think that, you know, one, that the number of submissions that we did except was capped. And, two, I feel that if AFCP didn't exist that would be the option and we might see filing similar to what we got for AFCP. But AFCP the popularity of AFCP certainly speaks to something that the applicants are seeing value in, and the AFCP has been around for a while. I know a lot of people has experience with it. So, clearly, applicants see value. There must be a reason for that, and there's also an intuitive case to be made that any additional consideration
and communication after final has value. So going forward our plan is to continue to explore these programs, take the lessons learned from these pilots and see if we can come up with options that are most cost effective, possibly, but certainly we see that there's value there and we're going to continue to explore them. And we'll, of course, be working closely with PPAC on that as well. So, are there any other questions about the presentation or do you want to open it for a general discussion?

MS. JENKINS: I just want to segue way that we do want to work with you, and what I'm thinking about is maybe we can do a roundtable or some other type of mechanism where PPAC is involved where we get more stakeholder input in this area. It's interesting because personally when you're making comments I'm thinking about, well, how much is it going to cost, and can I get the case allowed to I don't have to pay another RCE filing fee. You know, are we having trouble with the examiner, and, you know, we've tried to
explain it about ten different ways and gotten the SPE involved, and it still doesn't seem to be getting over the hurdle, and so do we appeal? Do we pre-appeal? How much is that going to cost? So, you know, there's a lot of elements that go into each separate case and each different client, in my experience. But I really think we haven't had a PPAC roundtable of some kind in a long time, so maybe we can try to get that going. That's an initiative for PPAC this year too. Julie's going to talk about what we're going to try to do with PTAB, and so there's a lot of enthusiasm from the committee in that area, so let's try to make that happen.

MR. FAILE: I think that's a great idea, Marylee. We've had a lot of success in doing roundtables and getting input. If you think back to the slides that we've been doing for the last number of PPACs we've shown a trend in RCE filings. And at one point we were up about 111,000 RCEs in the backlog, and through roundtable discussions we had a whole
RCE--centered roundtable set of discussions with the public. We put strategies together, some of which you see in front of you in terms of AFCP, and we brought that backlog down to its present day, 25,000 or so. So we've had great success in partnering with PPAC and also getting a lot of input from the public and finding out what are the pressure points and what are ways to address them. So I think using that same strategy here and looking at the after finals would, basically, be a wise thing to do.

MS. JENKINS: That was Ester's baby, RCEs, so I know she's very proud of the number going down, and we appreciate the PTO taking our input. So, Jeff, I'm going to task you with trying to move the ball forward on this.

MR. SEARS: Okay. Great.

MS. JENKINS: And let's try to think out of the box and maybe do something a little different than traditional, you know, someone gets up and speaks and then they sit down. You know, more interactive. Like, you know, what we did
with you last week which I thought was great, so.

MR. SEARS: Sure. Can I ask a question?

So I was just asked by a couple of my fellow members, and I regret I don't have the answer, but I know Andy will have the answer. Andy, does the patent office charge a fee to enter the pre-appeal or AFCP 2.0 or the P3 program?

MR. FAILE: There are no fees for any of those currently, is that correct? Or a notice of appeal as part of getting a pre-appeal, yeah, just that.

MR. SEARS: Okay.

MR. FAILE: When we tested P3 we had discussed initially a fee because there is quite an expense there, but to get the pilot going and get the data we didn't do a fee. If we were to run a full time program we'd want to discuss that end of it as well. But currently no fee except for the standard notice of appeal fee to get into pre-appeal.

MR. SEARS: Great. Marylee, are we good on time? So, I would like to make a suggestion
for the committee's consideration. Let's say that the alternatives to traditional 116 practice are condensed into a single program and that program is an interview by right after final. Does that appeal to the committee? Is that not sufficient? What does the committee think? Jennifer? Pete?

MR. THURLOW: Respectfully, I never get denied for an interview after final, so I think the bigger issue, quite frankly, is the amendment or the submission of additional information. But you'd have to take a step back, as we work on the application it's -- you have the non-final where you try to get the declaration and all the additional information you need and the amendments you've had for more important cases, the interview. So as you prep for the after final it's almost like you're prepping for the appeal. So, to me, the need for the interview we get. Has anybody been rejected for an after final interview? Around the table? Dan? I don't know.

MR. SULLIVAN: I haven't.
MR. THURLOW: I'm not aware of anybody being rejected for an after final interview. So I don't want to shoot down that idea, Jeff, but I'm just saying I get it now, so.

MR. SULLIVAN: So, Peter, from your earlier comments it sounds like the additional time for consideration is the more valuable piece of these programs.

MR. THURLOW: See, all these programs start out with excitement, so the pre-appeal was great initially. A lot of, you know, feedback and so on. AFCP 2.0 was great, but then as you get more and more into the program a lot of examiners start saying three hours is not enough, and they just started, you know, going to refile. So it kind of lost its luster a little bit. So that's why, you know, if you look at the continuum that's what led to more things like in the P3 program and interaction and so on. So each one of these programs leads to the next program and so on, and the former program it loses a little luster, at least that's my opinion.
MR. WALKER: Just had a comment for
Andy, so a suggestion. So following on to the
lack of cost there. So maybe what you do is you
institute a cost for each of these programs that's
$100 refundable if you provide feedback on the
program to the office. Because, you know, it's
really frustrating --

MR. FAILE: Oh, I like that.

MR. WALKER: Yeah. It's really
frustrating that you don't get more feedback. And
I was just, really, not just joking, but wondering
about whether or not you check with other parts of
the government. I mean, sometimes these things
come in on providing feedback and people just
throw them away, but is there some better modality
for getting input from people? It just seems like
there's such a big investment in time, and to not
get the feedback from user community on these
programs it's really hard to change the direction
of the ship if you don't know if it's going in the
right direction or not.

MR. FAILE: That's a great comment and I
appreciate your support and innovative thinking.

I'm not sure, I'll defer to Bob if we can actually do something like that, but one of the things I think along the line of suggestion that Marylee had is we don't get a lot of information through survey. We don't get a lot of participation through surveys, and I think maybe that's just kind of just surveys in general, you don't get a lot of participation. We do get pretty good information when we bring the issue to people for discussion, as Marylee suggested. In the RC roundtables we brought -- we had a number of roundtables throughout the country on that issue. In bringing the issue to those locals and getting people to talk to us there we got really good information in that way. So that seems to be, at least at the moment, one of the best ways to get information in from the public on the programs that we're doing. So I think that would probably be a good way to do here as well.

MR. THURLOW: And then you could probably tie that into the patent quality
roundtables and road shows. I mean, Valencia's been up to New York a few times, and so on, and I agree. Because I get the written request of surveys and you're just so busy with work stuff. It's hard to fill it out. But if Valencia calls me to talk about it I always take the time and say here's what's going on. And just very quickly, I question the numbers with the additional hours per case. Only thing, like, if we have a client we say we can push an application where you can get a patent within six months or a year. It'll take you more cost and more upfront, but we can just push papers back and forth for five years and won't get anything. So even though it may be more cost initially my concern is if you don't have that collaboration between the groups then, in essence, you know, you have concerns with the backlog and so on. Most cases get (inaudible) when you have those interviews and the interaction.

MR. LORENGO: I wanted to make one point too. You know, I'm glad when you ask for after
final review you're getting them granted. That's what we want. But we also know that not everybody files after final amendments, only about 60 percent of the time. Some people go right to an RCE, so --

MR. THURLOW: And that's what we don't want.

MR. LORENZO: Yeah, but I'm saying two out of five times people will not even file an after file amendment. They'll just refill an RCE, so there is no opportunity for the interaction is what I'm saying.

MR. THURLOW: Right. But, again, you agree that's not what we don't want. That's the worst case. That's what happened years ago.

Yeah, that's a no no.

MR. SULLIVAN: That's one reason we really sort of push the traditional after file that first part and 36 percent allowance rate with traditional after final submissions. It is a pretty effective way to get to an allowance.

MS. JENKINS: Just a couple things. I
think as a practitioner, you may not know, but we get a lot of requests for PTO surveys. You know, and if it's something that's more of a personal element I think people will give more attention to it that you're specifically asking for that input, and that input will have an impact. You know, even, to be fair, you know, we're really trying to push involvement through the user community through the PPAC page. And so I hope everyone sees we read this. We try to get you included. We try to get your input. And I think that's a perception people have is that it just goes into a black box and no one really reads it. We all know that's not the case. So I think it's a perception and a time element. I think the other thing for after final to consider is making is simpler. People, if you're used to doing it and you're a big company you understand after final, but if you're not a lot of folks don't understand the process. There's a lot of jargon. It could just be, like, a menu. Something, you know, here's what you get to do and you have an
option to interview. You have an option to pay a fee and get something else. And I think, unfortunately, the perception is after final practice the examiner is not going to allow the case, is not going to amend the claims, and you might as well just file an RCE because it's a waste of time to do some of the other mechanisms, so. But I think very, very importantly is it's a discussion between the user community and the examiners. And so we, you know, with the idea that we're all working together. And so, again, if PPAC can help with that we will step up. I know Jeff is all over it, so.

MR. FAILE: I will work with Jeff.

MS. JENKINS: Yes. Our after final subcommittee leader. So, okay. Where are we onto next?

MS. MARTIN-WALLACE: So our next presentation is on our training programs for FY--18, and Don Hajec, Assistant Deputy Commissioner of the Patent Operations is going to present that to you, as well as we have the
Director of the Office of Patent Training, Garry Jones, who will be here to answer any of your questions as well. So we put a lot of effort into developing the appropriate legal training for our examiners, quality assurance specialists, managers every year, and they're going to go through our FY-18 training plan, and how we develop it as well as what we will be focusing on this year. So I'll send it over to Don.

MR. HAJEC: Good morning, everybody. So, as Valencia said we're going to go over the training plan for Fiscal Year 18. So one thing to keep in mind we develop -- there's lot of sources that drive us when we develop our training. Some of this includes data from our master review form, our Office of Patent Quality Assurance Reviews, reviews that are done in the technology center. We are also responsive to feedback we receive internally and both externally. For example, if within the technology center there are observations that examiners are struggling
interpreting case law or applying 103s appropriately that feedback would be brought up the chain and we would evaluate for potential training. Same, for example, if Drew or Andy are out speaking and they hear feedback that there's an issue with 101 or some other procedural practice we would then go back, look at our own internal data to see if there is validation for that, and we would develop training and also through surveys as well. So our training is provided for both newly hired and experienced trainers. For example, the class of examiners we brought in last money they are currently in our patent training academy where they'll be there for four months receiving classroom training and hands on training working with applications. We also have quite a bit of training for our experienced examiners. I'm going to touch on some of that, but the training I'm covering today is really just the tip of the iceberg and I'll elaborate a little bit later. And our training can be delivered core wide, you know, every examiner mandatory, or it
can be targeted by technology centers or examiners who see a certain type of, you know, for example, 101 Alice type rejections. We wouldn't necessarily deliver to the entire patent core. And we approach our training with a variety of different styles. We include lecture style training. We use computer--based training modules, workshops, and combinations of those. And the workshops are something we're developed over the last couple of years and they've been very well-- received from our examiners. Basically, the workshop style training is a much smaller group of individuals attending each session. They're led by an experienced point of contact that we trained, and normally we'll have technology specific examples within those workshops, so a lot more interactive. Examiners have an opportunity to ask questions and work on specific examples. One of the approaches we've taken over the past couple years is to have a smaller cadre of trainers for each of the individual topic. Our trainers are developed
through our managers, our SPEs, and quality assurance specialists in the technology centers. Trainers from the Office of Patent Training, and also we rely on trainers from the Office of Patent, Legal Administration. So some of the training we've completed this year include 101 computer--based training CBTs on subject matter eligibility. We've also completed a 112--F CBT that introduced new form paragraphs that we think will facilitate examiners' analysis of 112F. So we coupled, as an example of our training approach, currently in progress our 112F workshop. So we started out with the CBT, and then we followed up with the smaller workshops where the examiners can have hands on examples on how to apply the new form paragraphs to their related technologies. So under development for delivery the rest of the fiscal year you can see there's quite a listing of trainings: 102, 103. 103 we're going to focus on modification of references and the reasons or motivations for obviousness. 112A, written description, with the emphasis being
on new matter. Legal analysis and writing, unity of invention, examiners answer, and double patenting. So some of these will be, as I mentioned, will be delivered core-wide, others targeted. Some will be just in time training. For example, the examiner answers training, since examiners don't see or have to write examiners answers all the time that is a just in time training, so that'll be available for when an examiner gets an appeal brief. They can take the training to get a refresher on the nuances of developing a good position in their examiner's answer. One of the other things that is extremely popular with our examiners are the examiner patent quality chats. So these are topic specific meetings, webinar chats that the examiners can attend. And as evidence of a popularity, when they're announced we only have a 250 participant maximum and they're normally filled up within the hour. Also, they conclude with a brief question and answer period, and they've been very, very well-received with the examiners. And you can
see some of the topics that we've covered in the past on these double patenting tools and statutory double patenting. Now, before I touch on some of the external stakeholder's opportunities I just want to emphasize that this is not all the training we do. Each examiner has a 25 hour bank of training that they can take. So Gary's shop has refresher training and master level training that are available to the examiners, so if they feel they need a little bit, brush up on a certain topic they can take advantage of the refresher training. Within that 25 hour bank they can also take some personal development type training. Each technology center has a quality action plan that is driven by what the supervisors and the quality assurance specialists see in the review of their examiners' work. Each technology center also develops training that is vetted through what we call the Patent Training Council, and that can be at a tech center level, it can be at a work group level, or it can be at an art unit level. We also have several stakeholder opportunities, as
you can see here. One --

MR. THURLOW: Hey, Don?

MR. HAJEC: Yes?

MR. THURLOW: Just a quick question, please.

MR. HAJEC: Sure.

MR. THURLOW: So, say an examiner misses the training is it always in person, physical training or if they miss a training course is it video tapped where they can log on later or a separate time or?

MR. HAJEC: Okay. Good question. Thank you. So, obviously, since we've got a nation--wide workforce and over 5,000 of our examiners are hoteling.

MR. THURLOW: Sure, sure.

MR. HAJEC: A lot of it is done WebX or virtually. We always have makeups recognizing that things, you know, life gets in the way. So while we generally will offer examiners multiple opportunities multiple times so we can, hopefully, match their schedule, at the end of the day we
always have, out of the 8,000 examiners, 100, 200
that had missed the training and then we offer
makeup. In some situations we do record and
that's what's provided during the makeup sessions,
but since -- like, the workshops really need to be
interactive. It's not beneficial for the examiner
to be watching a video of somebody else asking
questions, so those we would probably run -- the
makeups would be an additional workshop or two.

MR. THURLOW: That program been really
well-- received. It's not a huge amount of
people, but the feedback I received is that the
folks that have gone through it, especially some
junior attorneys have really appreciated seeing
how the examiners work and getting the other
perspective, so that's a really good program. I'm
sorry, Julie.

MS. MAR-SPINOLA: No apologies. Hi.
Good morning, everyone, Julie Mar--Spinola. So I
just want to ask a quick question on the
workshops. Of those workshops because by its very
format that you need to have in person training to
be effective how many of those are mandatory workshops?

MR. HAJEC: Well, for example, the 112F those are mandatory for all the examiners. Most of the workshops we've conducted to date have been mandatory. What we have found, the most successful workshops are either in person or all virtual, so we generally do not blend having some participants here in a room and others on line. When we've done the office--wide training and the trainings I'm mentioning here we generally will have all WebX type training or here on campus or in one of the regional offices. Okay. So moving on to some of the -- and I'll give everybody an opportunity to ask questions at the end as well. Some of the external stakeholder opportunities, as was mentioned, the step program's been extremely well--received. Gary, how many sessions do we have planned for this year? I know there's quite a number.

MR. JONES: Okay. Thank you. Good morning, everyone. So we have four sessions
planned for here in Alexandria. No, two sessions for here in Alexandria and four, one in each of the regional offices, and an additional inventor step which is the step program for independent vendors not for attorneys or agents.

MR. HAJEC: And for those of your who are not familiar with the step training, it's a three day program that exposes the participants that we give our examiners, so they get a nice perspective on what the examiners are taught, how they're taught to apply the statutes, and how to examine applications. So it's been very well--received. Another opportunity for our stakeholders is the external patent quality chat series, so similar to the examiner quality chats. We offer them to our stakeholders as well, and those will be a topic specific discussion that folks can participate in. Another opportunity that stakeholders can get involved in training is the patent examiner technical training program, and this is where industry experts can come and train our examiners so they can, you know, provide
their expertise and their experiences to examiners in related technologies. Those can be done virtually or we have individuals who come here to our campus or to our regional office and provide the training in that manner. And then another opportunity that we provide is the SEE program. And this is Sight Experience Education for examiners, and it's an opportunity for our examiners to go into the field to visits industry, commercial companies, academic institutions within the continental U.S. So each technology center has a budget each year for the SEE program, and examiners and SPEs will identify areas and companies that they'd like to visit. After those are identified the trips are planned, and these have been wonderfully received by the examiners. There's multiple benefits to it. One that can't be understated is the fact that quite often our examiners, as I mentioned, are throughout the country and this is an opportunity for them to see their colleagues and interact. Another great benefit, obviously, they're learning about some of
the cutting edge and emerging technologies in
their field, but I think they get to drive home
just how important intellectual property is. You
know, as an examiner day--to--day when you're
working on applications you don't always have that
opportunity to step back and think how the job
they do really make an impact on industry, and
this gives them the opportunity to do so. It's
not unusual for companies to prominently display
the patents they've earner, and I think that
really drives home that point to examiners when
they visit these sites and see just how their
work, their efforts makes a difference. Okay. So
now I'll welcome any questions.

MR. THURLOW: That last program I don't
think enough companies appreciate and know about,
so I want to know what we can do to help, but say
you work with a client that makes lighters for
cigarettes and other things, and they had an
examiner come up years ago and they found it very
helpful and others. So I think that could be, if
there's a way of getting the word out more that
would be good. And not to end on a sour note, my
last question, when we work with examiners the
biggest complaint we get is the training. You
know, there's just so much going on with the court
decisions and so on, and you have, as you saw it
8,500 examiners, half of which are on a hotel
program. And we when talk to them about training
and so on this is the biggest issue is the speed
of getting them the information, the accuracy of
the information, who they can refer to, and
whether fairly or unfairly that they use that as a
crutch, but that's the feedback we get most. That
--

MR. HAJEC: So you're getting it from
the examiners?

MR. THURLOW: We're getting it from the
examiners.

MR. HAJEC: Okay.

MR. THURLOW: Like, I've actually raised
some of the after final programs to them in the
pilot stage and we've discussed, you know, not
every examiner, but just trying to give you some
fair feedback. Training is a huge issue and it's a big challenge. I don't need to tell you that,

Don.

MR. HAJEC: Yeah.

MR. THURLOW: But that's the feedback we get a lot is the training just needs to, you know, so much information going on and just need more of it.

MR. HAJEC: Mm--hmm. Well, a couple things. You know, I think there is an appreciation that communication can always be improved. One thing Drew's been spearheading is we reconstituted and revamped our patent training council so we hope to be much more streamlined, more strategic in how we develop and deliver the training. And one thing we want to do is communicate to the examiners in advance what the curriculum for the year is so they know what's going down, you know, the pipe to them, and give them a reason why the training's important, why, you know, this is being developed and delivered this year.
MR. WALKER: I had a question on the SEE program because the European Patent Office is always very aggressive, actually, in reaching out to ask us to host them.

MR. HAJEC: Mm--hmm.

MR. WALKER: Are you reaching out to --

MR. HAJEC: Yes. That's --

MR. WALKER: -- or are people asking you? How's it work?

MR. HAJEC: No, we reach out. We ask that the SPEs and their examiners reach out to companies from the applications they're examining. But I do know EPO is very aggressive. Generally, when they come here the United States on those similar trips they will normally come and their examiners will visit here and we have exchanges on classifications, the cooperative patent cooperation. So we'll get examiners together. In my discussions with some of their executives, generally they use it more as a marketing ploy than an education visit for the examiners.

MR. JONES: I would like to add that
also in the past year we have been working
collaboratively with the regional offices where
they are reaching out to their contacts and their
own -- and around their own regional office to
help us contact companies so that we can target to
their local areas. So we also have the outreach
coordinators from the regional office is helping
us coordinate SEE trips.

  MS. MS. CAMACHO: Don, Gary, could you
expand a little bit on the 25 hour bank of
elective? What sort of course do people take, and
is it something that people take full advantage of
or is this something that they --

  MR. JONES: They have the ability to
take up to 25 hours as electives. So when we
assign training, like many of the courses Don
talked about that does not come out of their 25.
Or if their supervisors decides you need to have
more training on double patenting that would not
come out. But they have a bank of 25 hours they
can use for legal training, leadership, technical
training, TC specific training. So there's
different areas they can take, and I would say
some examiners don't use all the hours and some
examiners, with permission, go over, especially in
the technical training area because when we have
-- the tech centers have their PETTP events there
is multiple events. Those are very widely
attended. They could have a tech fair. Many
examiners can get up to eight hours in one tech
fair of technical training on different topics.
So a lot of examiners do exceed the 25 hours with
permission.

MS. MS. CAMACHO: Do electives include,
for example, refresher courses on something that
may have been mandatory the previous year or the
year before? So, for example, if someone doesn't
feel that they're up to speed on an AFCP could
they then use an elective hour to retake one of
those course?

MR. JONES: Yes. Don mentioned the
refresher classes. We have about 25 to 30 classes
on different practice and procedure topics that we
offer every quarter, and he also mentioned the
master classes which are refresher classes, but
are a little bit deeper dive into a little bit
more complex subject matter for more experienced
examiners. And that's exactly the kind of thing
that they can take using their hours.

MS. MS. CAMACHO: Thank you.

MR. THURLOW: One last point I'll make
is applicants find the customer partnership
meetings specific to each group or unit very
helpful. So to the extent you guys speak of those
events I've been to a few. They're helpful as far
as trainings. That's a big issue. And then I'm
not sure if this question should be directed to
you, or Drew, or Andy, or Joe, but the MPEP we
just got a notice it was revised, and so on, and,
you know, I remember going back where that book is
that thick. So now it's just a link, but what's
going on with that? Is that whole thing -- we
have a new revision to it? Training associated
with that? Anybody?

MR. FAILE: MPEP update.

MR. BAHR: We issued a new -- the
January 2018 revision of the MPEP. I believe it was Monday afternoon.

MR. FAILE: So for that, Pete, this is the first revision we've had in a while.

MR. BAHR: Yeah. This is the first revision in, I think, in over a year. The fact that we had it. It's kind of unfortunate that it's current as of August of 2017. The approval process for it was longer than usual.

MR. THURLOW: Right, right. Okay.

MR. HIRSCHFELD: Most of what's in there, Peter, is not, you know, new information. It's pulling together information that had been out, for example, on subject matter eligibility. It's taking the various memos as the law has evolved, pulling that all together in one place. So we don't necessarily feel the need to do separate training on that because examiners have been trained on everything that's in there. But it was just our way to say, you know, we've been considering it. At what point do we say it's time to update the MPEP when we feel like we've
got a full amount, you know, enough training at a
good point, and with the case law you're not in
the middle of changes. We felt it was, you know,
some time ago.

MR. THURLOW: So what you just said
right there is very helpful because all we get is
the link, so we don't know what's going on.

MR. BAHR: Actually, if you want when we
do a revision of the MPEP we have a change summary
sheet.

MR. THURLOW: Okay.

MR. BAHR: That's in the front of it and
that really itemizes in great detail --

MR. THURLOW: Okay.

MR. BAHR: -- all of the changes that
are in the MPEP.

MR. THURLOW: Yeah, I'll point that out.

Thank you.

MR. BAHR: Okay.

MR. HAJEC: And if there are changes
that would impact examiners' procedures then we
would send out advance memos or instructions on
how to apply that. One example was the search recordation. We asked them to record their searches in a little bit different format, so we gave them memos to give them a heads up that this change was coming.

MR. FAILE: So just to follow up, Pete. Drew's right. Generally, when an MPEP revision comes out, and this has been the first one we've had in some time. We're just catching on up revising it based on things that have happened before. For this particular one there's a lot in there, and we're actually sitting down next week with the MPEP editor and with Pam for POPA, and we're going to kind of walk through all different changes. And to the extent there are things in there we think are new and want to train on we probably will be doing that, and that's a little bit different in the past where we would basically just notice people. Here's a new MPEP changes, and they're basically just cataloging a series of changes from the last revision to date. So for this particular one we'll be sitting down, I
believe it's next week, walking through the
changes, and to the extent there are things there
that we'd want to talk to POPA about it, as far as
training, et cetera, you know, we'd making those
decisions then.

MS. JENKINS: I think we're looking for
a cheat sheet, so to speak, right?

MR. HIRSHFELD: Marylee, could I jump in
for one more thing?

MS. JENKINS: Yes.

MR. HIRSHFELD: Peter mentioned the
partnership meetings and I just wanted to
highlight for those of you who aren't aware, and I
think we did have a blog on this. We do have a
new web page where people can go see what the
partnership meetings are. We've taken a lot of
efforts to greatly increase the numbers of
partnerships, and so we've almost done one per
month in 2017 in various areas. So, anyway, I
agree with what you're saying. We get wonderful
feedback about them. That's why we wanted to
increase their frequency, and every technology
center has done them, but you can get more
information right from our web page on
this.

MR. THURLOW: One final thought.

MS. JENKINS: You still have time.

MR. THURLOW: So what law firms are
doing, many companies, you have to kind of get --
we're not getting away from the blogs and writing
these summaries and so on, but everyone gets so
many emails and so on. There's a lot more of the
audio blogs and the video blogs. So I think there
was a period of time where the patent office was
doing a certain amount of those, maybe a few years
ago. I don't see them. I know you can't do one a
month or something, but people, you know, a
picture's worth a thousand words or video.

There's ways to break down whether it's Bob on 101
things or updates for Valencia for patent quality
we could do in the office. It can be saved on a
website and people can easily catch it. You know,
sometimes it's easier just to read through a whole
MPEP. So, thank you.
MR. WALKER: Yeah, Drew, just on that partnership meeting. I think that is really -- I can't overemphasize its importance because outside of this meeting we all get feedback and I got feedback from some people. And I was able to refer to one of these partnership meetings where the SPEs were really, really open about how to deal with issues. Because everybody has little complaints and this and that, but, boy, they were very, very good at not just explaining what the issues were but saying -- asking for feedback because they said part of the way that we are judged is how we develop our people. So if we hear from you that there is a particular examiner or some need there this is not a negative. This is, you know, an area for growth and development. So please share that with us because that improves everything, and then I have an incentive to work with my team to improve them because that is, in part, how I get rated. So I thought that was really great discussion at one of those partnership meetings. And so someone asked me a
question recently about some issue dealing with an
examiner and I said, well, you know, if you go to
the SPEs, because this is what I heard from the
partnership meeting. So I thought that was really
powerful and that's something that we really need
to get the word more out.

MS. JENKINS: What comes to mind too is
PPAC, I guess two years ago, had the examiner
quality meeting where we had, I think, almost 800
examiners, 200 in the room. We had about 600
online. And I'll never forget the examiner
talking about vomiting references in an IDS. That
just stuck with me. But that exchange with
examiners from not just the technology that
they're working on, but also the folks who are
trying to make them understand the technology, the
practitioners, the partnership meetings are great.

But if, you know, we can, again, PPAC is here for
you. If we can look for ways to develop that more
and get the user community to come in and no
complain, but do an interactive session where
there's feedback on both sides, so I think that's
helpful for training. For us too, training us too.

MR. FAILE: That's great input, and

thanks for the input on the partnerships because we have, as Drew said, we've dramatically ramped those up within the last year. We're trying to do a couple things with the partnership meetings. One is just a general exchange on topics and bringing user input in for things such as after final programs. We'll take different issues that are going on and tee them up in the partnerships to get some input. Another thing we're trying to do is we're trying to facilitate the familiarity with applicants and practitioners directly with the TC personnel. So instead of email Drew or I from a practitioner, can you look into issue X. We're trying to get that traffic down to the TC directors and the SPEs who really are in the best position, in many cases, to handle those type of inquiries. When they come to us we're generally going right back to them and saying, okay, can just check this issue out. So one of the aims of
the partnership is to really start to develop that bridge between the applicant and practitioner community, and directly with the TC directors and SPE. So it's good to hear, Mike. It's exactly what we're trying to do is get the SPEs to be more familiar with you guys and vice versa so we can have those conversations and resolve a lot of the issues right where they occur. So, it's good feedback.

MS. JENKINS: Any more questions? No, good. Thank you. Thank you. Always informative. I know, we're so early. I'm just flabbergasted. Would you want to take a break? Yes, I get a nod. The committee's going yes. We have time. Can we take a ten minute break? Yes, perfect. Thank you.

(Recess)

MS. JENKINS: 10:59, so we're starting a minute early. Wow. I don't know how that translates for my poor subscriber or (laughs) transcription. Wow. Okay, so we are now going to segue to international update and let's see. So,
who's going to start it?

MR. POWELL: I will just start by introducing my colleague, Shira Perlmutter of OPIA, and my colleague, Karen Young from the Design TC, TC 2900, who will be giving you a discussion of issues China and Hague implementation and that sort of thing, so I'll turn it --

MS. JENKINS: Yes.

MR. POWELL: -- over to --

MS. JENKINS: Shira, I know --

MR. POWELL: -- Shira, first.

MS. JENKINS: -- you've got that topic, so, welcome. Thank you.

(Applause)

MS. JENKINS: It's on.

MS. PERLMUTTER: Ah, it is on. Great. So, we have a number of topics and I just wanted to say we will start with the China Investigation under Section 301 and talk a bit about CFIUS, which is how you pronounce that. It's always tempting to call it Sisyphus, but it's actually
CFIUS. (Laughter) And then we -- we're suggesting
doing some brief updates on the proposed Hague
Convention and Brazil's proposal to address its
backlog, both of which we've reported on before.
What we'll do is leave those two topics to the end
and cover them if there's time. And then ID5,
Mary Critharis will give a brief introduction to
the work that ID5 is doing after Karen's
presentation. But what I really want to do is to
start with the most exciting news, which is that
the President actually talked about international
intellectual property in the State of the Union
Address and so I thought I'd begin by reading the
actual sentence, which is: "We will protect
American workers and American intellectual
property through strong enforcement of our trade
rules." So, you know, it's not very common for
the State of the Union Address to touch on IP, so
it was very gratifying to hear that. So, if we
turn to the China Section 301 Investigation, this
is a section of the Trade Act that authorizes
discretionary action by the U.S. government if
the U.S. trade representative determines that an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts U.S. commerce and the investigation can last up to one year. Now, just to clarify one thing, I've given reports here before on the annual Special 301 process that USTR also runs and that's something completely separate from this, so Special 301 and Section 301 are two different things. Special 301 is a annual list of countries that USTR prepares where countries are not providing adequate IP protection or enforcement.

This is a section of the act that isn't specific to IP, but requires this investigation of another country's practices. Now, the President issued a memorandum in August that required the U.S. trade representative to determine whether to investigate any of China's laws, policies, practices, or actions that may be unreasonable or discriminatory and that may be harming American IP rights, innovation, or technology development. So, the memorandum specifically talked about intellectual
property. On August 24th, USTR issues a Federal Register notice and specified four areas to investigate. And three of them specifically talk about IP. So, the first one is whether the Chinese government is using a variety of tools to require or pressure the transfer of technologies and IP to Chinese companies. The second is whether the Chinese government is doing things that deprive U.S. companies of the ability to set market--based terms in their transactions and specifically calls out China's regulations on technology import and export administration known as TIER, and we'll talk about that a little bit more. The third area is whether China is directing and/or unfairly facilitating this systematic investment in and/or acquisition of U.S. companies and assets by Chinese companies to obtain cutting edge technologies and IP. And fourth, whether China is conducting or supporting intrusions into U.S. Commercial computer networks or cyber--enabled theft of IP trade secrets or confidential business information. So, a fairly
broad scope of the investigation. So, what happened over the fall is that there were hearings on this and there were a number of different submissions made and a lot of this focused on -- if we can go back to the tier regulation -- on these tier regulations of China's. And if you take a look at it, you might think at first glancing at it, it looks neutral, but the problem is these are regulations that impose restrictions on what terms can be negotiated in a technology import contract. So, it's not any technology contract, it's a technology import contracts, so it's only where technology's coming from another country into China. And Article 24 says that the licensor in such a contract has to warrant that it's the lawful owner of the technology and bear the burden of any infringement claims. Article 27 says that during the term of such a contract, the fruits of improvements to the technology must belong to the party making the improvements. And the fruits of the improvements would include patent rights. So, the concern is, you know,
you're talking again just about a technology import contract and essentially you have mandatory terms that dictate a specific allocation of risks and a specific allocation of ownership of the improvements. So, even if the licensor and licensee would like to have a contract with different terms, they are not permitted to do so. And in particular, Article 27, you know, mandates the licensing terms with respect to improvements to the technology, and that means that you would not be able to have a grant back, as you might want to have in a normal business transaction. In other words, the article makes all grant backs, per se, illegal.

MR. THURLOW: So, Shira, can I stop you for a second? Just --

MS. PERLMUTTER: Sure.

MR. THURLOW: -- kind of scope this out. I mean, we all for the most part read the paper and follow in the news and politics and depth of China IP from China and those would -- I guess, I want to say we don't want to pick on China, but
that's such a hot topic and it's in the press and
we all see it. That's why we wanted to talk about
it today. As we work with clients, most of the
work obviously is global. A lot of companies,
fortunately, are bringing their work back, if I
can say, into the U.S.; we're seeing more of that.
But there is still lots and lots of manufacturing
being done in China.

MS. PERLMUTTER: Yeah.

MR. THURLOW: So, that's why these
issues are so critical, as for who owns the
technology. The other thing I think I'll say is,
point three, as far as that four--point analysis
you mentioned, something about China investing in
different company -- companies in the U.S. and/or
acquiring them and bringing the technology, that
is something that's happening on a day in and day
out basis. So, I'm very just fascinated by the
whole -- this whole review and so on. And being
in New York, there's plenty of Chinese hedge
funds, venture capital folks, Chinese investment
corporation that are doing exactly this.
MS. PERLMUTTER: Right.

MR. THURLOW: So, I don't know if enough people appreciate all the concerns, especially with what we talked about yesterday. Let's grant back rights and the improvements and what China -- the big question may be who owns this. May and I were talking about technology overall, so I'm making a big speech. But, like, this is really, for me, business standpoint, something we work on. Anybody that does cross-- border work, these are really critical issues, you know, and CFIUS is next. We'll get to that, but this is, like, a really big deal that I don't think enough people focus on.

MS. PERLMUTTER: Yeah. No, I absolutely agree. And I think, you know, no one is suggesting that all investment by China and the United States is bad, but the question is, you know, whether it goes too far and it has to do with the government directing or facilitating systematic investment interacquisition to obtain an advantage over American companies. I think
that's the focus, but I completely understand your point. And I should say so, Larry Lian, who's here, is a member of our China team and he's been very deeply involved in this process and at all the hearings and helping to lead some of the work.

    So, he may want to add something.

    MR. LIAN: I totally agree with you, Peter, that -- oh, thank you -- that the issue really is not how license and transactions are done. The issue really is the government stepping in. Now, you have to set the terms this way, the grant back, the risks it's not exactly that -- the license and transactions that you -- it's not exactly that you don't have to do grant back. It's just matter of you take the rights out of the parties whether to do grant back or not.

    MR. THURLOW: The other reason we wanted to discuss this is that, you know, we're representing the public. And we go out and we speak to constituents, clients, and bar associations, different events. I don't think many people appreciate the work that you do,
Larry. And, like, the focus that you, Mary, and Shira and Mark, of course, do with the U.S. -- on the USTR side with respect to the -- it's intellectual property, it's patents, but it's much bigger with technology and innovation and the roles that the patent office plays in those discussions and that stuff. And that's the thing I've learned probably most of my six years on PPAC, so maybe just explain more. What do you do? You go to the USTR meetings, you're the voice for the IP side?

SPEAKER: Yes, the IP side.

MR. LIAN: We closely work together with our USTR colleagues, of course, on any IP issues. And there are, of course, IP expert for USTR, as well. But, I guess, the bigger point is that we closely work together.

MS. PERLMUTTER: Yeah. I would just add that's true not on China, of course, so --

MR. LIAN: Right. Of course, ma'am.

MS. PERLMUTTER: -- we are very involved in all the trade matters serving as essentially
their technical experts on intellectual property, whether it's a negotiation of a trade agreement, the implementation of a trade agreement, or issues like Special 301 and Section 301 investigations.

MS. CAMACHO: Shira, may I ask a question? Are these -- I'm just looking at the Article 24 and 27 under the Chinese regulations. Are these unique to China or are similar regulations found in other similar jurisdictions?

MR. LIAN: There are about 300 countries in the world, of course. I cannot say that we looked at each of those 300 countries, but we did try hard to look across the board. We have not seen any -- anything similar.

MS. PERLMUTTER: Good question. All right. So, just to say --

MR. LANG: Just one more, Shira?

MS. PERLMUTTER: Yeah.

MR. LANG: So, back on the grant back restriction, I'm just reading the language facially; it looks like a restriction on the ownership of improvements. How does that operate
with respect to, you know, the grant back of a
Non-exclusive license, for example?

MS. PERLMUTTER: I don't believe it
would affect that, but, Larry, do you want to?

MR. LIAN: Yeah, of course. You can say, oh, one party owns the improvement; the party can still license that improvement to the other party. However, a license is always less than ownership. As the ownership of the whole package of that technology, do you want to own the core technology while have the improvement own to the -- by the other party, you only have license rights, or do you want to own the home -- own a whole portfolio? That's the difference.

MR. WALKER: And I would just add to that, that we had this discussion that, you know, if you have that grant back so the licensee now owns it and they grant a license, you say, a limited -- much limited right back to the licensor, but a lot of these licensors are in the businesses of granting licenses around the world, and so now if they give -- if they want to grant
access to those improvements to someone else,
they've got to get from the Chinese entity the
right to further grant sublicenses or else it's
the Chinese company who controls the ability to
grant access to those improvements to other
licensees of a licensor. So, it's really -- it's
a complex thing, but it really gives a lot of
control to the licensee in that case to have a
statute that gives them that right up front. At
least, that's my read on it. You can tell me if
that was wrong.

MR. LIAN: Yes, thank you. That--
that's perhaps one way of putting this, is that
you gradually lose control of your technology
particularly in the complex, let's say,
telecommunication area that a lot of patents are
involved for one product that gradually lose
control.

MR. WALKER: I do have one other
question. I know you're going to talk about the
hearing testimony, but one of the other things
that point -- the first point I thought of those
four points was very important about the
organizational structure and the requirement that
China has for a lot of minority-owned joint
ventures in order to take technology into the
country. Was that part of -- was there a lot of
focus on that at the hearings or was that -- or
was it more on the technology licensing aspect?

MR. LIAN: There are actually a lot of
U.S. rights holders through industry associations,
through individual companies that have been
telling the U.S. government whenever they do deals
in China's always this -- how should I say it?
Could be -- oftentimes it's not in public, of
course. Here, you must transfer this technology,
but during the negotiations there's always this
pressure and the transcript and the -- all the
submission, by the way, are all on the website. I
can point you to some specific ones.

MR. THURLOW: A very practical example,
just to provide an example. What happens
sometimes, companies come to us and say, "We're
going to get the manufacturer," and this is going
back, you know, some examples, five to 10 years ago. "We're going to get the product made in China. You know, less expensive, no environmental issues, safety, and so on." And then they get the products made, but then they find out pretty soon after that companies are formed in China that are their competitors, are based on the same technology. So, then they come to us and say, "How can we stop them in China," and we say, "Well, what's going on in China?" They transfer all the technology already and they just -- because for them to manufacture the product in China, they need all the technology and the drawings and the know-how. So, we always say, "Buyer be aware, be caution," and so on. But unfortunately, it happens what we see all too often.

MS. PERLMUTTER: Well, we will continue to report on developments once the decision is made, the investigation's completed, the decision is made. Just to say I won't go over this in much detail, but, you know, the general concern by U.S.
businesses is, as we describe, that there is some
discrimination and unreasonableness in the tier
licensing regime and on the other side there was
testimony from a number of Chambers of Commerce in
China that are affiliated with the government that
are saying, "It's neutral in nature and it's
justified on the basis of the weaker positions of
licenses and transfers," that kind of argument.
So, I think, let's move on and talk about CFIUS.
So, this is the Committee on Foreign Investment in
the United States. And it's a -- I was saying
yesterday, it's a committee I didn't even know
existed until I took this job and maybe others
here are in the same position. It is an
interagency committee that is authorized to review
transactions that could result in the control of a
U.S. Business by a foreign entity and
specifically to look at the affect the transaction
could have on our national security. It's part of
the Defense Production Act, the Foreign Investment
and National Security Act, so you can see it's
pretty focused on defense and national security.
And it's made up of a number of different department and offices in the government, including, as you can see, the Department of Commerce, as well as Treasury, State, Defense, Homeland Security, Justice, Energy, USTR, and OSTP. And then you've got a number of offices in the White House that observe and participate in the activities. And we get involved as part of the Department of Commerce when there's something that has an IP aspect to it, which could include a transfer of technology where there's patents involved. And Mary Crittharis has been our representative in these CFIUS discussions, which basically means being locked in a room for days, dealing with the issues involved. If you look at what kinds of transactions we're talking about, it's any merger, acquisition, or takeover which results in foreign control of any entity engaged in interstate commerce in the United States. So, it doesn't have to be a U.S. owned business that is being taken control of. And control is also fairly broadly defined, a power to determine
direct or decide matters effecting the entity, which could involve the sale, lease, pledge, or other transfer of assets, the dissolution or the closing or relocation of research and development facilities. And then national security is quite broad, it includes a lot of concerns that fall under Homeland Security, including everything having to do with critical infrastructure, which again, is defined. And the kinds of things that could be considered, for example, is proximity to sensitive military facilities. So, just very briefly on the process, someone will file a challenge under CFIUS. Then the entity, the committee has 30 days to review it, to decide whether to commence an investigation. Once it's initiated, it can last up to 45 days, so you can see it's a very quick process, actually. That's an intense time period to make these decisions. And if the national security's issues are not resolved, then CFIUS makes a recommendation to the President whether to block or clear the transaction. And that has to be done within 15
days, so it's a tight timeframe, which you can understand why, given these are commercial transactions where you can't really ask people to wait for months before a decision is made whether they can go ahead. And if you look at the kinds of transactions that have been reviewed, you can see they come from a number of different countries and it's probably not a surprising list because these are going to be countries that are -- that have businesses that are interested in investing in the United States. So, China is at the top of the list, but you also have the U.K., Canada, Japan, Germany, France and South Korea.

MR. THURLOW: Russia not on there or just --

MS. PERLMUTTER: No.

MR. THURLOW: No?

MR. GOODSON: What happened to Germany in 2015?

MS. PERLMUTTER: (Laughs) Good question.

Mary, do you have any insights?

MS. MAR-SPINOLA: Actually, I was going
to ask if there's more updated information.

MS. PERLMUTTER: Not yet. We haven't seen the 2016 data yet.

MS. MAR-SPINOLA: Okay. It -- I think maybe that -- that'll have Russia in there.

MS. PERLMUTTER: Yes. I think --

MS. MAR-SPINOLA: In that time period.

MS. PERLMUTTER: -- you're probably right.

MS. MAR-SPINOLA: Yeah.

MS. PERLMUTTER: And I did also just want to say that you can see these numbers of cases that were brought, but there have only been four transactions that have been blocked by the President since CFIUS began, which was in '75. So, in 40--some years, four transactions have been blocked. However, others, often they're permitted to proceed if certain conditions are met, so it's a little bit like an antitrust review. And so, conditions may have been met in other cases that dealt with the national security concerns and then
there also have been transactions that have not
proceeded even without being blocked because they
didn't want to meet the conditions. So --

MR. THURLOW: Yeah.

MS. PERLMUTTER: -- the number four is
perhaps a little bit misleading.

MR. THURLOW: Did President Trump use it
once with the one --

SPEAKER: Yes.

MS. PERLMUTTER: Yeah.

MR. THURLOW: -- with the semiconductor
case, I think?

MS. CRITHARIS: Correct.

YeahYeahYeahYes, he blocked a recent transaction
involving the Chinese trying to purchase
semiconductor technologies in the United States.

MR. THURLOW: Oh.

MS. PERLMUTTER: And I just wanted to
note that there have been several amendments to
CFIUS proposed recently that are still pending,
all of which would broaden its coverage in some
way by either broadening the types of transactions
that are covered or broadening the concept of what constitutes national security. For example, looking at food security issues and looking at the impact on commerce as being part of a national security concern. So, moving a little bit away from the more military type issues. Yes.

MR. GOODSON: Yeah. There are practically no people in the Cayman Islands way -- I mean, obviously, it's an international business center. You know, like in banking, know your customer. Do we really know who these entities are or it's just a front -- I mean, that's what the Cayman Islands did. It's a front.

SPEAKER: (off mic) (laughter)

MR. GOODSON: Oh, absolutely.

MS. CRITHARIS: I've never been.

(Laughs) --

MR. GOODSON: Well, I think you should open up an office here. (Laughter)

MS. CRITHARIS: If I could.

MS. PERLMUTTER: A regional office in the Cayman, yeah.
MS. CRITHARIS: I think that's part of the review process, so there they are looking what the covered transaction is and looking for national security implications. Part of their review is to determine the type of ownership. So, that is taken into account. That's one of the factors that goes into the national security review. That is something the committee will review.

MR. WALKER: As a comment, it seems like all of this may not have been used a lot of late. It certainly is a trend. Today's Wall Street Journal reported that Australia is placing restrictions on the ability of Chinese to invest in a couple of industries, their energy infrastructure, and the food. So, the -- just seems to be that this is picking up momentum globally, so we'll see how it plays out.

SPEAKER: Yeah.

MR. THURLOW: And just with -- just along with what Mike said, I agree. That's something I haven't heard about -- I've heard as
long of as six -- say, six months ago. Now, it seems like every article in the paper is about it. Wall Street Journal had another article earlier this week. IP Law360 had an article about it, Top of the Page about it. So, see more and more of it and then as we go through your presentation, but just -- we talked about it yesterday, just for everyone's benefit. Who was actually on this committee that gets to make the decision? Obviously, the President is the ultimate decision--maker, but this committee is not this official -- well, let me tell -- just tell who makes up the committee.

MS. PERLMUTTER: Do you want to slide back up? Yeah. So, then who comes to the actual meetings from those departments?

SPEAKER: Yeah.

MS. CRITHARIS: Well, these are the members of the committee. about the Secretary of Treasury is the chairperson for CFIUS.

SPEAKER: Okay.
MS. CRITHARIS: The leads for these issues are at the Secretary or Deputy Secretary level. All of these discussions, even though there's a lot of staff participating in the committee discussions, the decisions are made at least at the Deputy Secretary level from all the agencies.

MR. THURLOW: Yeah. So, I think Michael mentioned yesterday was that to the extent they brought in a CFIUS review because of all the technology so-called IP concerns, more broadly, I think, technology. You know, these folks are a higher level of folk, so there's going to be -- after review, the whole process is going be, "Who's going to be doing a review to make recommendations to them?"

MS. PERLMUTTER: Yeah, and one other point I forgot to make is that this is the not -- the decisions are not made by majority vote. Any agency can veto the transaction going forward.

MR. THURLOW: Oh, wow. That's interesting.
MS. CRITHARIS: Yeah. Just to add, it is a consensus body, so if one member of the committee feels strongly that there is a national security implication, that then it has to be addressed. So, it can't be a situation where everyone else just says, "No, we don't think there's national security information." We have to address that situation and perhaps -- oftentimes, mitigation measures are imposed on the parties and they can decide whether to accept those mitigation measures. And that's usually where when we get involved because sometimes there's an IP component to the mitigation measures. And we have to make sure that everybody -- agrees to those measures and then present them to the parties.

MR. KNIGHT: I'm just curious. Since under Section 122, you know, if any application is found to impact national security, it's not published. So, are you dealing with, like, published applications that you still believe could affect national security or a member of
CFIUS does and then they ask the USPTO for advice?

Or how, you know, how are we involved?

MS. CRITHARIS: Yeah. So, typically,

what happens is if there's a transaction and --

mitigation measures are imposed, usually then

there's some kind of license that's imposed upon

the parties. And so, the question is, whether

there are grant back rights, whether there is

future investment in certain IP rights. But these

aren't really published applications; these are

actually patent portfolios of the parties

involved.

MS. PERLMUTTER: All right. If there

aren't other questions on this, we could give very

brief updates on Brazil and on Hague. So, Mary,

did you want on Brazil on what's happening with

the proposal to eliminate the backlog.

MS. CRITHARIS: I'm not sure if many are

familiar, but Brazil has incredible delays in

processing their application. It can take over a

decade to get a patent granted in Brazil and they

really struggle with some challenges on how to
address this backlog. So, they -- in the past summer, they introduced a proposal where they would automatically grant patent rights to 230,000 applications. So, that's the way that they decided to handle the backlog. They did have a public sector component and they had equivalent of Federal Register notice where they solicited input on their proposal.

Now, they're in the process of going through -- the comments. There were numerous submissions, and concerns about whether these patents would be held valid, whether someone can go to court, do they have different status than patents that were examined? They are grappling with all of the different comments and we're waiting to hear back from them with respect to whether they're going to go forward with their proposal. We just wanted to share that with you and obviously, we'd like to have your feedback on that proposal.

MR. THURLOW: Just one example and it wasn't funny, at the time. I asked foreign
counsel in Brazil years ago just to get me a copy of a patent and they told me it would take a long time, like, a long time. It was like, you know, I can just go on PAIR and just get a patent right now. And it was, like, months to get a patent. Not even to get examined, to -- patent from years ago, so it was tough, tough going in Brazil.

SPEAKER: Yeah.

MR. THURLOW: But, you know, I don't know why it -- this is actually -- so many countries have a registration system that, you know, I guess, there were always an examination system. One of the approaches that we talked about, the reason why the international harmonization of the IP system is so important is if you look at countries like Mexico and Canada, they really -- they tell you if you have an application or a patent that's issued in the U.S., you put the claims in the same scope in those countries as in the U.S., you get it. So, I think that would have been a much better middle ground for Brazil to do, assuming, you know, it's still a
certain amount of work, but not as much as
examining every application. That's a much better
approach than -- it kind of, you know, it's
unfortunate because the IP system is an
international system. If one country is important
to Brazil -- I think, Michael was telling me,
especially in biotech and Live Science is lots of
companies of interest down there. That's not --
it's not a good thing for them to make such a
silly recommendation.

    MS. PERLMUTTER: Yeah, and I think
they're really doing this as a way to just clear
the underbrush because they've hired so many new
examiners and they're trying to start from scratch
without having to deal with everything from the
past, but yeah. It raises a lot of issues.

    MS. CRITHARIS: On that note, I also
just want to add that we do have a PPH agreement
with Brazil. The initial pilot program was
limited to oil and gas technologies. It will now
be expanded to include the IT sector, so we're
hoping to sign that pretty quickly. I have spoken
to representatives from the oil and gas industry in the United States and they said that they actually have used the program and they were able to get patent rights in about three to six months, which was fantastic because they had really stopped applying there. There's a lot of mining and exploration patent--related activity that they these companies wanted to protect. So, this was a good vehicle for doing that.

MS. JENKINS: Two points. We had talked about Brazil and this idea of, I'll just call it, expedited review. And so, (laughter) but I did note from November's, there were some negative comments about it. I don't think it was incredibly well received. But I also noted PPH for Brazil, didn't the EPO -- I thought another office negotiated a different deal. But did I that read that wrong on Brazil?

SPEAKER: Yeah, right, yeah.

MS. JENKINS: So, I know -- I knew about our natural gas, oil, EPH narrowness, but I thought that they did something different. So, is
Brazil just sort of --

MR. POWELL: Yeah, the EPO --

MS. JENKINS: -- (inaudible) areas?

MR. POWELL: The EPO in Japan we were able to get similar agreements from Brazil, right? And while it's limited to oil and gas going their way, we're accepting any technology coming our way. And we don't have that many filings anyway, but it was sort of a breakthrough because as my colleagues who are able will affirm that things such as PPH, well their office had been talking to us for years about doing it, their political types in Genova always throw up the harmonization, you know, stigma flag and say, "No, no, no. This, you know, this is a sovereignty problem. You're, you know, you're asking us to rubber stamp your work," and which is really untrue. But I think that one other comment I will make about that is, a lot of the patent filings that are 12 or 14 years old in Brazil are pretty moot, right? If you're looking at telecom going back to 2G, Andy Faile may have
issued something on it back in his examinee career, but it's just worthless stuff and I think that, you know, if they can't clear the backlog and actually, you know, get back into the patent system, over time it'll be a good thing.

MS. JENKINS: My concern was, just noting quickly the press, is that, you know, hopefully if we're negotiating with Brazil and other countries and are also negotiating in Brazil and PPH, that we get the same opportunities as those other offices have negotiated it, as well. I mean, that was my concern for stakeholders. So, did you want to add anything?

MR. POWELL: We always try to get, you know, reciprocity for American files, but, of course, but I think the, you know, the fact that we were able to get a PPH started with Brazil at all, even in an, you know, at first, a limited area was -- it was, frankly, I think, a pretty giant leap for them. And so, at one bit at a time we'll go that way and hopefully, get all the way, in the end.
MR. THURLOW: (Inaudible) IP attaché in San Pablo, right?

MS. PERLMUTTER: Yes, sorry. The mic wasn't on. And she's been very active with the patent office there on this issue. Did you want to add anything?

MS. CRITHARIS: I just wanted to address the comment about having the same scope of coverage. Obviously, we were the first to negotiate the PPH agreement with Brazil and Europe and Japan following in our footsteps, wanted to have similar agreements. Brazil's trying to manage their workload when they were negotiating these agreements and their proposal for automatic grant of patent rights was not -- is not in effect—so they're trying to manage their backlogs and they wanted to make sure that they didn't have an influx of PPH requests from different offices.

So, we each had some different concerns.

In the PPH with Japan, some of the automotive industries was were included in the Japan PPH
agreement. For us, the IT sector and telecom was important, so all of that is included in our agreement. So, ours is actually in some ways a lot broader. If you look at the actual classes that were listed, because we went through all of the classifications. So, we have a much broader PPH than they actually have. They may have some other areas in their agreements but there's not as broad of scope as the will one that we have.

MS. PERLMUTTER: Right. I know we're out of time. Let me just say a sentence about Hague and then turn it over to Karen just to say we have made some progress in Hague. We've gotten the text to reflect very clearly as one of the options having IP completely excluded, and we've also managed to get even the options that include IP to narrow down the scope a lot and take care of some of our concerns about one country applying the law of another country in an inappropriate way or too much extraterritorial scope of injunctive relief. So, the negotiations are still going on, there's still a hope to have a diplomatic
conference at the end of this year, beginning of
next year, but we at least have gotten a lot of
countries to understand what our concerns are and
to make sure that the text now includes within it
proposals that reflect the U.S. position. So,
Chris Hannon was at the last meeting of the
Special -- what's it called? The Special
Committee?

SPEAKER: Special Commission.

MS. PERLMUTTER: Special Commission.

And so, he can answer any questions. But that's
generally where we are.

MR. MATAL: Say, Shira, before you go, I
just wanted to make a little news announcement
about the international team. Two of our
international patent staff are actually going to
start details shortly at the White House, serving
the Intellectual Property Enforcement Coordinator.
We're very excited to have them there just to be
able to be able to provide, you know, real IP
expertise to the White House as they negotiate and
consider a lot of these important policies. We
think they'll play a valuable role there. Oh, it -- and, by the way, the two details are Matt Coner and Summer Kostonyik wanted to -- so look for them, if you happen to be in the White House. (Laughter)

MS. PERLMUTTER: And I should just add that Duncan Wilson, who's a member of our China team, has been on detail there for the last few months, as well. Next. There we go.

MS. YOUNG: Good morning. I'm delighted to be here today to give you a brief overview of TC 2900, the Design Technology Center. I'll be going over some general TC 2900 information and statistics and then I'll provide an international update on the implementation of the Hague Agreement as it relates to designs. Just a quick reminder, a design patent protects the way an article of manufacturer looks, its shape and configuration, as well as any surface ornamentation applied to the article. There are design patents on cell phones, watches, and musical instruments such as guitars, to name just
a few. More and more people are becoming aware of the value of design patents in the field of intellectual property. Additionally, industrial design is a growing field which is contributing to the success of many manufactured products. Industrial design focuses on the aesthetic and user interface of manufactured products. It's blending form and function to make products more desirable. Two examples of this are shown here. The Mini Cooper is a classic design that came about because of restrictions in fuel supply during the 1950s and the designer was tasked with designing a car that was more frugal than the larger cars of the day. The design of the Dyson vacuum cleaner, including this handheld version, was a revolutionary new approach to a household product. All design patent applications are handled in TC 2900. My staff as of December 31st consisted of 183 design examiners, managed by 12 supervisory patent examiners and assisted by a design practice specialist, a secretary, and an office manager. We also have help from the
centralized technical support staff in OPUS. Design filings continue to increase, as noted in the chart on the far left. In 2009, design filings were 25,575. In fiscal year 2017, the second column from the right, we received 43,272 and that was, again, 6 percent over what we received in 2016. We are projecting just under 46,000 applications coming in this fiscal year. And as noted on the chart on the far right, during the first quarter of fiscal year '18, we received 11,909. To address the increasing workload, unlike Brazil, we have been hiring design examiners over the last five years. (Laughter) With the hiring freeze during fiscal year 2017, we were unable to hire, so our staff did decrease last year by six just through normal attrition. But I do plan on hiring 15 examiners this summer. As you'll note here, there are 77 examiners who are primary examiners while the majority are junior examiners. And they're becoming more and more experienced and they will be moving up in grade and thus, they will be
producing an increasing number of work products,
as time goes on. Yes.

MS. CAMACHO: Could you tell us a little
bit about what sort of background or technical
experience or expertise you look for in an
examiner?

MS. YOUNG: There are currently a wide
variety of backgrounds here, a lot of industrial
designers, architectural engineers. We do have
fine arts and some folks with art degrees that
also specialize and have the abilities required of
drafting and reviewing drawings. So, it's a very,
very diverse area.

MS. MAR-SPINOLA: Karen, of -- to follow
up on that, is -- can -- and maybe you're going to
do this, so I apologize if I'm jumping the gun
here. But in terms of your efforts or your
forecast to hire additional examiners, can you
elaborate on what your wish list qualifications
are for those hires, new hires?

MS. YOUNG: My wish list would be
basically to hire those folks who have the
industrial design background, the -- any
engineering or scientific or art--related
background where they have the ability to really
view drawings, understand the 3Ds, understand the
perspectives. It's a very intense job to have,
you know, 20 drawings in front of you and have to
-- all the different views that are presented and
pick out the differences between them and
understand, you know, the broken lines and what is
being claimed and not being claimed. So, a focus
on the ability to understand and review drawings
in whatever degree that they have earned, that
would be my desired examiner. We ended the first
quarter of FY18 with an inventory of 44,606 patent
applications. We are not quite at the point where
we act on more applications than we receive in any
given year. However, with our examiner promotions
and the hiring and the ability to do overtime, I'm
confident that we will be able to reduce our
inventory in the future. So, the current
timeframe from receipt of a design application to
the first office action is 13.4 months. That's
shown on the far right of the graph. You can see we had been going up. We're sort of heading in a downward direction. The overall total pendency is at the top and that—we are currently at 18.8 months.

MR. SEARS: I have a --

MS. YOUNG: I'll briefly touch on the Hague Agreement now.

MR. SEARS: I have a question for you, Karen.

MS. YOUNG: I'm sorry, yes.

MR. SEARS: Yes. Are design patents eligible for patent term adjustment or --

MS. YOUNG: I'll have Bob respond to that, (laughter) design patents and patent term adjustment.

SPEAKER: There isn't yet.

MR. BAHR: There's isn't --

MS. YOUNG: It's --

MR. BAHR: -- any patent term adjustment for design applications --

MS. YOUNG: It's only utility.
MR. BAHR: -- or a design patent.

SPEAKER: Okay.

MR. BAHR: And the reason for that is that the term of a design patent is measured from the date of a grant, so examination delays don't --

SPEAKER: Right.

MR. BAHR: -- you know, effectively shorten this term.

MR. SEARS: Thanks very much.

MS. YOUNG: We still want to do our best to have our first actions under 14 months, (laughs) or less.

MR. THURLOW: Before you get into the Hague Agreement, can you -- you have a lot of folks to review and supervise and so on. Is there a general area? I mean, why the increase is a basic question. We hear from clients that it is or from -- it is really the graphic user interface and other areas. Is there a certain area that you see --

MS. YOUNG: The icons and the graphical
user interfaces is a huge area that's -- that
we're seeing it. Cell phones, things like that is
a huge area.

MR. THURLOW: Okay.

MS. YOUNG: And opportunities for
different furnishings is an interesting area, too.

MR. THURLOW: So, what do you --

MS. YOUNG: We have a lot of --

MR. THURLOW: -- (inaudible) a chair --

MS. YOUNG: -- a lot of --

MR. THURLOW: -- or couch or something?

MS. YOUNG: Yeah, any type of
furnishings.

MR. THURLOW: Really?

MS. YOUNG: Shoes are very popular.

MR. THURLOW: Shoes?

MS. YOUNG: You've seen, you know,
fashion designers and the --

MR. THURLOW: Yeah, yeah.
MS. YOUNG: -- things that are out there.

MR. THURLOW: Yeah. Wow.

MS. JENKINS: You also talk -- I don't --I think a lot of people don't know that you can expedite -- you can't expedite review of design cases, so.

MS. YOUNG: We do have a rocket docket program. It is with a small fee, you are able to --it's sort of a -- like a track one on the utility side. You're able to accelerate it, not only for first office action, but unlike track one, it's through the whole process. So, we do have a process, like I said, the rocket dockets and we are currently at 4.4 months to first action in the rocket docket area.

MS. MAR-SPINOLA: Well, Karen, how well used is the rocket docket? I'm not sure it's that well known.

MS. YOUNG: It is very popular with certain companies. They will file almost everything by rocket docket, so we also have
companies that -- and applicants that request
suspensions because they would like us to not act
on the application, I think, and you know, they
might have some marketing or some issues that
they're waiting to see how it plays out. So, we
have kind of both aspects. I don't have offhand
the actual percentage of cases that are by rocket
docket. For example, though, in December, I know
we got 104 in one month.

MS. MAR-SPINOLA: And then also, in
terms of the upward trend that you're expecting on
filings, right, can you elaborate on what you
think is the basis for that trend and why it's
beneficial to have design patents at this point?

MS. YOUNG: I can comment on the -- as
we mentioned earlier, I think the areas that are
growing are the GUI and the icon area is becoming
more and more popular. And I think people are
recognizing that a portfolio of intellectual
property is not considered to be complete unless
you also have protection of the design of the
article of manufacture. That's been my understanding, from talking to our stakeholders.

MS. MAR-SPINOLA: And is there another benefit? I think there was something about Amazon?

MS. YOUNG: Oh.

MS. MAR-SPINOLA: Is that something you can --

MS. YOUNG: There was some discussion. These days, we see things being sold on Amazon and Amazon does have a process so that a patent holder can go to them if they believe that a product is similar to theirs and have it reviewed. I can't speak too much to Amazon product, but that is out there. We're hearing that type of online marketing use of patents.

MS. JENKINS: There's one issue. There's a lot of stakeholder interest in design and I've had multiple people come up to me and say, "You do not do enough Attention PPAC on design," (laughs) so --
MS. YOUNG: Excellent.

MS. JENKINS: -- thank you.

MS. YOUNG: Maybe we'll be seeing a lot of each other. (Laughter)

MS. JENKINS: Yeah.

MS. YOUNG: Okay. I'll turn to the -- a brief update on the Hague. So, this is a system of international registration of industrial designs. It's where a single design application is capable of being registered in 66 contracting parties. The offices of the contracting parties examine the published international registration if required under their respective laws. The United States joined this in 2015. The Hague System is primarily a procedural arrangement. It does not determine the conditions for protection, does not determine the refusal procedure applied when deciding whether a design may be protected, and it does not determine which rights result from any protection. So, those issues are all governed by the law of each contracting party that was designated upon
application. This is data from October of 2016 through December of 2017 and you -- it illustrates -- you may not be able to read the far left, but it illustrates that we see -- we receive between 150 and 200 Hague applications per month. The total Hague filings per year has increased from the 159 we received the year that we joined to now 2,127 that we received in fiscal year 2017. Per the Hague Agreement, our goal is to mail a first office action within 12 months. In fiscal year 2017, we averaged 11 months.

Of the 1,546 Hague applications that we acted on in fiscal year 2017, 27 percent of them were first action allowances, 44 percent were refusals, 26 percent were restrictions, and 3 percent were quails (?). I would like to wrap up by noting some of the challenges that we're currently facing that you might have noticed through the slides. Because my examining staff is mostly made up of juniors, we have a heavy training burden. We have to use our primaries to help train and to review work products, so this
means that our senior examiners are spending less
of their own time actually examining cases, so
they're not fully contributing to reducing our
inventory. So, the pending inventory is a concern
to me and I look forward to having the examiners
move up, do more work as naturally as they go up
in grade, and I look forward to having more cases
go out the door than we take in. We also have our
challenges keeping up with the Hagues. We also do
reexams, reissues, and petitions within TC 2900.
From an IT perspective, we're on schedule to get
UL deployments, our new laptops, in the next few
months and we look forward to that, and also some
examination tool updates that will be coming in
the next few months. I thank you for your time.
My information is up there. I'm happy to always
be available for questions. There are two Karen
Youngs at the patent -- at the USPTO. (Laughs)
The other Karen Young is in trademarks and we do a
good job of switching email back and forth if
anyone (laughter) mistakenly sends it to the wrong
person.
MS. JENKINS: Thanks, Karen. Another question on Hague -- so, I might not say this just what -- correctly, but as us, as a receiving office, how do we compare to other receiving offices, as far as filings are concerned? Because I know one thing that was going on was when Hague was implemented, it certainly started off slow, as far as filings. I see Charlie is now standing, (laughter) so --

MS. YOUNG: That's right.

MS. JENKINS: -- uh--oh. I got Charlie --I could get Charlie to answer.

MS. YOUNG: Charlie can add in.

(Laughter)

MS. JENKINS: So, but I do remember the filings were kind of low and we thought there would be more of a user filing enthusiasm over Hague. And I do see the number is substantially better, but -- so how do we compare to other offices, like, is my question, like --

MR. PEARSON: Oh. Okay, well, number
one, the office in which it's filed, the vast majority of applications are filed directly with WIPO.

MS. JENKINS: Ah.

MR. PEARSON: We're sort of a -- we're basically a conduit. If you file it with us, we collect a little fee and just pass it along to WIPO. So, for whatever reason, you know, we get very little business with direct or indirect filings through our office. And so, as far as the overall growth, I'm a little surprised that we don't have more business than we do. I thought with provisional rights being granted, with the Hague applications, people would flock to it more than they have. But I think it's -- number one, it's rather arcane that triatic practitioners are a bit reluctant to change their practices and use the Hague System. So, hopefully with time, we'll see even a greater uptick, so that's it.

MS. JENKINS: Another way to ask it is, how do we -- I'm watching rankings. I, you know, I've seen China --
MR. PEARSON: Oh.

MS. JENKINS: -- get ranked with, as far as increased trademark filings here in the U.S. I think I saw that in the TPAC report. So, that's what I'm wondering, is how do we rank compared to other countries using Hague?

MR. PEARSON: Yeah. Or --

MS. JENKINS: Right.

MR. PEARSON: Or do you have the stats?

SPEAKER: Who wants to answer that question?

SPEAKER: Yeah.

MR. PEARSON: Okay, go.

MS. CRITHARIS: So, I don't have the stats handy, but I -- just to put it in perspective. In the registration systems, it is easier for them to file, so with Europe, for example, there's more filings there. So, from what I hear from our stakeholders is that they're still getting familiar with the Hague, one of the concerns is that admittedly there are different practices with respect to the
drawings and requirements that make it a little
difficult to use. So, you have to read the user's
guide and figure out how to adapt to different
countries. And so, I think that dovetails nicely
into what I wanted to talk about -- a little bit
about ID5. But I think one of the questions I
wanted to ask Karen was when she gave those stats,
as far as the filings, I wondered if there's any
information as to what areas. For example, is it
mostly in the computer area, is it, what articles
and manufacturer they're associated with, so that
might give us a little bit more feedback as to
where it's being utilized, where it's not being
utilized. I don't know if you have that
information or not.

MS. YOUNG: I don't have that right now,
but --

MR. CRITHARIS: Yeah.

MS. YOUNG: -- I've actually started a
process to kind of do a deeper dive into some
Hague, like, there's been -- I would like to know
in what areas are we doing refusals more than
others and I think data like you're talking about would be good to collect in the future.

SPEAKER: All right.

MS. CRITHARIS: Well, thanks, Karen. That was really a great presentation. And so, what I wanted to talk about is the new forum for ID5, which really comes on the heels of us joining the Hague Agreement in 2015. Shortly after we joined the Hague Agreement, Japan as well as Korea became members of the Hague Agreement. So, we thought that was a really good opportunity for us to launch this new ID5 forum for discussing designs. So, the USPTO held the inaugural meeting in 2005 in November of that year and --

SPEAKER: 2015.

MS. CRITHARIS: 2015, sorry. And these offices, the regions represented are Europe, Japan, Korea, China, and the USPTO. And collectively, we represent 90 percent of the global filings for industrial designs. So, one of the reasons why we wanted to launch this forum was to address these concerns of having different
practices, particularly as they relate to the
scope of protection, perhaps how to get the
rights, drawing requirements, see if we can
develop some kind of convergences of that, so to
make it easier for the applicants to, you know,
file in the different jurisdictions, but also to
use the Hague Agreement. Just to keep in mind,
though, that China is not a member of the Hague
Agreement yet. We have been talking with them and
my understanding is they're looking towards
adopting the Hague Agreement. But as far as stats
are concerned, for Korea and Japan, they have --
we're actually -- have more applications filed
with us than they do, so it's interesting to see
how that's evolving. So, it's hard to predict. I
think it's a little too early, but we'll be
monitoring that as we go forward. So, this is a
mechanism for benefitting U.S. industries so that
we can discuss better ways for efficiently
protecting industrial designs across the world.
Obviously, we want to, as I mentioned, ensure
effective protection for all technologies, we want
to improve consistency in design practices, and we want to focus our efforts to identify the needs of our stakeholders. I wanted to talk a little bit about some of the programs under ID5. There's three studies that really address some more of the substantive issues. One is a grace period study that we are actually leading the study and we're comparing the legal regimes on the availability and scope and time periods associated with the grace period. So, that study is right now -- in progress we have collected all the data, so now we're going to compile for everyone. We surveyed all the different offices, so that study will hopefully be available by the end of the year. There's also another important study in partial designs. I know we talked a little bit about this yesterday at the subcommittee meeting. We want to make sure that we're able to protect designs that claim just a portion of the article of manufacturer and not the entire article so they can have more effective protection. Because what
happens is, if you can't protect a portion of it, someone else may use it on something else and then you don't have any protection vis-à-vis that design. So, we're also doing a study comparing the different practices on partial designs and, again, to report, we're also discussing this bilaterally with China. They've got some amendments to their law that are in play to allow for partial design, so we're looking forward to China adopting that practice. And I think one of the most interesting studies is a study related to the protection of new designs. I know Karen hit upon them a little bit early. So, this is a study to discuss how different offices are protecting things like graphical user interfaces, computer icons, transitional images, animated images, things in the virtual environment, even, interactive virtual components like a virtual keyboard, how are those going to be protected? So, this project is a little more in its infancy because we had to develop the questionnaire on how to approach the different offices. We finally got
together the format, and we'll now be seeking the
input from the other offices, and then we'll put
together a study on that. Now, the goal of all of
these projects, obviously, at some point, is to
see what the divergence is and see if we can come
up with ways to harmonize these practices, to make
it easier for applicants to seek protection in
these offices. There are some other projects that
we're also working on. One is a catalogue of the
view and drawing requirements for designs. This
project was finalized and this will also be on the
ID5 website, if anybody wants to see the
catalogue. Another thing to help industry is our
design priority document exchange program. This
is a digital service that will allow Offices to
access the priority documents so the applicants
don't have to file them directly with the
different offices.

We hope to implement it in the summer of
2018, so we're looking forward to that, as well.

And then the third component of the ID5
projects really go to outreach and interacting
with our stakeholders. We've got an ID5 website, that is up and running now, that lists our programs, our projects, and our studies will be placed on the website. And we also have a statistics working group, which will put together all the various important trends and statistics from the different offices that hopefully will be helpful and, you know, perhaps, Marylee, we can identify some of these trends in different areas as we expand the scope of this. So, I think that'll be --

MS. JENKINS: Sound recorded, that would be great.

MS. CRITHARIS: Yeah. (Laughs) Okay. So, obviously we love any feedback that you have, not just on design issues, but it's really important that in order for us to better promote your interests that we keep open the lines of communication so that we can, as we're going forward, assess some of your needs on these projects. But really on all our international. Issues, it's critical that we hear what's going on
in the ground and there's no substitute for that kind of practical experience. Thank you.

MS. MAR-SPINOLA: So, Mary, I -- I'm delighted that we're having a discussion on design patents and the coverage and the ID5 program. One of the things that I think stakeholders will be curious about is a comparison of the -- because there are overlaps of trademarks and copyrights and design patents. And it might be a nice visual if you have a comparison chart of the three IPs so folks can see why one would want to have a design patent if they already have a trademark or copyright.

MS. PERLMUTTER: Yeah, I think that's a great idea and we can certainly do that.

MS. JENKINS: So, I think that would be task Bernie? Is that a Bernie design task? That would be great to see that. Yes.

MR. KNIGHT: I'm happy to take that up.

MS. YOUNG: I just wanted to add that I attended my first ID5 meeting in December, so I guess it was the third meeting in general overall
and it was just exciting and fascinating and a
very fruitful meeting. I thought it was very
encouraging to see all the interest and the
potential cooperation, so I was excited. It was
very good.

MS. JENKINS: Well, thank you so much.
That was a great presentation and it is 11:02, so
we're now running late. And --

MR. WALKER: I have one quick comment.

MS. JENKINS: One quick comment.

MR. WALKER: Well, I just --

MS. JENKINS: 12:02, sorry.

MR. WALKER: I have more work for
Bernie. You know, this -- designs is a very
interesting area. I did some work in that area,
but it highlights an area we don't talk often
enough about. And there are other areas in the
office that we could talk about too, so it's just
planned patents or planned variety protection.
And so, maybe in terms of a special project, at
least talk what -- say what it's about because a
lot of people don't really understand what it's
about, so it's a great way to highlight another
area like we are for designs.

MS. JENKINS: So, one thing that I
didn't do this morning is talk about what all the
subcommittees are. So, again, our subcommittee
chairs are listed on the -- I'm looking at
Jennifer, looking at the PPAC page. Bernie is
tasked with special projects, cases, particularly
designs, reissues, reexams; great idea, Mike. So,
you're now -- plans, why not?

SPEAKER: Yeah, he's a busy guy.

(Laughter)

MS. JENKINS: He's a busy guy. Mark is
still --

MR. KNIGHT: I'm like Mikey on the
cereal commercial. (Laughter)

MS. JENKINS: Bernie will do it. Mark
is, once again, doing IT. Jeff, we've changed his
subcommittee to be no longer RCE, but after final
practice because we thought it was better to
broaden the scope and address that important issue
and pendency. Jennifer is spearheading quality,
yet again. Dan has finance, yes? Continuing
finance. Julie is PTAB. Oh, where are you --
Peter is international and Mike and I are happy to
say we don't have subcommittees. (Laughter) We are
going to focus on being chair and vice--chair over
the committee, so we continue this great
interaction.

So, with that, can I adjourn for lunch?

Yes? Yes.

SPEAKER: Second.

MS. JENKINS: Yes. Second.

SPEAKER: Second.

MS. JENKINS: Great. We'll adjourn for
lunch. We'll start back up at 12:30.

(Recess)

MS. JENKINS: So, we are going to start
with the afternoon session, which is an IT update.
And hello, IT people. (Laughs) Who is going to
lead the charge? David, are you going to
introduce everybody and introduce yourself too,
right? Welcome.

MR. CHILES: Yes.
MS. JENKINS: Welcome to your first PPAC meeting. (Laughter) Woohoo.

MR. CHILES: Not quite. All right. Thank you much. We're ready to start?

MS. JENKINS: We're ready to start.

MR. CHILES: All right. So, thank you all for the opportunity to speak with you all. My name is David Chiles. I am the acting chief information officer. And to my right is David Landrith; he is performing the role of our portfolio manager. And there is Debbie Stephens, who is our business partner and you lead, kind of, the IT activities from the business perspective. And, I think, today what we're going to do, I'm going to turn it over to David. He's going to go through the presentation and then afterwards, please ask questions. Thank you.

MR. LANDRITH: Thank you. So, as you-- as David alluded to and as you probably know, in October we rearranged the portfolio assignment so that I'm actually now over big data, artificial intelligence, and machine--learning as an effort...
to try to improve the USPTO's ability to make
timely decisions and executing its tactical and
strategic goals, as well as fulfill the agency's
mission. And so, today I am acting for Tom Beach,
who is now over PE2E. Now, I -- when I presented
to you last, I think the last time I did was
August, I wasn't aware that was going to be the
last time that I presented as the PE2E portfolio
manager. And this may well be the last time that
I present in this capacity, as well. So I want to
take the opportunity to say how tremendous this
has been as an opportunity for me to work with
this body during the seven years that I've been
here, to collaborate with you, to exchange ideas,
and I think effect some real change and
improvement in the IT system that supports patent
prosecution.

MS. JENKINS: Thank you for your
efforts.

MR. LANDRITH: You're welcome. So, as
an overview, starting with the Docket and
Application viewer, of course, we retired eDan a
little over a year ago. We at that point encountered some problems on count Mondays, which we've been over several times. We're continuing to monitor them just to be safe, although they have not reappeared And we're working toward then a retirement of MADRAS toward the end of this year. With Official Correspondence, we released that in April and began training in April of 2017. We trained about 5,000 examiners on a tech center by tech center basis. This fall, we encountered some problems. Those were related to infrastructure. The network bridges that supported the load elicited some defective behavior, so we've been replacing those this month and making sure that our configuration of them is correct. That will continue into next month and then following the confirmation of those -- the resolution of those specific issues, we'll resume training again on a tech center by tech center basis. With Examiner Search, we continue to proceed a pace toward a full release and then getting training at a core in FY19 with a full
release being in Q1 of FY19. That has been --
that has delayed, if you recall, from Q2 of FY17.
With Cooperative Patent Classification, we
continue to make progress working toward
agreements and implementing them in the
cooperative classification system that we have
with the EPO. So, the Official Correspondence,
there's not a lot to add here except that -- so in
the fall when we ran into the issues where the --
we had the problems with the load. We had sent
out an email asking for people to cease using it
and in spite of that, it is currently processing
25 percent of all of the office actions that go
out. So, it is evident that the examiners enjoy
using it and we're glad to see that and we're
anxious to have it back into service so that that
can continue to grow. With Search, there's also
not a lot to add. We're shooting for a September
release of a pilot that would go to the whole
corps so that we can begin training and retirement
of legacy systems in FY19. With Patent Center,
we're continuing to build eCommerce functionality
so that it can replace EFS Web and increasing the
can receive. So, in February, we will be -- just
to go over the background, in July we released an
alpha version for internal analysis and then in
September we released the refined version of Text
-- the ability to receive Text that was in the
alpha actually into the legacy product EFS Web.
So, that is live and then in November we have
taken the internal alpha functionality and the
additional features that we've added and released
them to an external audience for testing -- a
limited external audience for testing. And next
month, we'll be adding four new document types --
actually, eight; four document types and four --
the four corresponding follow--up document types.
And then in March, we're looking to expand the
external prerelease testing group and so begin
training for that.

MR. THURLOW: David, just on a point we
discussed yesterday, but just for everyone's
benefit, we haven't received -- I think Debbie
mentioned it. We haven't received too many DOCX, I believe they're called, or Text or Word files for submissions. So, a very small amount; I forget the numbers that you mentioned.

MR. LANDRITH: I believe it's 1,000 or thereabouts.

MS. STEPHENS: Yes, I confirm with the team yesterday, we've received one thousand--thirty, so total DOCX.

MR. THURLOW: So, one of the things we can try to help you out with as we go back and work with our staff especially is maybe just try to promote that some more, because -- and maybe if you have information, I think we talked about sharing some information with us to talk about the benefits of filing a doc rather than converting in --

SPEAKER: Yeah.

MR. THURLOW: -- EDS and all that. And I don't see any reasons not to do it that way, especially, well, if it's tough, we'll fit a patent office and reduces areas and all those
things.

MS. STEPHENS: Yeah, we're currently in our draft embedding process for those types of talking points and we'll be certain to share them with our PPAC members.

MS.MAR-SPINOLA: Would it overwhelm the patent office and maybe that's a strong word, but if we encourage filers to submit both a PDF and a DOCX, would that be too much for the patent office system? And I ask that because often times, having that PDF is proof of exactly what you send, whereas a DOCX is, you know, you can modify it, right? So, that's just a question that I had.

MR.LANDRITH: Based on what we've been able to calculate from an infrastructure and this technology point of view, we -- it would not overwhelm. Can you speak to kind of the procedural?

MS.STEPHENS: Yeah. I think it's an interesting concept. We probably need to chat with our legal team. Again, you're submitting two
different, perhaps, documents and that might be a concern; I'm not sure we have fully vetted that part of the process. So, sounds like technically it's feasible, but we would probably want to take that as an action back to our team internally and, you know, figure that one out.

MS.MAR-SPINOLA: The thought might be that on the PDF, it's more of an archival file and that they filed the DOCX. But the archival is for purposes of just being able to prove up if there was a difference between the two documents. But they both content--wise should be identical. It's just one is fixed and one is dynamic.

MS.STEPHENS: Right, and --

SPEAKER: Yeah.

MS. STEPHENS: -- that -- and certainly, we would prefer the Text and that helps us out quite a bit. Just would be concerned about receiving two potentially different and which one is the one that we should be using during prosecution and what are those safeguards for not only the filer, but for the USPTO in terms of
patent prosecution. So, I'll definitely take that
as an action item and get back with the team.

MS. CAMACHO: And perhaps you could
consider putting the burden on the practitioner
who's filing it to certify that they're the same
and that the PTO is to use the Word version.

MS. STEPHENS: Yes, definitely. Thank
you.

MR. LANDRITH: So, the CPC collaboration
tools are the tools that we used to collaborate
with the EPO in order to work out the differences
in this schema that result from the hands--on
operations within both of our organizations. So,
we've -- in addition to improving the tools to
increase the automation and reduce the process
time, we've been improving the dashboard and
increasing the quality artifacts that CPC creates.
Our next step is to begin replacing the CPC
e--form with a more structured and automated
workflow system that will also allow more granular
status tracking and adapting the dashboard to
accommodate that and continue to improve artifact
quality. The CPC management tools are the tools
that are used in--house by our classifiers. Last
year, at about this time, we released a tool, a
prototype tool, for sinking the EPO's
classification schema and our own schema in The
Cloud and that's a significant step forward
because there is a possibility that other IP5
partners may join CPC and that would clear the way
for it, as opposed to what we had before, which
was a direct link between our own systems and the
EPO systems. So, starting in June, we'll begin
migrating to that Cloud--based system, the
synchronizing infrastructure. And then we'll also
begin to further integrate it with other PDE
tools. So, we're beginning to wrap up the current
phase of Global Dossier. The focus has been on
making sure that we're able to provide a complete
complement of data, capturing the data in--house
where we need to, to augment the services that go
out to our IP5 partners. We've also then been
moving functionality from Global Dossier back into
the document application viewer. So, the Docket
and Application viewer released Global Dossier functionality in a kind of 1.0 setup before Global Dossier was available to the public. Global Dossier built on that and enhanced it quite a bit and so now we're in the process of making sure that those enhancements are available to the examiners directly within the document application viewer.

MS.JENKINS: Can I -- for Global Dossier?

MS.JENKINS: I actually use it pretty regularly and I think it's a great tool. I'm amazed and I know Andy was up last week in New York and I'm just amazed at how many people don't know about it. I think it was a great project for the office to do and I -- it's nice that you keep building on it. One thing I would love, though, is to find it a little easier. (Laughter) I have such a hard time (laughs) finding Global Dossier. So, you know, and I use a lot -- the quick links over on the right side of the page. Can we not just get a quick link for the Global Dossier
there, too, that would -- right? Go write in it.
That'd be great. Oh, good. A second. I heard a
second from Mark Powell. (Laughter) Thank you.
(Laughs) And then I can say, "When I was chair,
they put the Global Dossier link up." (Laughter)

MR.LANDRITH: So, in terms of a road map
for legacy retirement, of course, you successfully
retired eDan, that's been a year now. In FY18 or
perhaps early 19, we're looking to retire MADRAS.
We're also on track to retire OACS and then in
FY19 we're looking to retire East and West, as
well as the lingering classification data system
which is currently used to classify the portion of
U.S. patents that are not part of the shared CPC.
And then we'll also be looking to increase the
number of milestones that we can put on this list.
And now it's time for questions.

MR.POWELL: Just something I have to add
real quick. I just wanted to add real quick, Dave
Landrith talked about a couple of the CPC tools
and there's -- they sound a little mundane, but,
you know, one of the big things we do in CPC is
maintain this game and they'll make revisions and we do that in cooperation with the EPO. And having the collaboration tool is utterly important to speed that along because, you know, some of the revision projects can take, you know, many extra months, you know, of email communication and trying to arrange phone calls and stuff like this. But this is much more of a Wiki kind of thing where it goes a whole lot faster. And that may not have come out, but it's a very important accomplishment of, in fact, both of the CPC tools that David discussed.

SPEAKER: Thank you.

MR. WALKER: So, I had a question on behalf of the public. I think it's something we talked about yesterday, but maybe you could address it for the public too and that's around PAIR and about the denial of service. So, one thing we've heard from the public as we reached out to people is issues with PAIR and not being able to get in and getting kicked out and response times. So, I'm sure the public would like to hear
kind of what's going on and what you're doing to
to address that issue, et cetera. Anything you say
on that would be helpful.

    MR.CHILES: So, from a technology
perspective, we heard the comments that were made
yesterday. We also shared some information about
potentially some of the things that could be
showing up for users and that is the fact that
there is some datamining taking place within, you
know, Private PAIR. We haven't had the
opportunity since yesterday to actually have some
in--house meetings with our business partners, but
I think, you know, over wall -- all, our first
look is going to be to try to understand the
behavior. In other words, what is actually
causing the performance issues? And then take it
from there. If it turns out that there is
activity taking place from data miners, we talked
about potential suggestions about throttling. We
would be doing those type of things. We would
also discuss with the business whether there needs
to be an approach that challenges that, that
usage. That -- some of that may be above my pay
grade, so it would have to actually have
conversations potentially with the front office
and with anyone dealing with the public and the
interaction there. There was another suggestion,
which, again, we haven't talked to our open
partners yet, but Dave and I discuss from a
technical perspective; there was an interest in
Global Dossier and some of the capability that it
has. We needed to understand and discuss a little
bit more about what the differences are between
Global Dossier and Private PAIR relative to
whether there's potential there in terms of
changing Global Dossier to provide some additional
features, since that seems to be a very popular
product. So, all of that is on the table. No
definitive answer yet, but I can say definitively
we've heard what the cry is and it's a priority
for us to make sure that all of our systems, which
include our legacy systems, are operational. But
it's a strategic discussion, I think, that needs
to take place. And for us, really want to
understand what's causing the performance problems. Because there may be some things that we can mitigate with transparently to you all if we can identify them.

If not, we take it to the next level.

MR.WALKER: That is great. That's very reassuring because, you know, the way the public can see this is one of a very, you know, customer--focused interfaces PAIR and recognizes big investment being made by the office and IT and the fee increase having just gone into place and they need that functionality. So, that's great to hear, you know, your reassuring words on that, David.

MR.CHILES: Okay. All right. Thank you.

MR. WALKER: I do have one other question, if I can just jump in. Maybe for Pam, just in terms of (laughs) the tools that David talked about, like the new search tool and the rollout and the office action software, where -- in terms of the examining core, which -- is there
any higher priority there or is -- like, for
example, the search tool versus the -- opt with
the OACS replacement? Are these all the same
priority? I -- just curious from examining core
perspective on these IT initiatives.

MS.SCHWARTZ: Okay. I don't see a
difference in importance to the examiner's -- for
the action creation tool and the search tool. You
might spend more time using the search tool, but
they are both absolutely necessary portions of
coming up with an examination. So, from that
perspective, we need them both. My understanding
is that OC, they had started to implement that and
it was going along all right until it ran into
some difficulties, which they're fixing now. So,
that should be ready to go. We have ongoing
concerns about the search tool and whether it's
going to be usable in the way we use our current
tools and whether it's going to work as
efficiently as our current tools do. But
that's--the -- it's not as far along in the
process.
MR. LANG: On the challenges with the official correspondence viewer, can you talk about, you know, perhaps, you know, valuable lessons learned or, you know, guidance that you get out of that going forward for the rollout of other tools?

MR. CHILES: I'll also let them respond if you all have comments. So, you know, remember, I'm kind of new to the role. So, one of the things that I'm emphasizing in this stint, if you will, is to ensure that we're establishing a solid relationship with our business partner and in that light, transparency. So, one of the things that I've learned that I think can apply to any of the development efforts that we have moving forward is to actually engage the customer in strategic decisions regarding the technology that they depend upon. So, I'll give you an example. With respect to OC, there obviously was an impact to examining examination productivity. Never been an examiner, but they are on production and the way that the tool was working, I think you had to
start it off as action 1, 2, versus the other and it was disruptive. The business, as much as we are aggressive on a technology side -- we love our technology, we love to push technology, we love to be proud about it -- there was an underlying infrastructure issue. It was separate from the application itself, but if you're a customer using it, you don't know the difference. All you know is, "I try to do something and it doesn't work."

So, the business expressed a concern for the sake of their core that we might make a strategic decision to kind of allow the use of the legacy tool for those that were only using the new tool until we could sort the problem out. The other part of it is, it's a commitment between us not to rush it back, right? Because we're technologists, we love to push new technology, but they run a business. So, sometimes they're offsetting. So, the balance is what's best for the agency. So, the other thing we learned is, that opinion matters and it counts and when it comes to the strategy, as Dave alluded to, we're going to get
these hardware and infrastructure issues
straightened first, verify, and then the next step
is to open it up and then from there the business
can decide how aggressive they want to open it up.
But the primary concern is not to disrupt the
ability for examiners to do their job. So, I
think there's potential attitude adjustments that
we can make on some of the other products, Search
being one of them. Rick and I had a discussion
and we're looking at -- I believe they're doing
some assessments to determine some value add
features, what do examiners really want, and to
see what direction we take that in. And one of
the lessons learned is, we ask people not to use
the tool, but examiners that liked it still use
it. So, it's worth the risk for them to use it,
so that matters. Whether they like it or not,
whether it meets their needs, whether it has the
right, you know, attributes, whether they look at
it as a valuable tool. So, from a development
perspective, we don't look at what we build
through our eyes; we need to look at it through
the eyes of the customer, and that's that partnership that I'm working to help build so that there's a two--way communication to actually drive those type of decisions. So, I would love to say that I learned something new about technology and all of this, but what I really learned was about relationships, respect, and an appropriate way to work forward in order to get to the goals that we have in a way where everywhere benefits, and to have the discussions to determine that benefit as opposed to making assumptions. So, I would say it's kind of a soft learn, but it's an important one, from my perspective. I don't know if you all have -- no, okay.

MS.MAR-SPINOLA: Can I just add that I thought that was refreshing, so thank you.

(Laughs)

MR.HIRSHFELD: I'll also --

MR. CHILES: You're welcome.

MR.HIRSHFELD: -- add to that because, you know, David and I have been having conversations just like this and I think you have
absolutely done a wonderful job to try to create a path that says, "How are we going to get tools in front of examiners that don't fail?" And I'm not naïve; these IT systems are hard, they're confusing. There's going to be bumps as we go, but I -- there's a real commitment on all sides involved here to make sure we minimize that as much as possible. And that could, you know, who knows what that will entail in terms of whether it's extra testing, slower rollouts? I don't know, probably all of the above. But that commitment to making sure that when we get in front of a examiner, we know we've done everything we could to really minimize the chance that something's going to fail. Because when it does fail, it's, you know, there is a bottom line number to it. But equally as important, there's just the lack of confidence in the IT tools that the examiners have. And that is troubling because we want examiners to be confident in the tools that come out to them so they'll use the new tools and start to help us get on a better platform.
And I will say, those lessons I've seen also learned, as David alluded to, in our Search, which is -- as Pam said, is a little farther behind the official correspondence. We are taking a lot of steps to really make sure that the Search is good, accurate, ready, you know, stable as it can possibly be, but also trying to say, "What is going to get examiners? What features are going to get examiners to want to transition as soon as they can to this?" You know, sort of -- what I've been calling this is, if you build it, they will come approach. And I -- and I'm not so sure we had that with the OC. It was really like, "Here's this similar, very similar tool. Please use it because it's more stable and then if it fails, you lost your credibility." I think with the Search, if we roll that out and say, you know, "Here's a better tool, more -- much improved tool," they will be all together. So, I think there's a lot of lessons learned and I think David is certainly helping to put us on the right path here.

MR. CHILES: Thank you.
MS.JENKINS: Drew, appreciate those comments. I just want to touch on a couple things. One, there's a lot of stakeholder interest in Search. How it's done and what kind of searching do examiners do and have access -- what's the data that they have access to? So, if we could make a note for the main meeting, I don't know who would spearhead that presentation. It could be a joint presentation between IT and Andy and quality and (laughs) whatever works. But on a more serious note is, I appreciate the attention and directness that you are giving to your business relationships within the office. But I can tell you the anxiety on the outside when our filing system goes down -- I often reiterate, when the fired happened in December, I was shocked at the number of youngsters who had never mailed a response, didn't know how to --

MR.CHILES: And what's going on right now, actually, will be that that business unit -- the heads of that business unit, primarily the head of OHR and the deputy director, will be
meeting with each of our office directors independently as a result of other discussions to find out what their needs are and then to creatively look at what our alternatives are. And some of the things that they have talked about are definitely recruitment bonuses and others. The thing that we have to understand on our side is what their constraints are and it's why we've invoked the conversation. There are some new rules and regulations concerning classification and that presents challenges, so what we're trying to do is just face those challenges and figure out the alternatives that we have to move forward. So, it is a priority for us to hire qualified folks, to retain them, and to figure out and determine how we compete with the private sector. But what -- from what we've seen, it's a numbers game. So, from our perspective, you know, marketing, the advantages of working here would be important from an attraction perspective, as well as doing some recruiting. The idea or concept there is that there are folks who are talented who
have other things on their mind besides making a lot of money or making more money. There's quality of life in some of the other things. The bottom line is here, some of the activity we have on the technology, I think, rivals what you might do on a startup without some of the risks. And those are the things that we have to recognize and sell in order to attract interested parties. So, the bright side of that is, OHR understands the dilemma. They also understand what their restrictions are, but they're willing to work with us by having direct conversations with our staff to figure out what they need and to get answers for that. In addition to that, we -- we're doing an assessment. It's a third-party assessment, but it's designed to help us understand what the balance is in terms of contractor versus employee. So, one of the other options is, we increase our employee pool, bring expertise in-house so that we can retain that expertise, because as it turns out, IT, our goal is get our IT modernized, operational, and maintainable, but we also have to
still continue to maintain it. So, here's what we
don't want to do: do all of that work, let it sit
for another 10 years, and be back in the same
bowl. That requires personnel that are on board
and also learning. So, all of those challenges
are things that we're actively working on. So,
it's, you know. I know you used to work here as
the O -- head of OGC, but your question is spot on
to the activities that are taking place right now.
So, I appreciate that question.

MR. KNIGHT: Thanks, David. And I'm
really happy to hear the approach you're taking
and working with, you know, Fred Steckler --

MR. CHILES: Mm--hmm.

MR. KNIGHT: -- and also looking at the
mix of government employees versus contractors,
because I'm sure you've experience this, as --
like I have in the past, that a lot of times it
was difficult to get contractors to take long-
term ownership of a project, like an -- a
government employee would. So, I'm really
delighted that you're taking that approach and,
you know, looking at it, so thank you.

MR. CHILES: Oh, you're welcome.


MS. CAMACHO: I want to reiterate. I, too, appreciate the perspective that you're bringing to the group. I wanted to go back just one quick point that the -- Debbie had brought up. You mentioned the patent center. I don't know that we've spoken about that much, so perhaps you could describe what the tool is intended to be and where it is in the status and timeline?

MS. STEPHENS: Sure. So, David, do you want to go back? Just as kind of a guide, that is -- that's tentative, our timeline right now. But essentially, patent center is the tool to replace EFS Web filing system. So, one of our challenges is, of course, maintain the EFS web filing system while we're still building or while building the new tool patent center. I think, one other thing that should be noted is, as we move to the Text submission process, we did encourage and we did
change the EFS Web filing system to allow for that Text submission while we're still building patent center.

But essentially, in the probably mid to middle of 2019 -- I mean, we've got quite a bit of development -- would be when we're finally able to, I'll say, transition over to patent center fully. Of course, as we do things in patent center, we always do them in a -- and I think David mentioned kind of an alpha beta deployment schedule, so this will be coming to our external users in bits and parts and testing and retesting and making sure that the tool is stable and functional for our external community, all the while maintaining EFS Web. So, we really need to maintain that for all the intended purposes, yet building this newer version that hopefully has, obviously, the same functionality, plus takes advantages of the Text that we can ingest and manipulate and then provide some additional benefits to the external community in terms of having those Text submissions available so there's
maybe some versioning. You're able to cut, copy, and paste from our office action responses into yours as responses are returned back to us, those types of things. And as always, we encourage anyone who would like to participate in that process to reach out to myself or my team. And we have these outreach moments where we go out and speak and ask for input, and we sincerely want that input because we are building the tool for you and so we definitely want to hear from you.

MS. CAMACHO: Perfect, thank you. You answered my follow-up question about getting others involved. I -- I'm understanding that about a thousand external users now or for the alpha?

MS. STEPHENS: There's about a thousand submissions for just DOCX --

MS. CAMACHO: Oh, I see.

MS. STEPHENS: -- type, so --

MS. CAMACHO: Okay. Very good.

MS. STEPHENS: -- we're still in the beta phase, we don't have the ability to do that.
MR. RUSCHKE: So, typically, obviously we expand, there is an opportunity, let's say we go from three judges to five judges, which is typically adding Scott and myself to the panel.

MS. JENKINS: Right.

MR. RUSCHKE: Again, if it happens at the end of a proceeding, there's no issue, but again, if it happens at the interlocutory phase there is the possibility that, would the expanded panel then continue on through the entire proceeding. And I think we've handled that in different ways, certainly when there's been, so it's an outcome determine of decision again, there's no really need to contract it later on. Typically, I think we have -- I'm not sure if we actually have -- it would be part of the analysis that Julie was talking about, seeing how we've handled that over the years, but again, the numbers of cases that we are talking about are so small, it just doesn't occur. Yeah.

MS. JENKINS: Yes. I mean, I know what you're talking about, it's in here, I don't have
to say it.

MR. RUSCHKE: Yeah.

MS. JENKINS: Okay. And then how is --
two more questions -- so then how is the addition
of expanding the panel and then adding you and
Scott to that panel, not somehow impactful on the
resulting decision? So, in other words, you now
have your boss on the panel.

MR. RUSCHKE: Sure.

MS. JENKINS: So, how can you explain to
the stakeholder, the community that's listening,
is that you are just another judge?

MR. RUSCHKE: That's a good question.
And I would go back to the -- you know, when we
were smaller, for instance, which was not too many
years ago, it was very frequent that you had your
boss, either your direct boss or one of the --
especially at that point we only had one Vice
Chief, at that point, but you would have -- as a
matter of course, it's just a matter of paneling,
they would show up on your panel. And of course,
we also have the opportunity for the statutory
members to also appear, the Director, the Deputy Director -- excuse me -- the Commissioner for Trademark, so you have those statutory members that could also, and in past administrations they have also been there. So that's not a new thing that have Scott and I are on there, so that there would be some sort of, I guess, implicit pressure to vote the way of your boss. But one thing that we've tried to maintain and stress to the Judge is that, when we sit on panels, we have a single vote. We all have a single vote, that's the way it is. I guess I might analogize to, Chief Justice Roberts has one vote when he's on the Supreme Court. That's what we've tried to maintain, and I guess I think the proof somewhat is in the pudding in that if you, again, when we look at the rehearing decision, so we have the underlying vote, the underlying vote is 3--0. Now, if Scott and I expand and it becomes 3--2, and you see a dissenting opinion by one or the two of us, then you kind of know that we didn't change the underlying result, but we wanted to emphasize
the point, but in the opposite way. We haven't
done that. So, I don't think it's -- there might
be, again, sort of a subconscious mentality to it,
but historically the Boards operated that way, you
know, that is how it has happened.

MS. MAR-SPINOLA: Can I ask on that, on
the vote?

MR. RUSCHKE: Yes. You go ahead.

MS. MAR-SPINOLA: On the voting, is it
or can it be anonymous?

MR. RUSCHKE: No. It's not anonymous.

MS. MAR-SPINOLA: Okay.

MS. JENKINS: And then procedurally,
when do you give notice, or is there a procedural
aspect within the PTAB of when you give notice of
expanded panel?

MR. RUSCHKE: At present the standard
operating procedures does not require notice, and
past practice had been to essentially notify the
parties when the decision came out. So, instead
of having the three judges that you thought you
had, all of a sudden you had five judges.
MS. JENKINS: Mm--hmm.

MR. RUSCHKE: And again on the ex parte appeal side, I mean, we are focusing in on AIA, but on the ex parte appeal side, you really don't know who your judges are until you get that final -- frankly the decision. In AIA it's slightly different of course, because along the way, you have judges, there might be various reasons why those judges might change over time. Historically, if the panel was expanded it would be for that purpose, and there was no prior notice. As I said, we are taking a strong look at all of our standard operating procedures, including this one, and strongly considering that there might be, for transparency reasons, to let the parties know when the expansion occurs.

MS. JENKINS: All right. The questions are done. Thank you.

MR. RUSCHKE: If you'll bear with me, Marylee, before I can go expanded -- or go to sovereign immunity, I don't have slides on this, but I'm just going to -- I just want to give you a
little bit of a flavor of some of the cases that have happened over the last two years. Again, as I mentioned, the General Plastic case was one where we expanded from 3--0 to 7--0 on rehearing, and that was ultimately made informative and voted on to be precedential. Similarly, the Facebook v. Skky case, which was a recent CBM case on eligibility that was a 3--0 to 5--0, on rehearing. So, counting matters, you know, watch the votes. If you're concerned about what the reasoning is, and what happened, 30 to 50 does not change the underlying results; again, and that one was -- Facebook v. Skky was also made precedential. We have another case in 323(d) which went from 3--0 to 5--0 on rehearing, that one ultimately did not -- that one is actually not precedential at that point but, again, that guidance that we wanted to make sure was out there, and as we'll say later on, we did make three other 325(d) cases precedential, to help with the jurisprudence of that. I think another interesting cases when, again, it comes to the point of making sure that
the patent owners and those similarly situated are all treated the same, is a case called HTC v. Virginia Innovation Sciences. This was a series of 10 IPRs, and as opposed to the party suggesting a rehearing, or an expansion, this actually came from the judges themselves. So, 10 IPRs, we had a number of panels overlapping, and what they internally realized was that in order for consistency, on claim construction, they suggested to Scott and myself, that we should expand those panels. Now, this is actually the single situation where Scott and I did not add to it. They had actually sort of resolved it amongst themselves, those decisions all came down 3 --2, but again, because there was a difference of opinion of the judges on how to interpret 112--6, means--plus function, they internally decided that we need to -- they needed to expand, and they suggested the solution. So, again, there was no changing of the underlying result, there is a dissent, so all voices are heard. But that's, I think, a very interesting case of appropriate use
of expansion based on the initiative of the judges themselves. And last, but not least, I think we'll get to some of these other cases on these issues of exceptional importance to maintain uniformity as well underneath the sovereign immunity. I'll get those in the next section.

MS. MAR-SPINOLA: David, let me ask you.

On the basis of ensuring consistent results in accordance with the SOP, we talked about precedential opinions, and I think a lot of folks, including myself, believe that precedential opinions is probably one of the most effective tools to ensuring consistency. So, we talked yesterday about the process or the procedure for having an opinion made precedential, and I found it very interesting, and informative. So, if you can just quickly go over that.

MR. RUSCHKE: Sure.

MS. MAR-SPINOLA: And what you might contemplate doing, such the commission, or whatever?

MR. RUSCHKE: Sure. So, essentially our
precedential designation process is outlined in our standard operating procedure number two, which has been resolved over the -- been revised over the years fairly frequently. Again, that's under review at present as well. So, again, at present we have four levels within the Board of decisions: precedential which is binding on the Board, informative, which is not binding, and representative, and finally the regular cases that come in. We are strongly considering getting rid of the representative level, simply because those came out sort of like the early days of AIA, we wanted to representative cases for the public to see, we have a lot more experience, we have a lot of cases that we can use for that situation. Informative decisions, they occur based on my designation and totally in my discretion and can happen overnight. And again, as we've done with expansion, the cadence is expansion from unanimous to unanimous, I designate as informative, and then we a precedential vote. The precedential vote is what I think people are most interested in, that
is a process whereby in order for a case to be made precedential, it has to be voted on by a majority of the voting judges. So, again, we have 275 judges, all judges have the opportunity to vote on every single issue, even if they are only working on ex parte, or they are only working on AIA, all judges have the opportunity to vote. We have had a very good turn out with the judges, so well over 200 judges vote on every single issue that we have. What we've decided to do, where we've tweaked the process, not necessarily tweak the SOP, but tweak the process was the following. We have a Published Cases Committee, it has always existed, but we've reconstituted it, and we are putting together sort of standard operating procedures for the Publications Committee as well, to fit their recommendation into this process. They are constantly on the lookout for precedential cases or informative cases for issues that probably -- need some resolution via the precedential opinion process. And that group, which is at 14 to 16 judges right now, it's a
fairly large group of judges, actively do this on a regular basis to keep a pipeline of cases coming through the process. They look at the decision, they make a recommendation to me, as to whether it should be informative, or precedential, they take an internal vote, I strongly look and consider what their comments are, if there's any -- you know, if it's a 12 to 1, or a 12 to 2, that sort of thing. I'm always curious to know what the others thought of it. And that's how, by via the Published Cases Committee, the input of those judges, we then move that into either informative or the precedential opinion process. Now, when we make things precedential, what we do is we let the judges know that we are interested in making a case precedential, and we have intensive, I would say, brown bag sessions with the judges prior to the vote, to make sure that all of the issues, pro and con, are vetted. And if possible, again, ideally for us precedential cases arise through the rehearing process, when we are not underneath the statutory deadline to write. It allows us to
separate out issues for a particular vote, and if you've noticed some number of our precedential cases, only designate a particular section as precedential, that's important, again, to make sure that vote goes smoothly. And then there's a two--week voting process. The judges vote, and comments are exchanged. Obviously there's discussion amongst the judges. Ultimately, then based on that vote, if there's a majority of the voting members, then it's still up to me, at that point, to decide whether I go forward whether the case as precedential or not. Because if some judge had identified something that everybody else had missed, which is entirely possible, and that has happened, we will not move forward, even if there's a majority vote of the judges. Because after the judges vote, I have to move that up to the statutory members of the Board, and if the statutory members of the Board that I will inform that we have the plans to make that precedential, and it's their input that we are looking for as well; so, it's a fairly long and involved process,
but it does involve a majority vote of the voting judges. Complicated --(Laughter)

MS. MAR-SPINOLA: And can you give, on average how long that process takes?

MR. RUSCHKE: So, again, we have a two--week voting process built in. I would say, once we identify -- you know, one of most difficult things that we have is to identify cases, because there are definitely times where there are cases that arise, close to the one--year final written decision deadline, that are great candidates for precedential status. But again, based on the deadline we may or may not be able to craft it, or the panel may not be able to craft it in a way that it would pass muster with rest of the judges. What we've been trying to do is move that process up, alert the judges to those issues that we think we would like to have case law on, and get them to identify those things to us very early on in the process. But typically, it can take a month or two for cases to be designated as precedential easily. Again, the Published Cases
Committee has to do their review, and make their recommendation, then we do the town hall, or the brown bag with the judges, the two-week voting period, and then ultimately we raise it to the statutory members as well. So, it's a process that takes a while, but I think what we've done to it, is fine--tune it, so that the chances of success of moving those cases through precedential process are much higher than they have been in the past. And again, I would remind everybody that the designation for precedential status can be done by any member of the public. So, if you have a case, and this happened recently, where parties recommended that one of their cases be made precedential, and we actively look at those suggestions from the public. I'll move on to sovereign immunity again, which sort of, is a little bit of an overlay with the expanded panel piece. I want to just show this chart, which sort of summarizes where we are on the sovereign immunity cases. Now we divide them just for -- I don't mean to divide them jurisprudentially, or
there are certain overlapping issues, but we have
the state sovereign immunity cases, and then we
have the tribal sovereign immunity cases. So
these are the state sovereign immunity cases that
we have here. They are summarized based on color,
the two at the bottom, St. Jude Medical v.
California; and Gilead v. Minnesota, those are
still pending, those four IPRs have been decided
on their motions for sovereign immunity. They
work from bottom to top. The green cases in the
middle, those were the ones that we recently
issued less than a month ago, there's a number of
IPRs as you can see, they are all using -- having
the patent owner be the (inaudible) for the
University of Minnesota, but they were different
petitioners. Now, again, this is the situation
that I mentioned before where you want the party,
the University of Minnesota, that are similarly
situated, to be treated the same, that is why this
expansion occurred. Now, this wasn't on
rehearing, this was on motion, and at that point
we have -- the expanded panel was expanded to
include myself, the Deputy, and two of the Vice
Chief Judges, and the ultimate result there was a
6 to 1 decision. So, again, counting is
important, but that's a 6 to 1 expanded decision.
Those green cases involve not only to determine
where (inaudible) of where the sovereign immunity
applies, but also for the first time, whether the
patent owner can waive their sovereign immunity,
and we determine that the patent owner would waive
their sovereign immunity, when they had filed an
infringement case in the Federal District Court on
those patents. That's the holdings of those
cases, and it has been uniformly applied to make
sure that the University of Minnesota is treated
the same, and that different petitioners would not
have different results against the same patent
owner. Now the three on the top I think are
interesting. Those happened much earlier in time
frankly, those were much earlier last year. But
those were the first three cases that we dealt
with, with state sovereign immunity. The issue of
waiver was either not present in the case, or was
not sufficiently waived -- or not sufficiently raised in the case, so those decisions did not.
Those three cases in blue, all were handled by, essentially, three different judge panels, all nine of those judges determined that state sovereign immunity did apply and dismissed essentially the IPR for that patent owner. So, again, this is a building of case law, and none of those blue cases, by the way, there was no expansion that happened there, those cases just came out the way they did, and then again, to maintain that uniformity on this important issue, we expanded those cases in green.

MR. THURLOW: David, just to make sure I understand that. So, for the top three, they said the state sovereign immunity applied.

MR. RUSCHKE: Correct.

MR. THURLOW: Although with no corresponding litigation in those cases where they waived it, or?

MR. RUSCHKE: So, if I recall correctly,
there was one case, essentially, there was, but it
came up in the context of, I believe it was a
contract case in state court that was removed to
Federal District Court.

MR. THURLOW: Oh, okay.

MR. RUSCHKE: So, the patent owner did
not affirmatively bring a case in Federal District
Court of patent infringement.

MR. THURLOW: Okay.

MR. RUSCHKE: And in that situation I
think we actually -- we came out the same way as
the district court did, saying that sovereign
immunity had applied.

MR. THURLOW: Okay. So that's how
you're distinguish between, saying it's the blue
and the green up there?

MR. RUSCHKE: Exactly. And I think that
part of it also temporarily, so again, the first
three cases, handled by three different panels,
came up with the same conclusion. I believe the
University of Minnesota case against Reactive
Surfaces, there's a little bit of a twist there,
in that I think that the IP is owned by both a
state university as well as a private entity.

We've said the state is immune from suit, but we
are moving forward with the private entity. So,
again, it's consistent with the (inaudible).

MR. THURLOW: They are on appeal? I
don't know if you know about the appeal issues.

MR. RUSCHKE: I'm not sure about the
timing of this; I know that they are moving fairly
quickly towards final written decision, so I don't
think any of our cases are on appeal yet.

MR. THURLOW: Thank you.

MS. JENKINS: David, let me just jump in
for a second?

MR. RUSCHKE: Sure.

MS. JENKINS: And the user community, we
hear you were trying to figure out how to get your
questions asked. I think some of the questions
that were being asked, are very specific case
questions, so they are going to a case and they
are saying: Why did you do this? So, I'm going to
see -- so how do you feel about a particular
question, you know -- I feel like it's kind of putting us in a difficult spot because -- and I think it does you. So, we are trying to address that. So, user community could you please try to give a more general question so it's helpful for the entire audience? Not just your specific case, I think that would be nice.

MR. RUSCHKE: Thank you for that. And again, what I'm trying to do is again, when I talk about these cases, this is all based on, of course our public information, the papers that in the files so I'm not trying to give any confidential information, or any pre-decisional information, a lot of this discussion, the status of these cases is literally a status update for you as to where we are at.

MR. KNIGHT: No impromptu rehearsals at the PPAC Meeting. (Laughter)

MS. JENKINS: What did you do?

MR. WALKER: Marylee, I've been contemplating over here on this. But I do agree, I'll say maybe a little more strongly. I don't
think it's appropriate to be asking questions about specific cases, and why was something decided, et cetera, at a Patent Public Advisory Committee Meeting, where we are trying to get some more general themes and issues out here. So, I would say that that is not appropriate for us to raise in this forum. But if people, as you say, have general questions, process, procedure about expanded panels, that is fine. But I really have no -- I really disagree strongly with raising very specific questions, about very specific cases, and why they were decided. I don't know if this is the appropriate forum. I hope the Chair agrees with that stronger statement.

MS. JENKINS: Yes.

MR. RUSCHKE: Thanks Mike. I will say here, I mean, I think the interesting thing about the green set of cases, again, those were not on rehearing, those are 6 to 1 expanded panel decisions, and if you read the dissenting opinion, I think those are very important because those opinions are saying, essentially, that based on
their reading of the law, that sovereign immunity should not apply to the state entities. And so, again, this issue is of, you know, extreme importance on so many different levels, but I do think it's important for those sorts of voices to be heard out there. Now, again, as you see the cadence of cases was applying state sovereign immunity, for the universities. That dissenting judge in those green cases said no, sovereign immunity doesn't apply. We don't know. Ultimately this is going to be something -- I think it's interesting, you know, again, when you think about where we've expanded, we've expanded on some very tough issues. You know, there's a lot of different possibilities, state sovereign immunity applies, state sovereign immunity applies waiver, state sovereign immunity applies no waiver, state sovereign immunity doesn't apply. You know, these are not easy issues, and I mean, the Fed Circuit case law that we wrote in our opinion, I mean specifically says there are no bright line rules here. So, again, we are going
to be needing some help from the Federal Circuit on this, and certainly a lot of these issues will be going up.

And part of the expansion process is to signal the difficulty of these issues. And I think I forgot to mention this. If you recall in the expanded panel section, we talked about the Target case and the Nida case, are the two instances only where we expanded an AIA practice. If you note on the slide, that was the same issue, the same party (inaudible) which the Board has been struggling with since day one, a very, very tough statutory construction issue. So, you can understand where those tough issues arise, we may have to expand, and frankly, and it's in those limited circumstances where we have for the most part.

MS. MAR-SPINOLA: And maybe I'm wrong in this, but my impression is that when it is an important issue, and you expand the panel, you probably don't get too much pushback. I think where the pushback was coming from was on the
issue of ensuring consistency. Right?

MR. RUSCHKE: Yes.

MS. MAR-SPINOLA: And I think you covered that, but I think that sovereign immunity certainly, even though it's a very specialized issue, it was very important, and the expanded panel, I'm not sure anybody would question why that was being done. So, that's my two cents on that.

MR. RUSCHKE: No. I think that's a good clarification. Thanks, Julie. I think I already spoke about these next two slides as to those different -- the different sections of -- or the different colored cases. So, I'll go quickly into the tribal immunity. And again, I can't get in -- these are all pending cases before us, but the Mylan case is a BioPharma case v. St. Regis Mowhawk, and the second case that's recently filed is an Apple case v. MEC, and that's a high--tech case. So, we are seeing tribal immunity cases in both of our major technology areas. Again, I'm not going to go through the slide. I think the
most important piece here, is the last bullet point. Right now, those motions to -- the tribe has moved to dismiss the IPRs based on their tribal sovereign immunity, this is the first time where we have asked for Amicus briefing. We received 15 Amicus briefs, the parties have been allowed to respond, it is now sitting with the panel for decision, and so I won't say anymore about that case. But we appreciated all of the Amicus filings. As I mentioned before, we are hoping to put another SOP in place, to allow additional Amicus briefings, and provide some guidance as to when we will be doing that going forward. And as I mentioned, on the next case, The Apple v. MEC, I believe that -- very preliminary. Essentially they have a filing date in the sovereign immunity -- the tribal sovereign immunity will also be discussed in that case. Moving on really quickly, I know we are running out of time -- Am I out of time, Marylee? Or, can I keep going? Okay. Because I don't want to give short shrift to either the
informative or the appeal statistics, but I will mention the following. On 315(b), obviously this came up in the Wi-Fi One case, whether our decisions under that are appealable. We were looking at it recently, and a set of two decisions that we made informative. And again, I hope this has been helpful to the community. When our Published Cases Committee recommends, they actually try to look at bundling cases together in a particular areas, so we issued two. One was in Luv-N-Care v. McGinley, and the other one was Amneal v. Endo. Both involved the 315(b) one-year bar. Essentially what we are talking about here, is that if you recall earlier on in our cases, we weren't actually sure if our IT was going to be able to handle some issues in terms of accepting papers, in terms of accepting the fees, and ensuring that service of process happened. The three legs that have to happen in order to meet the 315(b) time bar. So there were certain situations when our equipment, or our facilities, or our ability to do that appropriately, didn't
work. And we gave some leeway. These cases, I think are being a little bit more, I would call on our sort of maturing jurisprudence out there, that we are requiring that you have to complete all three prongs in order to get that -- to beat a 315(b) statutory bar date. So, in the first case here Luv-N-Care, there was an issue with the fee, the fee didn't go through. If you look at our cases, there's a number of situations where some practitioners have struggled with this. For instance, they thought they had enough money in their deposit account and they didn't. They tried to charge it to their credit card, and they didn't have enough limit in their credit card to charge it. So, there's a number of these things, it's an alert to the practitioner: please don't wait for the last day, and please don't wait until 11:00 o'clock p.m. Eastern Time. We have plenty of people, paralegal staff, that can answer your questions, just don't do it at 11L00 p.m. Eastern Time, we can really help you out and make sure that you get everything you need in on time. The
second informative decision on the 315(b), this Amneal case, dealt with essentially service of process. I recommend that you read it, but I think, again, it's one of those situations where we are trying to package essentially -- I don't want to say pro--petitioner versus pro--patent owner, but the results essentially favored one party or another, and I hope that gives you a flavor of where the Board is looking at when it comes to these 315(b) decisions.

MS. MAR-SPINOLA: David, real quick. I'm not familiar with the Amneal case, and I will read it, but do you know offhand, with respect to the service and the second bullet point, is that because the original complaint was never served? And the second amended complaint was filed, and that was the first one to be served?

MR. RUSCHKE: The first one was served, if I'm not --

MS. MAR-SPINOLA: And that didn't trigger the time bar?

MR. RUSCHKE: So, that was essentially
one bar, but then there were -- I think new claims
that were added, into a proposed second amended --
to an amended complainant, and they were back and
forth. And so if you look at the dates, they were
arguing over whether, when they had the hearing --
when the Judge, essentially, allowed them to file
an amended complaint, did that start the year
running? Or, was it the actual physical filing of
the amended complaint about five days later that
triggered the one you are filing? And believe it
or not, it was that little, short, three to
five-day period, that's at issue. So, read the
opinion, and it's that date, because essentially,
also it involved whether service was accomplished
via the filing of the amended complaint, because
that was part of the electronic record, of which
the petitioner would have -- or the defendant
would have been -- had noticed at that point.
It's an interesting case, but again, it's saying:
No, no, no, you really do have to comply with the
three prongs, that's what we are saying. The last
but not least here, I did mention this earlier,
the Facebook v. Skky case, this is a CBM case, and
I think it's very interesting, again, we are
trying to designate certain portions of the
opinions as precedential, to focus the Board and
the public as to what's important. What we did,
we thought this was very important, because we
wanted to maintain uniformity amongst the panel,
so this was an expanded decision, and what we are
saying right now is, when a patent owner disclaims
claims prior to the institution in AIA trials, the
Board will treat those claims as if they never
existed when they determine if the patent is
CBM-eligible or not.

Very clear, we want to be very clear
about this, this case is limited to AIA trials,
it's limited to CBMs, and it's limited to
pre-institution. So, when you read the case,
you've got to tie in existing Federal Circuit case
law on disclaimer to CBM statutory eligibility
language. That's the key to this case. So, I
want to make sure that everybody is aware of that.
And again, I think it's -- it's a very important
case for us again, because although CBMs are not as popular as they once were, and we have a few data points, I'll show you. They've always been a small proportion of course. This is, again, an important piece that we wanted to make sure there was consistency, and that patent owners who were similarly situated who would disclaim claims, private institutions were treated the same. We did have a slide here on Wi-Fi One.

Unless, Julie, you think we need to go -- I think people have read it. We know it was essentially a majority opinion written by Judge Reyna with a concurrence by Judge O'Malley. And then Judge Hughes, I think had a dissent, representing three or four judges. I think it's obviously very interesting. It goes to the language of the statute, final and non-appealable, the patent office I think -- the Acting Director, I think Joe this morning mentioned this well. It's an interesting case, we thought this was decided by Cuozzo in many ways, but apparently not. And I think it remains to be
seen. The import of this as to how far the reach of this appealability decision goes. And again, I think there's some interesting language, and particularly the third bullet down, where the majority states, that 315(b) is unrelated to the Director's preliminary patent--ability assessment, or the Director's discretion not to initiate an IPR. So, underneath that holding, essential that's why 315(b) is reviewable, then I would assume that that quoted language, anything in that regime should not be appealable. But that remains to be seen. I do want to take some time on ex parte appeal statistics. I only have four or five slides here. So, bear with me, but I think --

MS. JENKINS: You have another -- One more question.

MR. RUSCHKE: Oh, sure. Yes.

MS. JENKINS: It's still related to IPRs. So, the question is basically, like quality is doing for Examiners, and looking at, you know, how they review an Office Action, and 112, 102, and all of that. Is there any similar program
going on with respect to how a judge -- I'm sorry -- judges review AIA cases and, particularly, you know, is this judge always finding the claims to be invalid. So, is there an analysis going on with the judges themselves, and how they are rendering decisions. That's the question.

MR. RUSCHKE: We internally don't do that. I don't have any data or any sense of that whatsoever. And again, part of our paneling process -- again, it's highly technology-- based, right, as much as we'll can, given, we have the judges we have, but we do try to match as much as we can, all three judges to the technology that's presented before them. It doesn't always happen and just can't be that specific, but for the most part that does happen, but then within that context, we do a randomization of those judges. Now, if it's the same patent, we try to make sure that those panels are similarly situated, so that we are not going to have a situation where, if for resource management that we have the same patent being looked at by 20 different judges within the
technology space, that doesn't make sense to us. I know sometimes this concern has been raised, and I think it's because they feel a certain patents, where the petitioners say, well, I'm getting the same panel over and over and over again. And I can understand that, because again, if it's the same patent or a related patent in the same family, that could happen, but there is randomness to our paneling, and a lot of that is driven by workload. We have 30 percent of our cases that settle, so there's a number of time when we see the cases coming in, we will assign them based on workload as well, in a random way, based with their technology, but then if those cases settle, we have to realign cases. And that can create a little bit of uncertainty as to who is going to be actually on your panel.

MS. JENKINS: -- are a lot of third parties any more that are providing all sorts of data mining of the PTO, across the board.

MR. RUSCHKE: Yes.

MS. JENKINS: And so you can look up and
see how your examiner -- you know, does this
examiner reject a lot? And how often does he or
she do this? And so that, I think is a similar
question is: are you doing any internal, I guess,
quality analysis with respect to the judges?

MR. RUSCHKE: Well, I guess -- I'm not
sure I would call it a quality analysis. We don't
keep track of their, you know, patentable,
unpatentable mixed records. We definitely don't
do that. But on a quality perspective we -- I
think our training, sort of our -- we actually
have formalized, and we've elevated one of our
judges to be a lead judge specifically in charge
of judge training, and we meet every single
Tuesday, for at least an hour, if not two hours,
to do judge training on various aspects. And part
of the training is to look at every single Federal
Circuit case, and those that we need to discuss,
we train the judges to make sure that we are
applying Federal Circuit and Supreme Court
precedent appropriately. We also do training
based on essentially, you know, any sort of --
we'll do 101 training, we just did 103 Inherency Training, and to make sure that the judges are up
to speed on the recent case law out there, that
they see the cases that their co-judges, or that
their colleagues are working on those same issues,
to try to maintain that consistency, but also to
make sure that we are getting it right. And I can
verify that, I think there's no judge out there
that ever is trying not to get the correct
(inaudible) irrespective of background they want
to get it right.

MR. BOALICK: I don't know if I could
just chime in, building on what David just said.
Basically, and I know there are services out there
that collect all kinds of data. Of course, that
data easily can get skewed when a judge is on a
series of related cases or cases that this
afferents reversal. Ratios may be somewhat
meaningless but the really important thing to
understand for anybody appearing before the Board
is exactly is what David said. The judges on your
panel are going to look at your briefs, they're
going to look at the case, they're going to decide it on the facts and the law. And the arguments that you put in your briefs, if you miss some really convincing arguments, you might get a bad result on what should have been a winning case. So, advocacy is important, it always has been. So, I just wanted to make that point that when you're appearing in front of the Board, the judges are looking individually at each one of your cases, your briefs, they are making their decision on that.

MR. RUSCHKE: Good points.

MS. JENKINS: Thank you.

MR. RUSCHKE: If there is nothing else on AIA, if I could just spend a few minutes on ex parte appeals. Again, this is the bulk of our jurisdiction, the bulk of our workload, the bulk of our judges. Two-thirds of everything that we do is involved with ex parte appeals. This is our present filing rates and you can see it over time over the last fiscal years. Whereas we did see a decline from FY12 to essentially FY14, there was a
stabilization two fiscal years ago and then the last fiscal year, FY17, we seem to be going back to our additional levels that we had about five or six years ago. Why is that. We're not sure. One of the things that we had thought about as, and again, this goes to as we brought the inventory down, our pendency numbers came down, would we see an uptick in use of the appeal process as opposed to resorting to RCE's or abandonment. I don't know if this is actually reflective of that but it is a possibility. Again, now we have just through Q1, we're up to 2700. You do the math, we're going to be coming pretty close if we're on the same clip into FY18 for the full year data. So, stay tuned on that and we'll see if we're going to be coming back up. I think we probably will. Any information that you all hear about increased use of the appeal process is important. We typically ask stakeholders, what is your ideal pendency that would cause you to move towards appeals as opposed to RCEs. Again, part of it is we've heard complaints that we don't want you to have low
pendency because we like parking our cases with you sometimes. That's not happening anymore I'm afraid. But we've also seen some people say, if you get it down to a year, if you get it down to six months, then we would start using it more frequently. If you can give us any information on that we would very much appreciate it. This is a little bit of a different representation of a slide that we have all the time.

MR. SEARS: David, that's a great comment you made, I just wanted to ask a question about it. Does your office have a pendency goal?

MR. RUSCHKE: We do.

MR. SEARS: What is it?

MR. RUSCHKE: We'll get to that in three slides but it is 12 months, from the time the jurisdiction passes from patents to the Board. It's sort of like our remand goal. It's not when the decision from the Fed circuit happens, it's when the mandate transfers jurisdiction back to us. 12 months is our goal. We would appreciate feedback on whether 12 months makes sense and does
that make sense for every single technology area. Again, I think we're making good progress on that in most areas as well. Again, we like showing this slide because five years ago we had essentially twice as many appeals in our inventory, known as a backlog. We are down underneath 13,000. One thing I would like to add to this slide just to give you some context, and it goes to your pendency question, Jeff, again what is our intake. You saw that from the top slide, we essentially are getting maybe less than a 1000 appeals in a month. So, again we reach steady state when we are disposing of about 1000 a month. As you can see here now, we have leveled off over the last fiscal year or so and that was intentional. We did an incredible amount of modeling. The administrative side of the Board has done a bang up job. They just won a director's award, actually, for their work in this area. To try and make sure we're modeling the intake and the disposal rate of our ex parte appeals to make sure that we not only hit our pendency goals and
our inventory goals but that the workload for the
judges is maintained. So, that from an
operational perspective, there is not going to be
super highs and super lows and also you might
think we would want to have our inventory go down
to zero, that's difficult for us to maintain from
an operational perspective. We're very happy that
this model is actually following our FY 17 and
FY18 Q1 data very closely. So, that's actually
right on target and exactly what we had expected
and projected. This is the pendency slide, Jeff,
and slightly different than what we had. We had
sort of a bar graph before got some feedback that
it was a little confusing. What we want to make
sure that you see on this is that there is sort of
two different types of pendency's. The one that we
can absolutely measure is the blue on the top
which is our decided appeals. So again, we have a
pendency based on, when that thing gets decided,
we look back and say, how long was it at the
Board. Our appeal pendency is decided pendency
appeals and that's the 12 month deadline. That
impact is also going to be impacted, of course, based on have we cleared out all of the old cases. I'll get to the next slide on that one. The red line underneath the blue is essentially the pending appeals pendency. As you can see, that is essentially somewhat lower but it is trending in essentially the exact same position. Now, I don't have the slide in here that I typically do but it is on our website, that breaks this pendency down by technology. If you recall, the last two PPAC meetings, the data on the technology slide was showing that in the electrical arts, the four TCs for electrical, we were down below 12 months pendency. I was getting a lot of feedback from electrical practitioners out there that said, hey wait a sec, I just filed this appeal and I'm getting my decisions out in less than a year. I said, yeah well that's kind of the way it's happening. We still have work to do when it comes to the other technology centers, particularly business methods, and we have been focusing the Board's energies and attentions to bring those
pendency's down which are hovering right around 20
to 24 months, down again to that one year pendency
level as much as we possibly can. I will say,
this is my last slide, and it ties into the
previous slide on decided appeals. It is a little
bit of a weird slide but essentially this is
saying, we as a Board, and I reported this, I
think, three PPAC meetings ago. Made an effort to
clear out old cases, get rid of them. And as of
today, I'm happy to say that we have no cases that
were ever filed before FY15. So, we are literally
dealing with FY16 and FY17 cases. We have just
instituted at a Board, a program, that we call our
quarterly review period so that every quarter, the
judges will be made aware of which decisions are
on their docket that are the oldest. As a result
of that, focus their attention on those and make
an effort to get those done by every quarter. So,
what you are going to see is that tail that starts
at Q4 of FY16, slowly be eliminated. So, over the
next two or three quarters, there should be
essentially no tail and if we fix this all
together at the same time to get to one year pendency, we will not be having any of these old cases pending anymore. And you will be seeing the same fiscal year you file it, you will be able to get your result out. So, we think these are really moving the appeal process in the right direction. It's not easy because of the volume that we have and the number of judges. I think these programs that have been reducing pendency, equalizing pendency amongst all the different technology centers and particularly eliminating older cases first, deciding those older cases first, was really going to go a long way to helping out the community.

MS. MS. CAMACHO: David, just a quick comment. I notice that the uptick in the filings, and you ask why the uptick, it corresponds with the decrease in the backlog or the inventory as well as the pendency. I wonder if it was noticed by the public and it becomes more of an option now that the pendency is down and it looks like it could be an efficient option when it might not
have been before.

MR. RUSCHKE: I think so and frankly, we hope that would be the case. And that's why we do try to ask whenever we go out, is this something that you've changed with your practice now either as a law firm or working as in house counsel.

When we were coming up with our model, we didn't know whether that was going to take affect or not. So, if it is, we're going to be adding that to our model. But it is definitely an effect that we're conscious of, it's just a little bit tricky to see whether that's actually kicking in or not. We are hoping people notice and I've heard that people are noticing.

MR. SEARS: The data you put together for today's meeting, in my view, is fantastic. It's exactly the type of data I was looking for, especially this last slide. I think you're making incredible process and I'm really happy to hear that the goal is 12 months and I'm happy to hear that you have a plan in place and it sounds like it will reach it fairly soon. Thank you very
MR. RUSCHKE: I appreciate the feedback.

This is all the judges. I wish I could say that it's me but I've done one appeal. That's all I can take credit for. But it is all the judges and again, part of the way this has happened, of course, is that we hired a lot of electrical judges in order to handle the AIA work that was coming in. And all of those new judges all focus on ex parte appeals initially. So, that's why the electrical cases and the electrical inventory really has come down more quickly than the others. But I think you'll see that inventory in certainly the electrical backlog and pendency numbers continue to be that low. That's our goal.

MS. JENKINS: David, thank you, always informative.

MR. RUSCHKE: Can I show one more slide? I'm sorry. We talked about this yesterday and Julie said I could show this slide.

MS. JENKINS: Can I note the subcommittee chair that I requested an hour for
PTAB. Can we note this that we're now an hour and
fifteen.

MS. SPINOLA: I want to give credit to
David for helping us change a format and to
address new topics. On the older topics, to
address it from a different perspective. So, I
join Jeff's comment and compliment for your
presentation, even if it took an extra 15 minutes.

MR. RUSCHKE: Thanks Julie. And the
only piece I wanted to say up here on this one
again is, if you recall the first six months of
calendar year 2017 was very erratic in our AIA
filings. We don't know but the last six months
seems to be going back to normal in a very steady
state. We don't know, let's keep an eye on it.
Again, we had the most AIA petitions filed ever in
the history of AIA last fiscal year. We're sort
of settling in into the mid 120's, 130's. We'll
see how that goes over the next six months. That
was it, sorry Marylee.

MS. JENKINS: Thank you. Dana, it's all
you.

MR. COLARULLI: Thank you. I'm glad to say that both David and Scott are much more exciting than I am. I think the people that I deal with actually are very interested in the progress that David is making so it is a good record that's he building here. So, I'll give a quick legislative report. I know you're all excited to hear from Will as well. The biggest news in my space is certainly that the Senate is going to move forward and vote, hopefully they're scheduled to vote, at 5:30 on Monday on the director nominee on Andrew Iancu. So, we're excited about that. I'll go into a little bit of Senate procedure here. It's what is called a bed check vote. It will be the first vote that the Senate takes. Generally, it is the vote as members are filing back into town. The leadership wants to know if they're in their seats and if they're ready for a committee action the next morning. So, it is that first vote. As a point of Senate history, Danny Martee was also the last bed
check vote and the last director nomination vote was Michelle Lee right after Danny. She was a unanimous consent. So, normally this position has been not necessarily a roll call vote but good that it is a bed check vote because it makes it more likely it will actually happen and won't get pushed. We're very excited. Just the director nominee, not others, not a package.

MS. CAMACHO: Quick question. How quickly will the outcome of the vote be made public or hit the wires? Is it instantaneous?

MR. COLARULLI: As soon as you get the email from me at hopefully 5:31. It is fairly instant. I think the politico, the technology report and certainly a number of other peer articles have been very, very closely watching this so I expect the news will get out pretty quickly. The rest of this is the history. The director nominee did get a number of QFRs, questions to the record, that responded to, including some commitments to get back to members of committee after confirmed. I think the
committee was very interested to move him forward. He has also created some good relationships already with the leadership. So, we're excited that that is moving forward. Of course, beyond that and Joe made a reference to this, this morning, there is a number of issues in front of Congress. IP issues continue to take a bit of a back seat, although as Shira mentioned, we did get mention of intellectual property in the State of the Union. I see this as a good trend. We see now a couple of Presidents, in fact, the last three Presidents have mentioned intellectual property, innovation or patents in a speech so it is good that our issues are very visible, even at the State of the Union level. I think in terms of consideration, certainly there is a lot of other issues, the budget being number one on the minds of both the House and Senate, certainly, immigration issues and others. As I was preparing to come here, the House unveiled plans for an additional CR that they might vote on as early as next Tuesday which would continue our
appropriations through March 22nd at which point they have to act again. At least that is what the House is floating, we'll see if it gets some traction next week and see how the Senate wants to respond. Remember, they have to by the end of next week to keep the government open. Certainly, that has been the focus and lots of other discussions. Infrastructure, you heard that in the State of the Union. The debt ceiling, interestingly enough, the date on that one moves back and forth depending on how much money the federal government is spending, so that might change as well and we'll just keep an eye on that.

Some changes in at least the two committees that we spend the most time with, the House and the Senate judiciary committees. Because of the election of Doug Jones in Alabama, it actually changed the ratio in the Senate. That produced two additional seats on the Senate Judiciary Committee, Zacord Booke from New Jersey and Camilla Harris from California, both joined the committee. We're also seeing the most
senior member, Orin Hatch announce that he'll
derire at the end of this session. He'll be here
for the remainder of the year. At least some
changes there at the Senate Judiciary Committee.
A number of additional changes in House Judiciary,
certainly affecting the next Congress. Chairman
Goodlatte and Representative Isa both announced
that they would not be returning or not be running
for reelection. There was some speculation that
Daryl Isa might run in the district right next
doors which, I think, technically would make him a
carpet bagger but we'll see if that happens. And
then because of John Conyers retirement, changes
in both the ranking member of the full committee
and the subcommittee. For the next Congress, it
has yet to be seen who would take the chairman
slot and the subcommittee chairman slot. At least
one of the candidates that had been talked about
just week, also announced that he'd retire. So,
things very much influx, we'll see what happens
for the rest of the year. In the meantime, I
think certainly the House Judiciary Committee,
we'll starting to see some activity now bubble up on some IP issues, at least initially focused on copyright issues. There seems to be considerable stakeholder support around, at least a music licensing bill, and a few others that are generally non-controversial. I think you'll see move together. The Senate Judiciary Committee, likewise, has set goals considering some copyright legislation. So, I think those would take up at least some of their time the second session of this Congress. But we've also heard some discussions of potential patent bills that may be introduced. Certainly issues, again in David's realm, people are very, very interested in PTAB. In addition to the Stronger Act which was introduced in the Senate at the beginning of the Congress, certainly the House has held at least one hearing on sovereign immunity. We might see some other legislation that is introduced by the end of the Congress. Again, certainly not a front burner issue but there is discussion of those bills being discussed and maybe some bills being
introduced. I think as you look at the two chairman I just mentioned who were leaving, certainly Chairman Goodlatte, one of the things he stated he wanted to get done before he left was copyright reform. Certainly, one of the things that Chairman Isa has looked at is improving the patent system, so I think you'll see both of those issues take some more attention at the Committees. I continue to report on the TEAPP extension. Great progress last year. The three year extension of our existing program was passed out of the House. It is now pending in the Senate in front of the Senate Homeland Security in Government Affairs Committee. We're waiting for a markup for that committee. I believe it is non-controversial. We've been doing quite a bit of outreach to members on the committee, highlighting not only the importance of this program but a number of TEAPP employees who actually happen to be in their states and the importance of maintaining this ability for the PTO and limiting any disruption. We're hopeful they'll move forward before March.
We currently have a gap agreement in place with our unions that is serving us well. We look forward to actually having the authority back on the books for us at least for those three years.

Two last things I'll mention. One, just for folk's interest, there were some IP provisions in the big tax bill. In the original draft, there were some provisions that would have addressed copyrights. There were, in the final bill, just provisions that address patent rights and would likely impact certainly companies patent portfolios subject to a higher tax rate treated as capital gains now under a lower tax rate. It is yet to be determined what else is in the bill that might offset that but at least that is something that we thought was interesting and certainly will watch what the impact is on patent owners. The last thing I'll mention is we continue to get a lot of interest and our IP attaché program, folks on The Hill as they're looking at ensuring that PTO can continue that program, maintain that program. So, both folks on the Senate side and the
House side, on appropriations committee and
authorizing committees, certainly want to make
sure the program is working well. They are aware
of the issue that has been raised by some of our
stakeholders of increasing the rank of the
attaché's, so those are the types of questions
we're getting. We think it is a good conversation
and we would like to continue the program and
continue giving it the resources it needs. That's
all I have, Marylee. Any questions that folks
have I'm happy to answer.

MR. GOODSON: Real quick. I live in the
eastern district of Texas. Should our tourism
rate change any?

MR. COLARULLI: Well, I think maybe TC
Harland has already caused some changes in your
tourism rate, although I hear the barbecue is
still very good.

MR. GOODSON: It is quite good. The
real question being, is there any effort underway
to change laws on venue, given that case and what
all it has brought on?
MR. COLARULLI: I continue to hear folks talking about the impact of the TC Hartland case and watching the cases. I think at least as you look at the congressional leadership on the House side, there were very early signs that the chairman thought that the case did a good job of addressing the issues that he was at least looking at. I hear from stakeholders, some interest in further clarifying the statute. I do think that it would not be uncontroversial. I think we're seeing this already with the legislation, we'll see this with patent legislation. If there are controversial measures, they're likely not going to move forward. I don't think anything in the near future, I wouldn't foreclose changes in the future after we see more cases working through the court system. I'll mention just for pure curiosity. I included one more slide just on federal government shutdowns back to the 70s. There have been quite a few. I'll note, I thought it was interesting when I looked at this chart. Not unlike the situation we have right now where
both houses of Congress and the President are held to the same party. The same thing happened in the 70s where Democrats had all three branches and still there was a shutdown and quite lengthy shutdowns at that time. So, purely for historical context, I thought that was interesting and I would share that as well. With all hopes, we'll still be running, we'll still be open as we go into the end of next week. Thanks.

MS. JENKINS: Dana, thank you. We have one final topic and it is Diversion at the USPTO Office of Enrollment and Discipline.

MR. COVEY: Good afternoon, I'm Will Covey, I'm the director for the Office of Enrollment and Discipline. Today I'm going to talk to you about a new program we just started, a pilot program we just started back in October. I want to lay the groundwork to what is going on in the bar, why we did what we're doing now because of an issue we've seen. In 2016, the ABA partnered with the Betty Ford Foundation and did a study of attorneys throughout the country. These
are not IP practitioners, these are attorneys across the board but obviously it applies to our bar. They came up with some pretty startling figures when this came out. I heard about this at a conference and I anecdotally have been seeing the issue kind of come across my desk because I sign every single complaint against every attorney and agent that we take a disciplinary case. I can tell you, in many, many of these cases, there is some issues with alcohol, drugs, gambling, there is something else going on that kind of causes the cases to go abandoned and to steal their client's funds. The conflict issues that we see, they're not focused on what they need to be. If you take a look at this data here, it is pretty startling. You can see that 21 to 26 percent of the attorneys that were surveyed in this 13,000 person population had a drinking problem. They used a standardized medical methodology for determining what is a problem drinker. How many times do you have a drink every week. How many times do you binge drink on the weekends, those types of
questions. If you looked at the questions and there are ten questions, it is pretty startling.
If you get to the point where you're a problem alcoholic, you'd say oh yeah, that person definitely has an issue. So, the bar has an issue in general across the United States and we're seeing it also too. The study also showed that a significant portion of the bar has problems with depression and anxiety. So, those are again, those are issues that are feeding into problems that we're seeing in (inaudible). The goal for us is and why it got on our radar is that it is not very helpful at the end of the day to have a case filed against a practitioner. We're going to litigate the case or we'll settle it and we're going to take their license for some period of time. That really doesn't solve the problem and help the person get better. It doesn't help the bar in general. So, this program that we've started, which 30 states have started similar type programs, are also staring to recognize this issue. I'll tell you another interesting point
with this is the ABA also looked at law students. They did a study of 3000 law students and the numbers are much, much higher. So, the issues are kind of fermenting in the law schools and then we're going to see those issues down the line throughout the bar as they go out and they practice. Yes?

MS. SPINOLA: William, can you, to the extent you know, how did these numbers or percentages compare against the general public numbers?

MR. COVEY: That's a great question. We had a chance to take a look at that and they are much higher. So, for example, in the general public, the Hazelden Foundation also did a study in 2012 and problem that tagged, for example, the bar was 21 to 36 percent. The general public it is 10 percent. So, it is significantly higher in the bar across the country too. We've got an issue that we need to deal with here. So, what did the PTO do. So, we looked at what diversion, they're called diversion programs, diverting them
out of the disciplinary lane, letting them get help and working with them to not just move forward on a disciplinary case. So, this is available to anyone, attorney or an agent who has got some type of physical, mental or emotional health issue related to drug or alcohol use and it some how impacted what they did before the office. Now there are some caveats to that. It's not carte blanche, we're going to allow everyone to enter into this program. So, the PTO program, and this tracks basically what the state bars are also doing. It can't involve any type of misappropriation of funds. We have several cases every year, we have a steady stream of these of attorneys stealing $100,000, a million dollars from clients and things. So, those cases are almost a steady stream of those types of things. They can't have serious crime involved with what they've done. We've had cases in the past, serious assaults, there has been attempted murder cases we've seen. So, you see crimes that don't relate directly to the IP practice but obviously
impact the person’s ability. Securities fraud is another one we've seen over the years. Those types of individuals would not be able to avail themselves to this type of program. We've already, just since October, we've had two practitioners take advantage of the program. One an agent in Texas who had an alcohol problem and fortunately, the Texas state bar also worked with us and they were able to get the person help in the state. We are working with the state and the person had issues here with the PTO so then we worked together and crafted a way to move forward and hopefully this person will get healthy and get back to being a productive practitioner. And then we had another attorney in New Hampshire who had an opioid issue which you're hearing a lot about in the news. So, lawyers are not immune to that type of an issue so he was working with the state bar up there and getting help too. So, we've approved those two individuals already taking advantage of this program and are hopefully moving forward. One question that came up with the
subcommittee I want to mention too yesterday, was
I was asked is this a diversion program or a
deferral program. We had a lot of discussion
internal to our office. So, the difference is, do
we kind of just hold off which we do in many of
our cases for whatever reason, we decide to toll
the disciplinary case that we're looking at for
whatever reason. It might be a court case that is
pending that we think is important to wait to see
what the district court or the court of appeals
might do so we kind of hold off on these. But
with these types of cases we decided, you know
what, it is probably better if we just allow the
person to get better, get the help they need, get
the medical treatment they need and kind of let
them move on without the threat or the Sword of
Damocles hanging over their head that they're
going to face something if they somehow slip or
fall down in their treatment process. We're going
to look at those types of cases, we're going to
not put them under that type of stress. The one
important point is, obviously there is no PTO
funds being expended on this. We can't do that, we can't spend our dollars on this so they're going to have to pay for this medical treatment out of their own pocket. The last thing I'll mention is there is something called, The National Organization of Bar Counsel. This is a group of bar counsel throughout the United States. Every state is a member of this and kind of get together and they kind of discuss issues that are impacting their bars. We, about five or six years ago, joined this group because we're the only federal bar basically. We're kind of a little bit of an anomaly. They really don't understand us but anytime they get a patent or trademark issue, they will certainly call us and say, here you take it, can you help us and figure out what is going on here. So, we kind of got involved in this five or six years ago and now the group has started kind of a wellness committee. We decided, you know what, we're ready at this point, the PTO, to kind of play a role in this because we're starting our own diversion program. It's a pilot program. We
want to learn what the states are doing, how the programs are working, what is working well and what is not working well so that we can kind of modify and tailor our program so that we can best help those who have an issue before the office. So, we appointed one of the staff attorneys to this committee, so she is going to participate in those meetings and things that they are having basically so PTO can learn and they can also share. I got a call from the ABA's professional responsibility head. As soon as she found out we were moving forward, she was really thrilled. We've gotten a lot of great press about the program. I was interviewed by Bloomberg, a reporter from Bloomberg called me up immediately. The ABA has kind of tagged onto this story so we've gotten a lot of great press. Also, I go out and the office sense, people at the talk at CLE's through the country so you may have seen me at things like AIPLA or IPO or ABA type events. We have now incorporated this information that one, we have this program but there is also an issue in
the bar that we think the bar needs to be aware of, this alcohol and this drug issue. We're a little concerned about what's going on here too. That's basically the presentation so subject to any questions, yes sir.

MR. WALKER: I was going to say, congratulations for taking this on because I think we all know people with substance abuse in different fields and it is a terrible thing. And to have this Damocles hanging over their head at the same time they're trying to resolve these personal issues is really unfair. So, it's a very humane thing to do so kudos to you and the leadership at the PTO for doing it.

MR. COVEY: Thank you.

MR. KNIGHT: Yes Will, and I'd like to echo Mike's comments. Number one, thinking of this program and overtly proposing it for the Agency, I think, is a phenomenal initiative for you and your staff. I agree 100 percent with Mike that these people cannot get their lives pulled back together if they can't make a livelihood. A
disciplinary action does not help them nor does it
help the patent system, so thanks for implementing
this.

MR. COVEY: Thank you.

MS. MS. CAMACHO: It's a great program.

I'm curious as to how it fits into the process.

So, you have a complaint that comes in for
misconduct. Do you investigate and decide that
disciplinary action would be necessary and then
you offer the diversion?

MR. COVEY: So, the way it works and
this is in general terms here. I think this
question came up at the subcommittee yesterday and
when I go out and speak, people are always
curious, how do you get complaints and how do you
get information. Well, we get lots of feeds of
information into the office. It comes in from
your opposing counsel, former clients, so we're
getting lots of information feeding into us. We
get several hundred contacts to the office in any
given year. We evaluate those and in many cases,
we don't even contact the practitioner in about
half of them because we look at it and say, there is nothing here, there is nothing for the office to do. But once we then decide, you know what, there might be something here we need to take a look at, then we kind of craft a letter to the person that says hey, can you please tell us, we have this information, we'd like to hear what your side of the story is, can you please tell us. We have this information and we went into PALM and we say you did X Y and Z and all these cases went abandoned, what is your side of the story. And then at that point, they may tell us, well I forgot this issue. That's the two cases we've seen so far. So, we contacted them, we initiated a complaint process against them, we contacted them and then they told us that they had issues with substance abuse basically. That kind of sets off an all stop for us. Especially since this program, we were looking at putting this program in place. We then shifted to kind of focusing, well hey would you be interested in this type of a program. They both have counsel. They don't have
to do it, it is totally up to them. If they say
no, well we have no choice and we have to move
forward on the case, we have to do something with
the case. In this case, they both were very
willing. One of them was already in treatment at
the time too so it was a perfect match. We were
willing to help them and we entered into an
agreement with the practitioner and we just want
them to stay on track. We need to do some type of
monitoring to make sure they're doing something.
We're not medical professionals, so we just want
to make sure that they're getting the help they
need and they're moving in the right direction.
This process is already a high pressure type
thing. If you get a call, there's my contact, I
know none of you want to call me. Nobody wants to
ever talk to me. I don't get lots of calls or
Christmas cards or anything like that. That's the
kind of business we are and we take that very
seriously. Going back just generally, whenever we
contact someone, we make sure that it is really
something that we're going to move forward on. We
get hundreds of contacts per year and we kind of
have to sift through them. If you get a call from
us or a letter from us, it is going to be a heart
stopping moment for you. We're cognizant of that,
we're trying to be sensitive to that issue.

MS. JENKINS: So, there is not tie in.

So, in other words, you need to complete the
course and then you don't get disbarred and there
is nothing like that.

MR. COVEY: No, so we stop the
investigation at that point. There is nothing
further and we then kind of shift to, let's get
the agreement in place, let's encourage them,
let's get whatever documentation. We do ask for
documentation as to what type of program they're
in. It is very minimal and we just want to
understand that they're doing something. We do
ask them to send us periodic updates just to make
sure they're moving forward and doing something
that is positive to correct whatever health issue
they have and are trying to make themselves better
and hopefully not take their license away. That
has been an issue too. We know when we take your license away, even if it is for six months or a year, it is a pretty catastrophic event for a practitioner. There are even instances where we take someone's for 30 days. We give a lot of thought to, is this really the right thing to do and is this the appropriate sanction. I will say this too, of those hundreds of cases, people do ask us and they always kind of wonder, we only have about 35, 36 cases per year, reported cases. Out of a bar that is 35,000 patent attorneys, 11,000 agents and 20,000 trademark attorneys who are practicing in some shape or form before the office. So, if you do the math, it's pretty small. The bar is in great shape. We look at other state bars like Massachusetts or Michigan which are roughly comparable to our size and their discipline stats are like three and four times what ours are. So, we're in pretty good shape, I think.

MS. JENKINS: Well, we would love to have you come and talk to us again.
MS. SCHWARTZ: Marylee, can I say one thing before we finish. I think this is a great program. I would to see the Agency, I know I've talked to Drew about it before, but we never got through doing something for the employees of the Agency. There are a lot of high stress jobs here as you know. I think we have hired, when you look at performance, we have higher disciplinary stats than what Will is talking about here. It would be great if we could have a similar program that would -- he was talking about this sort of Damocles hanging over their head. That is how the employees are treated in that situation right now. So, it would really be wonderful to look to see if we could do something for the employees. That would put them in a similar situation where they didn't lose their jobs because of this type of an issue.

MS. SPINOLA: Actually, I would have asked that question earlier about whether this program extends to the employees. But my assumption was, was that you already had a
separate program. So, thank you for bringing that up. I think it's a valid point, a significant point. More importantly, I think it's great. In the private sector I think there's a lot of that support so I think it's a great thing for the Patent Office to also support that.

MR. GOODSON: Pam and I had the conversation over lunch and she assured me, and I think this is very appropriate, that there are ombudsmen available within the Agency for a person who feels that for whatever reason they are being sexually harassed. That seems to be the topic in some quarters. I'm glad that is already taken care of and what she is telling me is that if a person feels that way, they can go and meet with an ombudsman of their choice or gender to explain the problem and that you all take it seriously.

Thank you for that.

MS. JENKINS: Okay I didn't really want to end on that note but thank you all. I think this has been a great session. We always are so appreciative to the input that we get from the
office.

The Committee is very excited for the coming year and we look to new initiatives and new outreach and engagement with the office and help everybody to move forward. With that, I'm going to move to close the meeting. May I have a second, second. Thank you and we are closed.

(Whereupon, at 3:08 p.m., the PROCEEDINGS were adjourned.)

* * * *

* * * *

* * * *
CERTIFICATE OF NOTARY PUBLIC

I, Carleton J. Anderson, III do hereby certify that the forgoing electronic file when originally transmitted was reduced to text at my direction; that said transcript is a true record of the proceedings therein referenced; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and, furthermore, that I am neither a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Carleton J. Anderson, III
(Signature and Seal on File)
Notary Public in and for the Commonwealth of Virginia
Commission No. 351998
Expires: November 30, 2020