

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING  
QUARTERLY MEETING

Alexandria, Virginia  
Thursday, August 2, 2018

1 PARTICIPANTS:

2 PPAC Members:

3 MARYLEE JENKINS, Chair

4 JENNIFER CAMACHO

5 CATHERINE FAINT

6 MARK GOODSON

7 BERNIE KNIGHT

8 DAN LANG

9 JULIE MAR-SPINOLA

10 PAMELA SCHWARTZ

11 JEFFREY SEARS

12 PETER THURLOW

13 P. MICHAEL WALKER

14 USPTO:

15 THOMAS BEACH, PE2E & PTAB Portfolio Manager

16 SCOTT BOALICK, Deputy Chief Judge, Patent and  
Trial Appeal Board

17 DANA COLARULLI, Director, Office of Governmental  
18 Affairs

19 JOHN COTTINGHAM, Director, Central Re-Exam Unit

20 ANDREW FAILE, Deputy Commissioner for Patent  
Operations

21 ANDREI IANCU, Under Secretary of Commerce for  
22 Intellectual Property and Director, USPTO

1 LARRY LIAN, Office of Policy and International  
Affairs

2 CHARLES PEARSON, Director of International  
3 Patent Legal Administration

4 SHIRA PERLMUTTER, Chief Policy Officer and  
Director for International Affairs

5 MARK POWELL, Deputy Commissioner for  
6 International Patent Cooperation

7 MARTIN RATER, Statistician, Office of Quality  
Management

8 DAVID RUSCHKE, Chief Judge, Patent Trial and  
9 Appeal Board

10 ANTHONY SCARDINO, Chief Financial Officer

11 DEBBIE STEPHENS, Associate Commissioner for  
Patent Information Management

12 ANDY TOOLE, Acting Chief Economist, Office of  
13 the Chief Economist

14 VALENCIA MARTIN WALLACE, Deputy Commissioner  
for Patent Quality

15 MINDY BICKEL, Associate Commissioner for  
16 Innovation Development

17

18 \* \* \* \* \*

19

20

21

22

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

2 (9:03 a.m.)

3 MS. JENKINS: Are we ready to start?

4 Yes, yes, yes. I've got a nod, Mark we're going  
5 to start. Mark told me we should start. Are we  
6 good?

7 So, welcome. Welcome to the August 2nd  
8 PPAC Meeting. I looked at my notes from our main  
9 meeting and I keep saying time passes so quickly  
10 and it does. And here we are in August and very  
11 excited about the many initiatives that the office  
12 is doing, but I obviously will leave all the  
13 exciting news the Director. We usually start  
14 introducing the Director so I will do that.  
15 Andrei Iancu, Under Secretary of Commerce to  
16 Intellectual Property and Director of the U.S.  
17 PTO. If you would share some comments and then at  
18 the end we'll go around and introduce everyone at  
19 the table. So, welcome.

20 MR. IANCU: Sure. Thank you Marylee.  
21 So good to see everybody here once again. It's a  
22 pleasure to be with all of you and as I was

1 mentioning to Marylee before we got going, we're  
2 beginning to measure our lives by PPAC acts and  
3 PPAC increments. So this is my PPAC increment so  
4 to speak. But it's great to be together.

5           So let me talk a little bit about some  
6 of the events at the PTO in the past few months  
7 since we have last met. Obviously, as you all  
8 know one of the most exciting events that we've  
9 had this year is the issuance of patent to number  
10 10 million. It was a fantastic event and we have  
11 used it and continue to use it as an opportunity  
12 to discuss the history of the patent system, the  
13 great benefits the patent system and intellectual  
14 property brings to the United States economy,  
15 culture, history, and the like. And we have  
16 marked the day with events and we continue to be  
17 celebrate it throughout the summer.

18           The patent was signed as usual by myself  
19 as a director but more importantly in this case it  
20 was signed by the President of the United States  
21 and also the Secretary of Commerce. The signing  
22 ceremony was at the White House in the Oval Office

1 and it was a remarkable event. First of all let  
2 me just say that it was important for me and for  
3 the office that the PPAC was represented at the  
4 ceremony. Marylee was there for the ceremony and  
5 I think she will agree that it was a very  
6 meaningful event for the IP system.

7 Patents at the beginning of our history  
8 were always signed by the President of the United  
9 States. George Washington signed the first patent  
10 obviously and all the presidents through John  
11 Quincy Adams signed patents. But since John  
12 Quincy Adams only two presidents signed patents;  
13 Gerald Ford signed a patent in 1976 as a ceremony  
14 for the bicentennial and now President Trump  
15 signed a patent Number 10 million.

16 Obviously IP and the patent system are  
17 critically important to this administration but  
18 even more importantly they have become an  
19 increasingly important part of the economy and our  
20 growth. So patent 10 million is an opportunity  
21 for us all to recognize the importance of our  
22 system.

1                   So other than the fun ceremonies we are  
2 also engaged in a number of activities and policy  
3 considerations. Let me talk about some of them,  
4 and in no particular order, but let me just start  
5 with section 101. Since we last met we have  
6 issued a couple of memoranda to our examining core  
7 about how to implement Section 101.

8                   The first one we issued in the last few  
9 months is what has been called for better or worse  
10 the Berkheimer Memo. That memo deals with step  
11 two of the Alice Mayo Framework and addresses how  
12 examiners are to think about conventionality in  
13 the 101 analysis and how to document it.

14                   We have also issued what's been called  
15 the Vanda Memo in light of the Vanda case that  
16 preceded it. And it deals with method of  
17 treatment claims and how to deal with those within  
18 Section 101.

19                   We are continuing to work on a more  
20 comprehensive section 101 guidance and hopefully  
21 in the coming months we will have more to say on  
22 that issue. We are working on various issues

1 coming out of the PTAB.

2 And some particular examples, we issued  
3 a Notice of Proposed Rulemaking recently on the  
4 claim construction standards during post grant  
5 proceedings. That's NPRM, as it is called, Notice  
6 of Proposed Rulemaking was out for public comment.  
7 The public comment period closed on July 9th. We  
8 received more than 350 comments and we are  
9 currently reviewing them all and addressing the  
10 various issues that have come up from the  
11 comments.

12 We are working on the amendment process  
13 for four post grant proceedings and were looking  
14 towards issuing guidance on amendments and the  
15 process for amendments, again in the next few  
16 weeks or months.

17 A few guideposts, we believe that  
18 amendments in post grant proceedings should be  
19 done during the post grant proceedings themselves.  
20 We think the statutes asks for us to allow for  
21 that. We think they should be completed under  
22 normal circumstances in the 12 months prescribed



1 by the by the statute. We think they should be  
2 fully participatory because they are intraparty  
3 processes, so that means that both the patent  
4 owner and the petitioners should have an  
5 opportunity to participate in the amendments.

6           There are other issues that we're  
7 looking at but those are some of the main  
8 parameters. And we're trying to figure out  
9 exactly how to make the schedule work and all the  
10 other requirements to meet the various parameters.  
11 We're looking a variety of other issues with  
12 respect to the PTAB such as the trial practice  
13 guide and the like.

14           Last time I believe I mentioned that  
15 we're also looking at the initial search process.  
16 The search that examiners conduct during the  
17 initial examination; I believe that surfacing the  
18 best prior art is critically important to  
19 conducting a good examination and issuing good  
20 patents. So we're looking towards helping  
21 examiners do that search, perhaps with enhanced  
22 technology, perhaps with other tools such as

1 training or collaboration between examiners and  
2 the like. And we have an internal task force  
3 that's focused on those issues.

4 Overall and those are just some of the  
5 examples. Happy to answer questions if anybody  
6 has questions. We're working a lot of other  
7 issues as well. Overall I personally believe that  
8 it is important for the IP system and  
9 practitioners in the IP system beginning with  
10 folks at the PTO and all of you and everybody else  
11 who participates to engage in, what I call, a new  
12 dialogue about IP and patents and the like.

13 I think it is critically important for  
14 our economy and for our country that as leaders in  
15 this field we communicate the importance of  
16 innovation, the critical role played by inventors  
17 and entrepreneurs in our innovation and  
18 entrepreneurial ecosystems and the great benefits  
19 all of this activity brings to the United States.  
20 So I think all the policy considerations should  
21 keep that in mind and the discussions should have  
22 that in mind and promote the great benefits of our

1 wonderful system.

2 So I will leave you with that and I hope  
3 you have a great set of meetings today. I looked  
4 at the schedule and it really looks really, really  
5 interesting. So thanks for having me here to  
6 start the day.

7 MS. JENKINS: Great. Thank you. Any  
8 questions from committee members? With respect to  
9 -- yeah, Mark --

10 MR. GOODSON: This is two questions from  
11 Marla Grossman of the American Continental Group,  
12 one what are your IT priorities during the coming  
13 year and second is the USPTO accelerating or  
14 slowing down the patent end to end program?

15 MR. IANCU: Thanks for the question. So  
16 IT is obviously a very high priority for us. We  
17 are looking at all aspects of our IT systems. The  
18 IT systems are very important for our examiners to  
19 conduct their work on a day-to-day basis. They're  
20 obviously very important to our stakeholders  
21 because they interact with our office in large  
22 part through electronic means.

1                   So one of the main things that we are  
2                   looking at is trying to find ways to bring us to  
3                   the most up to date technologies. So instead of  
4                   continuously and incrementally update the systems,  
5                   which we have to do. It would be great to find  
6                   the very latest technologies and potentially  
7                   perhaps leapfrog our current state. This is a  
8                   long-term project, it's not something that can be  
9                   done overnight. But we are looking at that and  
10                  frankly a great place to start would be with a  
11                  search activities and the state of the art  
12                  technologies that can be added to help examiners  
13                  with that process. So anyway that's just that's  
14                  just one example and we're working towards all  
15                  that.

16                  With respect to your second question  
17                  about patents end to end, I will defer to Drew and  
18                  the patents group to address that.

19                  MR. HIRSHFIELD: Sure. So there is no  
20                  plan to slow down patents end to end and rather we  
21                  have every plan to continue moving forward. I  
22                  don't know if accelerate is the right word, I

1 think right now we're still determining the best  
2 path forward. I know that we've made some good  
3 progress with some of the examiners tools,  
4 particularly the official correspondence tool has  
5 been a success and I know we're making some steady  
6 progress in our search tool. So a long way to say  
7 that the patents end to end is continuing, is a  
8 big focus of ours, and will remain a focus.

9 MR. WALKER: Director Iancu, I just want  
10 to make a comment and thank you for the leadership  
11 on 101 because having been in this patent business  
12 for over 30 years, you know when I started the CFC  
13 was just created and there was a lot of wind in  
14 our sales to keep the peace system going and  
15 people were very enthused and now that wind has  
16 died down, it's non-existent and blowing in her  
17 face with a lot of this 101 jurisprudence.

18 And I think as part of your platform the  
19 business community has a sense now that patents  
20 are not as valuable as they were. And you have to  
21 Defend Trade Secrets Act so people are looking  
22 more at trade secret protection in lieu of patent

1 protection, which is not in my opinion a great  
2 thing because you don't have the social contract  
3 where you are trading publication of information,  
4 of innovation, in exchange for the limited rate.

5 So congratulations for that effort.  
6 Thank you. And I think you'll get a lot of support  
7 from the business community but it's a big hill to  
8 climb to get, not just the legal community, but  
9 the business community mind around the fact that  
10 there is still a lot of potential in the patent  
11 system because reading the business papers, I  
12 think do have a different sense. So thanks for  
13 the leadership on that, it's a critically  
14 important issue.

15 MR. IANCU: Thank you, Mike. I very  
16 much appreciate that. It is true, we do have a  
17 fairly big hill to climb but I have no doubt --  
18 there's absolutely zero doubt in my mind that the  
19 patent system is critically important and having a  
20 robust patent system is critically important.

21 All we have to do is look at our history  
22 from the founding of the Republic until today, and

1 all the amazing technology and science and growth  
2 that we have experienced in this country and  
3 provided leadership to the world. And throughout  
4 all that time, all that work was backed by our  
5 patent system and for the patent system to  
6 function as intended and as you're suggesting we  
7 really need to have faith in the system. The  
8 business community must have faith in the system.

9           And that's why it's critically important  
10 to understand the needs of the business community.  
11 Of course, the business community is not  
12 monolithic. There are many, many different  
13 interests and they cover a whole spectrum. There  
14 are different technologies with different life  
15 spans, different needs, different points of view.  
16 That's why I believe that in everything we do we  
17 need to have a very careful balance; we need to  
18 listen to everybody. Understand the various  
19 pressure points in the system and provide the  
20 appropriate balance.

21           The last thing we need to do is to  
22 ignore or downgrade the patent system that will

1 have a detrimental effect in my opinion across the  
2 board. Instead we need to have a robust system,  
3 strengthen the system in a balanced fashion.  
4 Thank you.

5 MS. COTTINGHAM: I'll follow with that  
6 with Mike. Thank you for taking the leadership on  
7 101. I represent the Life Sciences and Pharma  
8 industry and particularly the venture capital  
9 investors in that industry as well as the startup  
10 companies.

11 Trade secrets is interesting but patents  
12 are critical; they're absolutely critical to the  
13 funding, to the growth of companies and getting  
14 them off of that off the ground. And I thank you  
15 for that guidance on the particular cases and that  
16 sort of thing.

17 I'm interested in hearing what else you  
18 see, what other opportunities you see as far as  
19 providing a little more predictability or  
20 certainty or simplicity in understanding the  
21 101's. I'm constantly having to explain to  
22 investors for example 101 isn't an issue here or



1       why 101 is an issue. And also trying to  
2       understand issue patents that that issued 10 years  
3       ago that would never issue today and what risk  
4       that poses to our company for example.

5                   MR. IANCU: Sure. Thanks, Jennifer.  
6       So, 101 is very important in providing additional  
7       clarity to the to the 101 analysis is very  
8       important. I have said before that I do believe  
9       that there is a level of uncertainty in our patent  
10      system as a result of the current state of Section  
11      101 jurisprudence. I do think that there is more  
12      that the Patent Office can do.

13                   As you've comment and as I've mentioned  
14      at the beginning, we have issued two guidance  
15      memoranda on two particular aspects of 101, but  
16      I'm hoping we can do more. And some of the  
17      overall parameters of where I think we can go  
18      relate to understanding exactly what are the  
19      areas, the so to say prohibited areas or the  
20      problematic areas that the Supreme Court has  
21      identified. And I believe that if we look  
22      carefully at the Supreme Court jurisprudence over

1 the arc of patents history.

2 I think we can identify the select  
3 issues that the Supreme Court has found  
4 problematic. The statute itself has by and large  
5 been the same since about 1793. There's been  
6 Supreme Court jurisprudence since basically that  
7 time; it's been about 200 years of the Supreme  
8 Court looking at Section 101 and its equivalence  
9 over history.

10 During that time the Supreme Court has  
11 identified fairly narrow set of patent  
12 applications that it thought have been  
13 problematic. And I think that it would behoove  
14 the system for all of us to exercise judicial  
15 restraint and stick closely to those Supreme Court  
16 cases. And they think if we do that I think it  
17 will help clarify section 101 a little bit. So  
18 that's one approach we're trying to follow and see  
19 if we can issue some guidance that is based more  
20 closely on our reading of those Supreme Court  
21 cases.

22 MR. KNIGHT: Director, I think the

1 initiatives on 101 are great and I think it does  
2 promote your initiative to enhance the certainty  
3 of the patent right so the business community and  
4 the patent community can rely on that right.

5 I think another issue that we have to  
6 face though is the difference between what happens  
7 in examination and what happens before the Patent  
8 Trial and Appeal Board. And I think the user  
9 community is really concerned about the fact that  
10 the PTO is issuing patents and those same claims  
11 are being found to be unpatentable by the board.  
12 And so along those lines what are the initiatives  
13 that you have started to make certain or to  
14 enhance the certainty of the patent right when it  
15 goes before the board?

16 MR. IANCU: Thanks Bernie. I definitely  
17 agree that it's critically important to have  
18 certainty and predictability of issued patent  
19 rights. And let me just touch upon some of the  
20 initiatives at the PTAB.

21 I did mention the NPRM regarding claim  
22 construction. I think this is an important issue

1 when it comes to predictability. If you think  
2 about it, whether you're a patent owner who's  
3 trying to build a business around her patent or  
4 you are a member of the public, a competitor let's  
5 say, that is trying to assess somebody else's  
6 patent.

7           And you're trying to decide whether you  
8 need to design around, whether you need to license  
9 the patent, or do something else. When you make  
10 those decisions, when the business community makes  
11 those decisions, it needs to be able to understand  
12 what the scope of that patent is. And the scope  
13 of the patent, the boundaries of a patent cannot  
14 possibly depend on the happenstance of which  
15 tribunal will review that patent years down the  
16 line because you don't know whether it might be  
17 the PTO that takes it up first or district court  
18 or the ITC that takes it up first.

19           The boundaries, at least from an  
20 objective point of view, should be the same no  
21 matter who reviews it. And that's why we proposed  
22 -- that's one of the main reasons we propose that

1 the claim construction standards should be the  
2 same. As I said we are reviewing the comments  
3 from the public and will reach our final decisions  
4 fairly soon.

5 I also think that through the post grant  
6 process, the result of any post grant proceeding  
7 should not be an all or nothing proposition. The  
8 only options should not be either the patent is  
9 completely valid or completely invalid. The  
10 statute allows for amendments and I think it is  
11 good for everybody; the patent owner, the public,  
12 the patent system. If the claim is as issued  
13 happened to be invalid or too broad, then if there  
14 is patentable subject matter to allow the patent  
15 owner to hone in the patent in a more appropriate  
16 way.

17 So that's why I think having a robust  
18 amendment process is critically important and we  
19 have been working very hard at that and I think we  
20 will have something that will go a long way  
21 towards honing in claims during the post grant  
22 process.

1                   There are a variety of other things  
2                   we're working on. Let me mention one more thing  
3                   that I did not mention in my opening comments,  
4                   which is the question of the review panel itself.  
5                   There has been some criticism out there about the  
6                   way we sometimes enhance or expand the panel. I  
7                   don't particularly subscribe to those criticisms  
8                   but I hear them. So we are working towards  
9                   clarifying that process, providing more  
10                  transparency, both to the parties in the process  
11                  as well as to the public. And again hopefully in  
12                  the next several weeks or so we'll have more to  
13                  say about that as well. So those are some  
14                  examples.

15                  MR. KNIGHT: If I may just one follow  
16                  up. One item that when I worked here that I was  
17                  always grappling with, that I always thought would  
18                  sort of enhance the certainty of the patent right  
19                  would be when you come out with guidelines for the  
20                  patent examiners, to coordinate with the board, to  
21                  make certain the board judges are on the same page  
22                  so that they are following the same guidelines.

1                   Because when I worked here a lot you  
2                   know I would hear from the judges that they don't  
3                   have to follow those guidelines, but the judges do  
4                   report to you, you prepare their performance  
5                   plans. So I would think that one great initiative  
6                   would be to make certain that the board judges are  
7                   following the same guidelines that the examiners  
8                   are following.

9                   MR. IANCU: Yeah. Thanks for the  
10                  suggestion. Let me just state the obvious; we are  
11                  one agency.

12                 MS. JENKINS: Thank you for the  
13                 questions. Thank you for the answers and having  
14                 been at several of your speeches, when Bernie  
15                 asked that question I immediately thought of the  
16                 many times you've said this is one office. And so  
17                 as a PPAC we appreciate all the input, we've been  
18                 hearing many positive comments from the user  
19                 community about all the new initiatives.

20                 One thing that I know I've always been  
21                 lucky because I've been on the committee for six  
22                 years and I know the office listens and I always

1 tell -- when I go out I always tell folks they are  
2 listening to you and I do believe that the  
3 initiatives that you're doing now help to show the  
4 user community that you truly are listening. And  
5 trying to hear as many voices as possible to give  
6 guidance and that helps the business, that helps  
7 the practitioners, that it helps the courts. And  
8 so all of these things and more that you're doing  
9 are very exciting and you know we commend you for  
10 doing this and in doing the initiatives on these  
11 different issues.

12 On the issue that Mark brought up  
13 quickly about IT also too the PPAC during my  
14 tenure here has always been supportive of funding  
15 for IT. It is vital, crucial not only for the  
16 office, but also for the outside as we become more  
17 and more dependent on a paperless environment. So  
18 anything that PAC can do to get more information  
19 for the office of what the user community is  
20 expressing in this area, we will certainly step up  
21 and help in that area.

22 Personally it was an honor -- switching



1 to the 10 million patent ceremony at the White  
2 House, when Andrei called me and asked me to  
3 represent the PAC. It is wonderful to see the  
4 support from the White House for IP and for  
5 patents and I think President Trump's signature  
6 got even bigger when he signed it on these  
7 ceremonial patent, which was literally this large.  
8 So it was wonderful to see and the other thing  
9 too, which I want to share is that the inventor  
10 and the CEO of Raytheon were so excited to be  
11 there they. They were so excited to have this  
12 honor of being the 10 millionth patent. And it  
13 was just an honor and a pleasure to be there with  
14 you to see that enthusiasm.

15 MR. IANCU: Thanks for all those  
16 comments. It really was a remarkable day between  
17 the signing at the office and the various other  
18 celebrations that we had it was a wonderful time  
19 for the IP system, highlighting the best of what  
20 we do, I think.

21 MS. JENKINS: So with that we'd like to  
22 move on here. So at this point, one thing I'd

1       like to do differently -- just a little  
2       differently today is I've had a lot of comments  
3       that we don't express where people are from, so if  
4       we could when you introduce yourself if you can  
5       just express more than just being a PPAC member,  
6       obviously briefly. So Pam you want to start?

7                   MS. SCHWARTZ: I'm Pam Schwartz. I am  
8       the President of the Panthers Professional  
9       Association and a member of the PPAC. So I work  
10      for the U.S. PTO and I am a patent examiner.

11                   MR. GOODSON: I'm Mark Goodson and I'm  
12      an independent inventor. I come from the Dallas  
13      Texas area.

14                   MR. KNIGHT: My name is Bernie Knight.  
15      I was Deputy General Counsel and General Counsel  
16      at the PTO previously. I'm a partner at  
17      McDermott. Will, and Emery and now I have my own  
18      patent consulting firm.

19                   MS. CAMACHO: I'm Jennifer Camacho, I'm  
20      from Boston Massachusetts where I am the Chief  
21      Legal Officer and a Patent Attorney at Tort  
22      Therapeutics, which is a cancer immune-

1       therapeutics company.

2                   MR. LANG: I'm Dan Lang, I'm from San  
3       Jose California. I'm Vice President of  
4       Intellectual Property and Deputy General Counsel  
5       at Cisco Systems and a member of the PPAC.

6                   MR. WALKER: I'm Mike Walker from  
7       Wilmington, Delaware. I was Vice President Chief  
8       Intellectual Property Council at Dupont and  
9       retired three years ago. Member of PPAC.

10                  MS. JENKINS: I'm Marylee Jenkins, Chair  
11       of PPAC and partner at Arent Fox in New York.

12                  MR. HIRSHFIELD: Drew Hirshfield,  
13       Commissioner for Patents, here at the USPTO.

14                  MR. FAILE: Andrew Faile, Deputy  
15       Commissioner for Patent Operations here at the  
16       U.S. PTO.

17                  MS. MARTIN-WALLACE: Valencia  
18       Martin-Wallace. I'MS. I'm Deputy Commissioner of  
19       Patent Quality for U.S. PTO.

20                  MR. SEIDEL: Hi, I'm Rick Seidel, Deputy  
21       Commissioner for Patent Administration USPTO.

22                  MR. POWELL: I'm Mark Poweel, Deputy

1 Commissioner for International Patent Cooperation.

2 MS. JENKINS: Okay with that -- oh thank  
3 you, Mike. We have several of our members  
4 unfortunately could not make it in person but they  
5 are online, so I'm looking at the ceiling right  
6 now. So Julie, Jeff, and Catherine are you there?

7 MS. FAINT: Yes, this is Catherine  
8 Faint, I'm Vice President of the Trade Market  
9 Union and an Interlocutory Attorney for the  
10 Trademark Trial and Appeal Board and a member of  
11 PPAC.

12 MR. SEARS: This is Jeff Sear's, I'm  
13 Associate General Counsel and Chief Patent Counsel  
14 at the University in New York and also a member of  
15 PPAC.

16 MS. JENKINS: Not hearing Julie, so  
17 we'll get Julie later. Just remind me. Okay, so  
18 I would like to move forward. Can we do the next  
19 presentation? And Director, thank you again. We  
20 appreciate your comments, your leadership, and  
21 look forward to the November PPAC meeting.

22 MR. IANCU: Thanks for having me.

1                   MR. FAILE: Okay. So in our combined  
2 operations and quality update, we have a number of  
3 different items to go today. I will start farming  
4 trends. So is there a clicker? Thank you. Thank  
5 you, Mark. I'm actually going to start with this  
6 side.

7                   So one of the things I thought I would  
8 do today, we get a lot of questions about filings  
9 and the basics of filings and how do we look at  
10 filings here at the office. So I only have three  
11 sides, I thought I'd spend a couple minutes  
12 walking through filings in general and then give  
13 some data on where we are now, where we were last  
14 year, and hopefully what we're going to see for  
15 the end of this year, as far as what we are  
16 modeling.

17                   So as everyone probably knows by now, we  
18 run a patent model where we're basically looking  
19 at the work that we need to do in trying to match  
20 the appropriate staff. Obviously in patents, we  
21 can't just take a patent examiners and have them  
22 examine any technology. They're pretty much

1 rooted in a certain technology with a little  
2 latitude on the left and right of that technology,  
3 but you're not generally going to assign a biotech  
4 examiners to a computer system case, et cetera.

5 So one of the things we really need to  
6 do is very specifically match our incoming hires  
7 to the technology areas that we have, that they  
8 have expertise in or that we will be training them  
9 in, number one.

10 And number two, we want to very  
11 carefully match the actual pendency's of all the  
12 areas that we have with our incoming hires. So if  
13 you can imagine we have hundreds and hundreds of  
14 different dockets, when we hire they all have  
15 different tendencies that turn into our aggregate  
16 number that we're reporting on in our pendency,  
17 such as 15.4 months average pendency.

18 Underneath that number is a lot of  
19 different areas; hundreds and hundreds that have  
20 different penances. So we're very careful to match  
21 our hires to those areas. We can try to have as  
22 equal a pendency as possible given the situation

1       that we're in.

2                   A huge driver of that particular  
3       placement, the number of hires we need, where we  
4       need to place them, is the incoming filing rates.  
5       We look at the incoming filing rates from a  
6       workload perspective in two different ways. We  
7       have a new filing, we call them serialized  
8       filings; the reason you see serialized is they  
9       actually getting new serial number; that's a  
10      serialized new filing. And we also have requests  
11      for continued examination RCE work.

12                   So we really need to be on top of how  
13      the filings are coming in and even more  
14      specifically where they're coming in in different  
15      areas. So we know we're matching hires and  
16      workload to those particular areas so we don't  
17      have dockets that are driven too deep and we don't  
18      have dockets that are ballooning up on the other  
19      end of the spectrum.

20                   So one of the questions that we often  
21      get is about our filing rates and what have filing  
22      been doing. There seems to be a narrative that

1 filings have been dropping off over the years. So  
2 what I have here in this graph is hopefully  
3 attempt one to kind of dispel that particular  
4 myth. What you see here and you probably can't  
5 see the numbers on the bottom, at the very bottom  
6 is on the far left is 1995 the year of filings and  
7 on the far right is 2017. So you got a pretty  
8 wide spectrum of years.

9           And then on the axis going up is the  
10 number of filings per year. The numbers aren't  
11 necessarily important for this but the graph kind  
12 of tells the story that within the last 10,  
13 probably 15 years we've had one dip in filing  
14 rates and that was in a 2009 time period and we  
15 have been steadily moving up since about 1995 or  
16 1996 actually.

17           For a couple data points on the very far  
18 right, in 2017 we had about 419,000 new cases come  
19 in last year. That was about a.3 percent increase  
20 over the prior year. So you can see on the last  
21 part of that blue line, a slow little tick upward  
22 that's a general filing rate increase that we've



1       been seeing.

2                       This year we are actually seeing --  
3       you'll see that line go up a little bit more.  
4       We're currently at about a 1.7 percent increase  
5       over last year. And we've modeled in our patent  
6       model about 1.5 percent, so we're kind of on that  
7       target. We'll land somewhere in that end zone by  
8       the end of the year. Again very important for us  
9       to be predicting that for making sure we have our  
10      workflows adequately staffed.

11                      Another a big part of our work is RCE's  
12      and if you think about the ratio of work it's  
13      roughly 70 percent of our workload comes in under  
14      serialized filings, 30 percent comes in over  
15      RCE's. It's been a relative constant off  
16      throughout the years. So in our seas you see a  
17      little bit more of a dramatic performance. You  
18      see an increase around the 2000 and 2006  
19      timeframe. And as we move up lately we've been  
20      seeing a lot of different performance in RCE's,  
21      they have roughly been coming down and they went  
22      up a little bit and they're coming down.

1                   Last year at the end of 2017 we had a  
2                   negative 6.7 percent growth so we were 6.7 percent  
3                   below what we had last year. And right now we're  
4                   even a little bit lower that we're at 7.7 percent  
5                   down from last year's numbers. So the RCE part of  
6                   the equation is coming down, we consider that  
7                   generally a good thing. We have a number of  
8                   initiatives that were designed at trying to reduce  
9                   the need for RCE's. At least in the aggregate,  
10                  the numbers seem to be reflecting on that trend;  
11                  that's an overall positive.

12                  Go back to the very first slide and  
13                  here's just a snapshot of our monthly serialized  
14                  filings and there's a lot more unevenness as you  
15                  move down to monthly or you can even do daily.  
16                  But again we are on pace for probably about a  
17                  percent and a half increase over last year. Right  
18                  now we're running a little bit over that 1.7  
19                  percent. Again the big point I'd like to make  
20                  here is that on this particular graph, you do see  
21                  serialized but for one exception you do see  
22                  serialized filings rise throughout the years

1 throughout the couple decades that this graph  
2 shows.

3 So that's it for filings, they'll be a  
4 little bit more in the afternoon presentation from  
5 international folks about some international  
6 filing. These are filings here domestically, of  
7 course. So let me stop for any questions here  
8 before we keep going on to the next point,  
9 Jennifer.

10 MS. CAMACHO: I have a quick question on  
11 the serialized filings on the last -- the  
12 composition of the serialized filings over the  
13 last decade or so. Has the composition of brand  
14 new disclosures versus continuations and division  
15 changed? And does that impact how you predict  
16 your hiring's as much as it's continuations and  
17 divisional's tend to go to the same examiners,  
18 someone who is familiar with the disclosure  
19 already?

20 MR. FAILE: Yes, that's a good question.  
21 Those percentages are roughly the same. The  
22 continuation part of the filings is in the 20

1       percent to maybe 30 percent, off top of my head.  
2       They don't necessarily -- the fact that is a con  
3       doesn't necessarily affect staffing trends because  
4       we will match that to the technology and they'll  
5       generally inherit their technology from the parent  
6       case, to the extent the examiners not here, we  
7       obviously would reassign it to the extent  
8       examiners overburden, we possibly would reassign  
9       it. But generally the cons counts are would be  
10      matched up with the person that had the parent  
11      case.

12                 MR. KNIGHT: Just wondering, it looks --  
13      just looking at this graph it looks like the rate  
14      of increase in filings has -- the rate of increase  
15      has really dropped from about 2013 to present. Is  
16      that accurate, that from year to year the increase  
17      has been less than less in the number of  
18      serialized filings?

19                 MR. FAILE: That is accurate.

20                 MR. KNIGHT: Okay.

21                 MR. FAILE: So Bernie makes a good  
22      point. I probably should have pointed this out.

1       If you look at the end of the line dial back about  
2       4 or 5 years to 2013, you'll see a very slow  
3       increase and that's anywhere from almost flat --  
4       you know if that line was line was flat, we'd be  
5       at zero. You see an almost flat line to it's  
6       starting to creep up a little bit but it's still  
7       in the 1 percent, 1.5 percent increase.

8                To the left of that, you see a lot of  
9       different shapes there as we've gone through the  
10       years. One of the big questions for us and if we  
11       had a crystal ball or if you guys have a crystal  
12       ball and can give me the answer, I'd love it, is  
13       are we going to see that -- what's the behavior of  
14       that line in the next few years?

15               That's really important to us to know  
16       should we be staffing up in advance of the trend?  
17       Should we be figuring out other ways to compensate  
18       if the trend is going down, et cetera?

19               MR. LANG: Are there discernable trends  
20       if you look at individual technology center areas,  
21       are there trends that differ from what we see in  
22       the aggregate?

1                   MR. FAILE: Yes good question. So Dan  
2 if you were to take the slide down and break it  
3 down just by technology center, you would see a  
4 lot of different movement. If you move down to  
5 the work groups, which are getting more into a  
6 monolithic block of technology and you compare  
7 those across all the technology centers, you would  
8 see a lot of movement there as well.

9                   And again that's part of the very big  
10 job ahead of us that patent ops works with our  
11 Rick and patent admin to try to figure out how  
12 many hires do we need, where do they need to be  
13 placed, which is very critical. So we can chase  
14 those down, so we can try to even out our  
15 pendency's across the spectrum as best we can.  
16 We'll never have that perfect, just because of the  
17 enormity of the cases that come in and the  
18 different filing trends that you see. But if you  
19 were to break this down you would see things  
20 jumping up a lot more.

21                   MR. LANG: Of course, you know, very  
22 curious how it is of the different technology

1 areas, what's in the IT industry versus life  
2 science. But another question, do you see  
3 different trends in foreign filers versus U.S?

4 MR. FAILE: Not really, I believe we're  
5 about 50/50 at the moment. We're going to talk a  
6 little bit in the afternoon session about some  
7 international filing trends. There's some  
8 differences there but we haven't seen much of a  
9 change over the last few years.

10 And what I can do to your previous  
11 question, maybe next time what I'll do is I'll  
12 break this down at least by chemical, mechanical,  
13 electrical, maybe a little bit more so you can see  
14 some of the different distributions depending on  
15 areas. This is kind of just the largest block of  
16 all incoming columns.

17 MS. JENKINS: Can you break it down --  
18 sorry -- can you break it down even further by  
19 country?

20 MR. FAILE: I believe we can. Mark, do  
21 you if we can break down by origin? I'm pretty  
22 sure we can do that.

1 MR. POWELL: Yeah, sure.

2 MR. HIRSHFIELD: We've been -- I don't  
3 know off the top of my head what the percentages  
4 are, Andy is correct that we're not seeing large  
5 shifts in percentages of applications filed from  
6 foreign countries. I know on the trademark side  
7 there is with regard to China, there's many, many  
8 filings. I think they've had a -- I don't  
9 remember -- I think they overall have a 10 or 12  
10 percent increase in filings and a bulk of that is  
11 from Chinese filings.

12 I believe we're seeing a slight increase  
13 of Chinese filings but nothing very significant,  
14 but we can certainly follow up with those numbers.  
15 But we have not seen what the trademark side has  
16 seen.

17 MR. POWELL: We in fact have those  
18 numbers this afternoon. We have some slides  
19 showing the various percentages of breakdowns.  
20 That'd be at one or so.

21 MS. JENKINS: It's a common question  
22 because people are obviously noticing the activity



1 in China and how their filings have significantly  
2 increased in China alone. And then how that  
3 impacts United States. And then obviously that  
4 impacts resources here at the Patent Office,  
5 examiners review. Great, thank you.

6 MR. FAILE: So, I'll just end with all  
7 my quarterly ask that if there is any intel that  
8 anyone can give us about filing rates, filing  
9 trends, where we think things are going, it's very  
10 helpful to us. That kind of feeds into kind of  
11 predicting what that line is going to do to the  
12 right of where we are now; very hopeful for us for  
13 setting staff levels, et cetera. Kind of make  
14 sure or try to equalize in chase pendency's down,  
15 so thanks.

16 MS. JENKINS: Any other questions for  
17 Andy? Thank you. Thank you Andy.

18 MR. FAILE: So now I'd like to introduce  
19 John Cottingham, he's the Director of the CRU.  
20 And we had a request last time; we went through  
21 some of our design statistics for our design  
22 TC2900. There was a similar request for the work

1 that John does in the applications in proceedings  
2 that he handles in central re-examined unit, the  
3 CRU. So John's going to walk us through that, so  
4 John.

5 MR. COTTINGHAM: Thank you, Andy. Like  
6 Andy said I'm John Cottingham, I'm the Director of  
7 the Central Re- examination Unit. I'm here to  
8 kind of give an overview of what we do in the CRU  
9 and give some statistics and stuff.

10 First I'd like to go over the staff of  
11 the CRU. It consists of one SCS Director, 10  
12 supervisory Patent Re-exam Specialists, 79  
13 Re-examines Specialists broken out in the  
14 different specialties; 15 chemical, 49 electrical,  
15 and 15 mechanical. And we have a dedicated tech  
16 support staff with which includes one supervisory  
17 paralegal specialists, 7 paralegals, and three  
18 legal instrument examiners. We do not handle the  
19 designs, 2900 handles all their re-examines and  
20 reissues.

21 Next, the proceedings that we handle in  
22 the CRU include all ex-party re-examine

1 proceedings along with supplemental examination  
2 proceedings. We just recently couple of years ago  
3 took over all reissue applications filed in  
4 utility applications and we still handled the  
5 legacy Inter- Party Re-examination Proceedings.

6 In 2012 the AIA came out and made some  
7 significant changes. The Inter-Party Re-exam  
8 proceedings are no longer available and they  
9 became the inter-parties review proceedings and  
10 were shifted to the patent trial and appeal board.

11 The AIA also introduced the supplemental  
12 examination proceeding, which is a mechanism for  
13 patent owners to have information considered,  
14 reconsidered or corrected in an issued pattern.

15 Next I'd like to go over some of the  
16 filings in the Central Re-examination Unit. On  
17 the left is the ex-party re- exam filing requests.  
18 It's broken out into the differing disciplines;  
19 blue is the chemical biotech, red is electrical,  
20 green is mechanical, and designs is the little  
21 purple one down there. So as you can see the  
22 filings have kind of like -- the chemical and

1       mechanicals have kind of steadily stayed and the  
2       electricals have kind of tailored off in expertly  
3       tailored re- examines.

4               Supplemental file examination request  
5       filings, since it was created in 2012 you can see  
6       this kind of came out low and it kind of went up.  
7       Supplemental exam's has just not been a popular  
8       program at all. I think since 2012 we've had just  
9       a little over 230 of them filed.

10              Next is just how often we find a  
11       substantial new question in the ex- party re-exam,  
12       which is on the left, and forward the supplemental  
13       examination requests. In supplemental exploratory  
14       exams we order and re-examine 95 percent of the  
15       cases and deny about 5 percent of the time. Where  
16       in this supplemental examination request we will  
17       find and SNQ with substantial new questions 71  
18       percent a time and no SNQ about 29 percent of  
19       time. But because there is a lot more party  
20       re-examines -- I mean the numbers can fluctuate a  
21       lot -- the percentages fluctuate a lot more in the  
22       supplemental exams area.

1                   Next is the Legacy Inter-Parties  
2           Re-examines. We still have some of these floating  
3           around, about 167 of them. Seven are with  
4           currently with this Central Re-examination Unit.  
5           The rest are either with the pending trial appeal  
6           board or at the CAFC at this time. We currently  
7           have one inter- party's re-exam reopened after a  
8           CAFC decision and six are currently stayed by the  
9           PTAB.

10                   Next, this is how long it takes us to  
11           get to an order in a party reexamine and in a  
12           supplemental examination certificate. In a  
13           reexamine we're about 1.2 months to issue a grant  
14           or deny a re-exam and to complete the supplemental  
15           examination phase where at 1.3 months.

16                   Time to conclude an ex-party re-examine  
17           proceedings in supplemental examination request.  
18           The left side, the blue side is for ex-party  
19           re-examination. The top line is the time for all  
20           ex=party exams to NIRC, which is the nudge to  
21           issue a re-exam certificate and that includes  
22           appeal. So you can see it's a much higher than if

1 we have an ex-party re-exam without appeal. It  
2 goes a lot quicker. We're right around 12 months  
3 or about a year to complete an ex-party re-exam  
4 from start to finish as long as there is no appeal  
5 in it. Yes?

6 MR. WALKER: Hi, John. So I have a  
7 question from our colleague Jeff Sears who's on  
8 the line but there's a there's a delay, I'm  
9 watching the live stream and it's hard to keep up  
10 to speed, so I have a question from Jeff. He  
11 wanted about timing, so he said the CRU re-examine  
12 supplemental exam, dependency from filing to  
13 determination of SNQ and determination from SNQ to  
14 NIRC is fast, roughly 12 months or less, during  
15 ordinary examination roughly 12 months to just  
16 first action level and final disposal would be  
17 lightning fast. So why is dependency so fast  
18 compared to ordinary examination?

19 MR. COTTINGHAM: We have a lot less  
20 cases. That's really it. We have a lot much  
21 bigger volume in the patent court as opposed to  
22 what we have. And then for the supplemental exams

1 without appeal we average about 9 months to NIRC  
2 and you can see even with appeal it's not much but  
3 you got to remember there's only 237 of these or  
4 so. So the numbers are just small.

5           There we go. On to reissue applications  
6 before the CRU. We assume all the reissue  
7 applications in the spring of 2015. Examiners can  
8 choose to either send any -- if they were in  
9 prosecution examiners could send us the reissue at  
10 any point in time in prosecution and we would take  
11 it and then we would take all new files reissue  
12 applications. The idea was to make the handle all  
13 reapplication so everything was uniformly done.

14           Here is reissue filings over the last  
15 several years since 2013. As you can see it  
16 started off with the core, the gray is the  
17 chem-biotech, blue is electrical, orange is the  
18 mechanicals, and then you can see designs kind of  
19 creeping up in there a little bit. Now if you  
20 look at the scale it's just -- that there's just  
21 not a lot of -- a lot of reissues compared to like  
22 serialized filings. And as you can see, I mean

1 the RCE's -- the stripe lines are RCE filings and  
2 the solid lines are the new filings.

3 This is the current inventory awaiting  
4 first action in the CRY. Again it's broken down  
5 by discipline; we do not have the designs in this  
6 one since this is handled by 2900. So we're  
7 pretty much holding steady. I mean we had a blip  
8 up in '16 then and now we've kind of brought back  
9 the inventory down a little bit in '17 and into  
10 '18 as well. And that's all I have; any other  
11 questions?

12 MS. JENKINS: I'm not sure you can  
13 answer this but actually picking on something that  
14 Bernie said and obviously the one office concept  
15 the Director has been speaking on, when you're  
16 doing a PTAB proceeding, getting IPR, is there any  
17 communication, a lot of working together if  
18 someone files a reissue? I get the impression --  
19 and maybe this is totally wrong, that you really  
20 operate as two separate areas.

21 MR. COTTINGHAM: We do operate in  
22 separate areas. We do talk with PTAB on an



1 administrative level of like, hey we do have this,  
2 we're just you know, but we do not talk substance  
3 of the cases. The PTAB handles their proceedings  
4 and we handle our proceedings.

5 MS. JENKINS: I guess some of the  
6 comments that I have heard is obviously a reissue  
7 is an option but then folks get concerned that the  
8 reissue process may take too long.

9 MR. COTTINGHAM: We're actually pretty  
10 good at picking up the issues pretty quickly in  
11 disposing of them. As you can see from our times,  
12 I mean -- is it about a year? It's about a year  
13 from conclusion to first action to a final  
14 reissue.

15 MS. JENKINS: I think it's helpful for  
16 the user community to hear that.

17 MR. COTTINGHAM: Yeah we're very  
18 responsive and pretty quick turnaround in this  
19 area.

20 MS. JENKINS: Thank you. Anybody else;  
21 any other questions for John? All right, great  
22 thank you.

1 MR. COTTINGHAM: Thank you.

2 MS. JENKINS: Who's next? Oh, Valencia.

3 MS. MARTIN-WALLACE: Next we have  
4 quality updates and before I introduce Marty  
5 Rater, I just want to give a very quick update on  
6 our Step Program, which is a training program we  
7 have for our stakeholders, specifically attorneys.  
8 And just behind where I'm sitting is the Acting  
9 Director of the Office of Patent Training, Debbie  
10 Reynolds and our Acting Deputy Director, Gary Welsh  
11 who have done an amazing job with this program.

12 It's a three day program where we step  
13 our stakeholders specifically attorneys through  
14 three days of how we train our patent examiners on  
15 each phase and it's been just overwhelmingly  
16 successful to the point where we can hardly meet  
17 the demand. We've reached out to now having them  
18 across the country; our regional offices each have  
19 a step program.

20 So I just wanted to remind everyone of  
21 it and also say because of the demand, we started  
22 the program with newer attorneys within their

1 first three years because of the demand we're now  
2 opening up to senior attorneys who would like to  
3 attend as well. And our next one here at  
4 Alexandria campuses is in September and we're  
5 still accepting participants in that. And we're  
6 also going to have one at Chicago-Kent in  
7 November. So we're trying to reach out and meet  
8 that demand of this particular program.

9           So next I would like to introduce Marty  
10 Rater. He's the Chief Statistician for the Quality  
11 Assurance Office and he's going to step through  
12 some new improvements in our customer perception  
13 survey as well as our latest results.

14           MR. RATER: Thanks, Valencia. Good  
15 morning everybody. So the Office of Patent  
16 Quality Assurance obviously has their internal  
17 quality review program. We've talked about that a  
18 couple times in recent meetings. As we go into  
19 the fiscal year on that data, we're going through  
20 a phase of calibration validation of that data.  
21 And one of those important steps in calibrating  
22 the data to make sure we're on the same

1 wavelength, if you will with our customer is our  
2 in our external customer perceptions survey that  
3 we do twice a year.

4           So I want to show you a little bit about  
5 that. It is about frequent customers and I'll go  
6 through these pretty quick. Just to give you an  
7 idea though that of the folks that respond to  
8 these surveys, we asked them to provide their  
9 perceptions about the previous three months and on  
10 average they have about 20 office actions that  
11 they have seen. So these are our customers that  
12 are interacting with our office on a daily basis  
13 and that 20 office actions is kind of an  
14 interesting thing as we get into a little bit of  
15 the data here.

16           Overall quality, as you can see the  
17 green line we've kind of climbed up and it's  
18 stabilized. About 50 percent of our customers are  
19 saying that quality is good or excellent. We've  
20 got a steady line down there, that red line,  
21 that's the folks that say quality is poor or very  
22 poor. It be interesting -- I should have gotten

1 with Andy before this, right? Because if you  
2 remember Andy's slide you remember that chart that  
3 goes from 2009 up to 2018 where we're at and you  
4 know a 30 percent growth in filings and you take  
5 everything else that we've considered over the  
6 time, you know CPC come in there. Mr. Walker  
7 mentioned that we're into a headwind now on a lot  
8 of stuff of case law. So maybe you look at this  
9 in terms of that would maintain quality, at least  
10 in the perceptions of our customers over that time  
11 frame. It's not a bad way to look at this.

12 What we've done is modified like  
13 Valencia mentioned, the survey a little bit to  
14 kind of try to figure out what is happening behind  
15 these numbers and that's what I'm going to do with  
16 the next couple of slides. So obviously the gap  
17 in between those other folks that are saying that  
18 quality is fair. One of the other measures we do  
19 in the survey -- although not showing it today is  
20 we also asked customers, well do you at least have  
21 a sense is quality improving or is it declining?

22 Because obvious, right? Folks might be

1 -- I've had three years of bad service, I've had  
2 three years of this one bad rejection, I can't  
3 just get out of my mind. I'm going to continue to  
4 call you fair until I see something good. All  
5 those people are at least willing to say quality  
6 is getting better. So we do see about 20 percent  
7 of our customers do say -- and that's primarily  
8 coming from those customers that are in that fair  
9 or good group.

10 Which then brings up another thing, that  
11 bottom line, do we just have 10 percent of our  
12 customers that are responding to these surveys?  
13 No matter what we do until we find what that item  
14 is that we'll be able to satisfy him in terms of  
15 quality. They could be thinking in terms of --  
16 you know other issues come into play in what's in  
17 their quality matrix, right?

18 I think you'll see as we kind of go  
19 through some of these more initiatives like  
20 customer experience, that's where we'll start to  
21 be able to explore those types of issues that  
22 might be keeping those folks at that 10 percent

1 and not willing to come out of here.

2 MS. CAMACHO: Bernie, I have a question  
3 about who's responding to these surveys? When  
4 you're talking about customers are you talking  
5 about the applicants, the company, the signees, or  
6 patent attorneys for example?

7 MR. RATER: So primarily this --  
8 obviously about 10 percent of our sample I think  
9 responses are corporate attorneys that have had  
10 filed -- our original sample frame is when we  
11 build the sample frame that's over 12 month  
12 period, did you have 6 or more filings that you  
13 were in there? Obviously the largest pool of our  
14 sample is coming from the registered agents and  
15 attorneys. That's where we what people were  
16 acting as opposed to the total end user.

17 The problem is was we get to the total  
18 end user, now they may be having the quality that  
19 you add or detract from this system as part of  
20 their decision matrix. So this is really the  
21 examiners -- your interaction with the examiners  
22 is what that is. And that's one of the things, as

1 we go back into this customer experience we've got  
2 different personas and different customers, right?  
3 Attorneys are a customer, agents, are a customer.  
4 You know Mindy's going to talk about different  
5 customers in the process. Those were different  
6 sets of customers. That's something we would have  
7 to explore a little bit further.

8 MS. CAMACHO: And how big is your sample  
9 size? How many people are responding to this  
10 survey?

11 MR. RATER: So our sample frame covers  
12 basically -- just give you a little idea of the  
13 scope it covers about a 65 percent of the total  
14 filings; you know it was touched by somebody that  
15 said our sampling frame. And then we sample about  
16 3000 of these frequent filers semi-annually. And  
17 within that sample we have 50 percent of that  
18 sample is in both waves in a current year, so that  
19 we have a little bit of carryover for  
20 inconsistency.

21 MS. CAMACHO: Are they randomly  
22 selected?



1 MR. RATER: Yes.

2 MS. CAMACHO: Are they across all tech  
3 centers and then also do you find that -- are you  
4 getting the same responder's in the survey?

5 MR. RATER: So what we'll do is  
6 obviously a firm could have multiple agents and  
7 attorneys in there. So first of all this survey  
8 is administered by an external firm, Westat, we  
9 contract out to do this survey. We select the  
10 sample, it's weighted based on how much volumes of  
11 filings you had and by technology so that this is  
12 representative. Because we don't want to  
13 overburden you all with surveys all the time and  
14 we've tried to keep the survey short, we will  
15 rotate you out after a couple of surveys and give  
16 one of your colleagues a chance to respond and  
17 rotate you back into the survey.

18 As you can see it's relatively stable  
19 we're about plus or minus 3 percent on our  
20 sampling years on this. The demographics --  
21 that's the other thing too, we ask our customers  
22 to identify or our respondents what technology did

1 you file most of your applications or what were  
2 you speaking for, for this particular wave.  
3 They're not speaking to a particular unit, but  
4 they'll say hey most of mine were in chemical,  
5 they were in electrical or they were in mechanical  
6 disciplines.

7           So we don't see much variance based on  
8 the respondents through that as well. So it's  
9 been pretty stable and it's a pretty good  
10 indicator. And we obviously we weight the data  
11 back up so it's a representative when it comes  
12 back too.

13           And just an aside on that, any  
14 nonresponse occasionally we'll stop and take a  
15 look at our non-respondents and I think it comes  
16 into play with this, okay you didn't respond,  
17 we've gone back was short survey's and say we  
18 realize maybe didn't have the time to fill out our  
19 15 questions or give this a whole lot, will you at  
20 least answer our question about what his overall  
21 quality? Is it good, fair, or excellent? Our  
22 nonresponse studies actually showed that our non

1 respondents were actually more satisfied about by  
2 5 percent more satisfied than what -- so we like  
3 to think they were catching this is a worst case  
4 number and were catching the complaints, we may  
5 not be not catching all the kudos. So by all  
6 means I'll use this opportunity to solicit kudos  
7 as well.

8 MR. KNIGHT: Thank you Marty. Am I  
9 reading this correctly? The quality initiative  
10 under Director Lee was started in around, let's  
11 say 2014 or 2015, and since that initiative there  
12 hasn't been really an increase in the customer's  
13 perception of quality, is that correct?

14 MR. RATER: Correct. At least in terms  
15 of the way the customer is defining quality.  
16 We've seen to observe some internal metrics and  
17 that's kind of why we're going to go - this is one  
18 of our calibration pieces. I think that's what  
19 we're got to get into the customer experience and  
20 try to identify what maybe these initiatives --  
21 and go back to what I said initially were these  
22 initiatives that prevented us from dropping in

1 quality while we were doing all these other  
2 initiatives to improve pendency.

3 Or to, you know all these pilots, or all  
4 these hiring programs and everything else that  
5 we've done and all the different training that  
6 we've had to implement maybe that's where -- or  
7 are the way the customers are looking at quality,  
8 is it a long term, it is going to require us to  
9 maintain this fantastic job we're doing for two or  
10 three years before they're willing to give us that  
11 thumbs up on this. I'm hoping -- that's what  
12 we're hoping to see is a little bit of gradual  
13 thing on that.

14 MR. WALKER: Marty, just quick question  
15 on the bottom, you said the bottom numbers have  
16 stayed steady for a while. Is there more follow  
17 up to understand beyond the 15 questions, what are  
18 those issues?

19 MR. RATER: Fantastic segue. So what I  
20 will do is go to this next slide. We changed --  
21 our so historically we've done the survey since  
22 about 2006. It was a pretty wide scope, kind of

1 just how happy are you, any big issues and so  
2 forth? What we did is at the beginning of -- and  
3 is the first survey that we've done with this new  
4 scheme, we've actually gone to the customers now  
5 and say just like we're doing on our internal  
6 quality reviews, we want to go by statute and tell  
7 us how satisfied are you with the consistency, the  
8 clarity, and correctness of each one of those  
9 statutes.

10 And what this is, is kind of all just  
11 coalitions bar and I'm probably have an unpopular  
12 opinion here because I'm going to see the 101's at  
13 the bottom that's going to say those aren't  
14 important. These are items that are correlated  
15 with an overall customer perception. As you can  
16 see the top 103 rejection, clarity, inconsistency,  
17 and correctness, 103 comes to the top.

18 This is not surprising for us when you  
19 consider that of 9 finals and finals going out the  
20 door, 75 percent of them contain a 103 rejection,  
21 often contain multiple 103 rejections; 101's, I'll  
22 be showing you a slide just in percent of total

1       rejections is only by 8 or 10 percent of total  
2       rejections. But a 101 is only 15 percent of our  
3       non-final and final rejections. Huge pain point  
4       and it might not be a key driver as well because  
5       relict data in just a second. There's no  
6       variance, pretty much everywhere there's a large  
7       bucket of people that are unsatisfied with 101.

8                   And for all the data wonks out there, we  
9       want variants and our responses so that it  
10      correlates with the overall quality. So this is  
11      kind of our first step to say what is driving  
12      those numbers and I think 103 is one of the big  
13      items. We are seeing that internally with some of  
14      our quality reviews, just not only because of the  
15      volume of 103's but of the variance amongst our  
16      examiners in the 103's.

17                   MS. JENKINS: Question online -- and  
18      just a reminder that everybody in the online  
19      audience, is that we do read your e-mails and we  
20      try to incorporate your questions into the meeting  
21      as best we can. Is there a copy of the survey of  
22      what the questions are that people can see what

1       you're asking?

2                   MR. RATER:  I don't -- I believe we've  
3       had it posted and I'm not sure, I will look into  
4       that and we'll get back to you.  But yeah  
5       absolutely, there's a -- it's going to be probably  
6       pretty evident here in about two slides.  I want  
7       to talk about 101 -- oh, I'm sorry, Dan.

8                   MR. LANG:  The information that you  
9       showed in the previous slide is interesting but in  
10      my mind I wouldn't call it exactly quality.  To me  
11      it seems more like an applicant satisfaction  
12      metric and you know they can tell you interesting  
13      information as people comment on the kinds of  
14      rejections they're seeing and the examination that  
15      are getting.  But perhaps too cynical, I mean  
16      applicants are more satisfied if they obtain broad  
17      patents without much resistance from an examiner  
18      and are less satisfied if they have difficulty  
19      along those lines where maybe you know some of the  
20      rejections we're getting are in fact quite  
21      legitimate.

22                   I think that if we want to measure

1 quality as it pertains to things that I think are  
2 very important to the office like reliability and  
3 certainty of patent it's going forward, you're  
4 minimizing the delta between results and  
5 examination and the PTAB, you need to measure  
6 satisfaction elsewhere in the system.

7 I mean what is the satisfaction, let's  
8 say among patent lawyers who were doing studies  
9 and figuring out you know are they able to assess  
10 and advise their clients appropriately? What are  
11 people encountering in litigation and other kinds  
12 of assertion? And they think that those pieces  
13 are very necessary for a fuller picture of  
14 quality.

15 MR. RATER: Couldn't agree more.  
16 Absolutely. This is just one piece and I think  
17 this is going to be reported out with our internal  
18 metrics. It's got to be not only the internal  
19 reviews that the operations does of their own  
20 including all these different customer segments at  
21 different points in time where in that application  
22 that thing needs to be measured.



1                   We've struggled in the past a little bit  
2                   trying to conduct some sort of transactional  
3                   surveys. So we've got a little bit of a hesitation  
4                   to respond while something is still in prosecution  
5                   and unspecific application but maybe the  
6                   environment is more ripe for that now than it was  
7                   back when we first tried to do that back in 2004.

8                   MS. JENKINS: I appreciate that comment  
9                   because I think people are just getting surveyed  
10                  to death. Everyone wants the survey; Uber wants a  
11                  survey when you get out of the car. So if I think  
12                  you want people to really give you valuable input  
13                  and not be angry in the sense of what they're  
14                  saying in a survey that maybe if they were in a  
15                  better mood they might respond a little  
16                  differently. So I think it's something that you  
17                  always -- I think the office needs to be thinking  
18                  about is how do we do this differently so we  
19                  actually get valuable data right.

20                  MR. RATER: And I think that's where  
21                  we're kind of right now with this data is just  
22                  kind of to keep us a little bit in check or are we

1 -- is this identifying maybe something that we're  
2 not measuring internally that we should be put in  
3 a little bit of light on? Or is it seeing the  
4 same patterns? Are we totally missing something?

5           And like the 101's is a great example  
6 because we could easily talk ourselves into not  
7 focusing on one on ones internally, at least from  
8 the quality perspective because we can say, hey  
9 it's 15 percent of non-files and files, let's  
10 focus on the item that's in 75 percent. However  
11 this survey at least identifies our biggest  
12 comment is, hey we're seeing an increase in 101's,  
13 we're seeing it over applied.

14           So that kind of at least puts us back in  
15 check to say well we do need to continue with our  
16 internal review to focus on what is driving these  
17 101's and are there any behaviors that maybe we  
18 don't think are happening. Because if we look at  
19 101's and I'll throw this one slide up on 101's --

20           MS. MARTIN-WALLACE: So this -- before  
21 you move there if I can just make one point,  
22 Marty. So I think yours and Marylee's comments

1 are very valid and there are places where that as  
2 well into making sure that we're meeting the  
3 needs, we're improving in the appropriate areas.

4 But one thing I want you to remember for  
5 this data that Marty is going through is in order  
6 for OPQA the quality review is for us to know if  
7 what they're doing and their results are valid, we  
8 have to calibrate that with different points. And  
9 this is one of the points for us that helps us to  
10 calibrate whether what we're finding internally  
11 through OPQA is valid.

12 MR. RATER: Absolutely and that's great  
13 because now I actually showed the 101 slide and I  
14 don't have to explain Berkheimer, which I couldn't  
15 do if I wanted to. This is just an idea, right?  
16 So at the same time that they were saying over the  
17 three months, so it was January, February, March,  
18 we had a lot of comments in there. We're seeing  
19 an increase in 101's, we're seeing it over used.

20 We actually went into our big data  
21 environment and said, okay pull us all office  
22 actions and what percent of all the rejections

1 that are made -- so there could be multiple  
2 rejections in a case -- what percent of those  
3 rejections were 101 rejections? And we've  
4 actually seeing a slight decline and actually the  
5 fancy blue dotted line I put there is one that  
6 Berkheimer memo went out and we've actually seen a  
7 slight decline in the 101's going out the door.

8           So again, all this back and forth, are  
9 you right? And again, those comments could have  
10 come from a very specific technology area,  
11 specific art unit, and could be absolutely true  
12 but we want to look at this data back and forth.  
13 And I've already spoke more on 101 than I ever  
14 want to.

15           This is the first - remember I said we  
16 looked at correctness, clarity, and consistency.  
17 So we did the survey is very simple, how often  
18 were the rejections you received under Title 35  
19 years ago reasonable in terms of correctness?  
20 Then we asked about 102, we ask about 103, 112A's,  
21 112B's and 101's. What you're going to see in the  
22 green bar, that's the percent of the customers

1 that said, hey it's a reasonable in correctness  
2 most of the time so you see 102's and 112B's about  
3 66, 70 percent of our customers. Pretty happy  
4 with that.

5           Look at the far right, that's our 101's.  
6 That's where we have our largest, if you will,  
7 dissatisfaction or concern coming from the  
8 customer base. Again it didn't correlate or it  
9 wasn't a big driver of overall quality  
10 perceptions. And also remember when I said 20  
11 office actions, well keep in mind, so this  
12 perception could be based on 102 or 101 rejections  
13 they received in that period we're asking to  
14 evaluate. So this is the correct -- this data --  
15 and I know we have shared these slides so  
16 everybody can look at these and wonder in a few  
17 hours from now. Same thing you're going to see in  
18 the 101s and the terms of clarity. You're going  
19 to see 102 rejections, 103, and you can see the  
20 103 numbers now. That 56 percent agree that it's  
21 kind of clear or that it's most of all the time.  
22 That's very similar to our overall customer

1 quality number, and you're going to see that with  
2 these 103 data points. And again, we're asking  
3 everyone about the office actions they saw. They  
4 probably saw 15, 16 103 rejections in this survey  
5 period versus 1 or 2 101s.

6 And then finally consistency, we do see  
7 a lot of correction and clarity seem to (audio  
8 drop), did I cut out there? Kind of goes hand in  
9 hand in terms of our quality reviews internal,  
10 that's what we see as well. Consistency's kind of  
11 a new item we're trying to get our arms around,  
12 and I know Dan's probably going to -- how do we  
13 define consistency, how do we do this. So that's  
14 kind of new to us. But we do know that that has  
15 historically been one of our drivers of overall  
16 perceptions is I want some predictability. I want  
17 some reliability when I go into this art unit and  
18 I don't want examiner A acting different than  
19 examiner B.

20 So again, a very high level of measure.  
21 And then this was end of '17, and this is just  
22 kind of an idea of where we're going with this is

1 well, do we see similar patterns in that bar chart  
2 on our left. Just shows you we've kind of got  
3 this little U-shaped here when we look at it by  
4 discipline. Our compliance rates kind of showed  
5 the same similar type of little U-shape. Are we  
6 are least in the right alignment or do we think  
7 we're doing so fantastic in one area and the  
8 customers think we're doing horrible? But yet, we  
9 think we're doing awful in one area and we're  
10 putting too much focus, and there's a customer  
11 saying yeah, nothing to see here. Move on. We  
12 want to be in alignment with what you want, and  
13 this is kind of what we're doing.

14 So hopefully here at the end of '18,  
15 we've calibrated this data, our new quality review  
16 in alignment with this customer. And I think that  
17 is all I have. And we still have time for Mindy,  
18 I hope.

19 CHAIR JENKINS: We always have time for  
20 Mindy. Marty, thank you. I also -- it is a team  
21 effort here. I also have an answer to the  
22 question about the survey. If you search for OPQA

1 external quality survey on the PTO website,  
2 hopefully you will find it, so.

3 MR. RATER: And hopefully it's the most  
4 recent survey.

5 CHAIR JENKINS: There you go.

6 MR. RATER: We will check that.

7 CHAIR JENKINS: If not, we'll touch back  
8 in November. Great, okay, thank you, Marty,  
9 appreciate it. Any other questions from anybody?  
10 Okay.

11 Mindy, you want to talk about ombudsman?

12 MS. BICKEL: I would in the few minutes  
13 that Marty left me. Can I have the clicker? So  
14 --

15 CHAIR JENKINS: We are running 15  
16 minutes behind and so I will take away from their  
17 lunch, which I'm sure they're already  
18 anticipating.

19 MS. BICKEL: Oh, gosh, I'm sorry about  
20 that. So I am Mindy Bickel. I am the associate  
21 commissioner for innovation development, and I  
22 provide oversight to the Office of Patents



1 Ombudsman. And I'm just going to run you through  
2 kind of a reminder of what we do, and then give  
3 you a little bit of an update on what we're seeing  
4 now. So we started in 2010.

5 Our goal at that time was to help ensure  
6 that the application process is working the way  
7 it's intended to work. And that remains our goal  
8 now. We address issues relating to applications  
9 that have become stalled somewhere along the way.  
10 It could be pre-exam, or OPAP could be in the  
11 examination.

12 We track everything to ensure that we  
13 meet the promise that we will address issues  
14 within ten business days, and then we also look at  
15 trends to see what kinds of inquiries we're  
16 getting. And that helps us inform some training  
17 or updating issues that could be useful.

18 We do follow the standards of practice  
19 of the International Ombudsman Association. We  
20 are outside of the operations area, so we are, in  
21 that sense, independent. We advocate for the  
22 process. So we don't advocate for the person

1       who's called us, nor do we advocate for the  
2       office. So we try to just make sure that the  
3       right people are addressing the issue, and in that  
4       way we're neutral and impartial, and we provide  
5       confidentiality. You can contact us and remain  
6       confidential. We'll put your issue into the  
7       database and use it for tracking trends, but we  
8       won't go further in addressing your issue unless  
9       you agree to waive confidentiality.

10               This is our process. Essentially the  
11       applicant or attorney will contact the Patents  
12       Ombudsman team and they will respond within one  
13       business day. So it could be by phone, could be  
14       by email. And then the issue that they raise is  
15       routed to the most appropriate person who can  
16       handle it. So if it's in a technology center, it  
17       will be routed to someone within the technology  
18       center. If it's in OPAP, it will be routed to  
19       OPAP.

20               This is just the structure of the  
21       office. We have our team, and then we have  
22       business unit reps in every part of the patent

1 office. So in the technology centers we rely on  
2 experienced SPEs or quality assurance specialists  
3 to handle the issues that are raised to us. We  
4 have every division across patents, or across the  
5 Patent and Trademark Office, actually, is  
6 represented. We have people who can help us if we  
7 get a question on maintenance fees. We have a  
8 representative if we get a question regarding  
9 PTAB.

10 So we have a network everywhere and we  
11 use them. If we get an inquiry that's related to  
12 the substance of examination, we do send that to  
13 the technology center, and there the quality  
14 assurance specialist, or the experienced SPE, will  
15 work with the SPE of the examiner who is examining  
16 that case. And they will resolve that issue  
17 together within the technology center.

18 And we do remind people that Patents  
19 Ombudsman is not a substitute for responding to  
20 office actions by the statutory deadlines. It's  
21 not a substitute for appeal or petition. And it's  
22 mostly certainly not a substitute for

1 communicating directly with the examiner, SPE, or  
2 TC director. And the TC directors strongly  
3 encourage people to contact them directly if there  
4 is an issue during examination. They do want to  
5 help and we've heard that from them that they  
6 encourage people to contact them.

7           This is how you find us. We are on the  
8 website, and if you go to learning and resources,  
9 and the inventor and entrepreneur page, under  
10 there you can get to Patents Ombudsman or you can  
11 go from our home page. If you scroll down a  
12 little bit you would see a -- see more patent  
13 resources, I believe, is what it's called, and you  
14 can get to us that way. Once you get to our page,  
15 you can contact us through the website. You can  
16 choose to contact a particular TC rep if you know  
17 that that is where your issue rests, or you can  
18 contact the central team, and we'll route the  
19 issue to where it's best handled.

20           You can tell us to -- what your phone  
21 number is, to call you back, or your email  
22 address, and the best time to reach you.

1       Actually, I did want to note it's probably very  
2       hard to see, but there is some blue links on the  
3       bottom of the page towards the bottom. And they  
4       relate to this slide.

5               So one of the things I mentioned is that  
6       we like to look for trends. What are we seeing  
7       and what does that tell us about ways that we  
8       could help improve? And the by far, most common  
9       inquiry we receive is status request, which is not  
10      really a true ombudsman kind of issue. Nothing to  
11      work out there, there's just you don't know how to  
12      find that. And so we added links to the Patent  
13      Ombudsman page that what's the status of my  
14      application and when will I get my first office  
15      action. So before you hit the send button, you  
16      can probably get the information faster if you  
17      just get it off of our page. So that's one  
18      improvement we made to try to help smooth things  
19      along.

20             The other thing we see increasingly are  
21      inquiries regarding the ADS. And people have some  
22      trouble filling that out correctly. And so we've

1 done a couple of things to aid the external  
2 customers in filling that out. So we have done  
3 some inventor info chat and a quality chat. We  
4 are developing an online CBT that explains how to  
5 fill out that form, and we're also providing  
6 information and outreach material. And I think  
7 that one is a really good example of how we've all  
8 sort of working together with the folks in Rick's  
9 area in OPM, the application assistance unit team  
10 is working with Patents Ombudsman to sort of see  
11 what we see and what we can do about that.

12           When you contact us, of course, if you  
13 want us to help you, you need to provide some  
14 information about your application, brief  
15 description of the inquiry, telephone number, and  
16 email address. We do caution people not to  
17 provide too much information in an email because  
18 we -- if it's too detailed, we might have to make  
19 that of record and so we just want very brief  
20 information like you have a question about an  
21 office action, or you have a question about  
22 maintenance fees. And we'll talk to you about

1 that.

2           You can actually reach us between 8:30  
3 a.m. and 8 p.m. courtesy of the regional offices  
4 who will answer the phones after 5 p.m. east coast  
5 time. And they will also route the issues.  
6 They'll put them in the database and route them as  
7 we do. And this is my contact information if you  
8 have any questions.

9           MR. WALKER: Hi, Mindy. I have a  
10 question from our colleague Jeff Sears. Can you  
11 give some examples of situations you've seen where  
12 contacting the ombudsman has been helpful? So  
13 obviously not like status inquiries, like people  
14 can find that online but --

15           MS. BICKEL: Sure.

16           MR. WALKER: -- like give us some good  
17 examples of where the -- contacting the ombudsman  
18 has really been helpful.

19           MS. BICKEL: So there's a number of --  
20 probably the examination process is what most  
21 people want to hear about. And I think there are  
22 numerous situations in which someone might have a

1 difference of opinion on a position, and getting  
2 the experienced QAS involved in speaking with the  
3 SPE and taking another look at the application may  
4 help move things along. It may be that the  
5 examiner is correct, but they find some way to  
6 maybe help move the application a little bit  
7 further.

8           So those things are really handled in  
9 the TC. We stay out of the substance of the  
10 examination, but we do hear things, and move that  
11 along to the TC. One thing I will say that we  
12 haven't heard is people coming back to us saying  
13 well, that wasn't helpful. You know, you weren't  
14 able to address the inquiry, and we didn't make  
15 any progress.

16           So we have really great folks in the TC  
17 who really look into it. And I think help make  
18 progress.

19           MS. MARTIN-WALLACE: So just to add a  
20 little to what Mindy was saying. She mentioned  
21 earlier that we have tentacles across the entire  
22 agency, specifically in the TCs, the experienced



1 supervisors and quality assurance specialists that  
2 work with us are actually part of the program.  
3 They are our ombudsman representatives and there  
4 are two representatives in each TC.

5           So it's not just passing it on to them,  
6 but they actually have been trained through the  
7 ombudsman program on how to address it as well as  
8 how to work with the inquiry, or the person with  
9 the concerns, as well as with the examiners and  
10 the supervisors that it's directly related to.  
11 And we have received really positive feedback, not  
12 only from the people who have used the ombudsman  
13 program, but actually supervisors and examiners  
14 within the TC as well who are -- want to do the  
15 right thing, and may not necessarily even know  
16 that -- how far the issue has gone. So working  
17 with the ombudsman representatives in the TC has  
18 really helped that.

19           MS. CAMACHO: Mindy, thanks for the  
20 presentation. I think this is a program that not  
21 a lot of people out there know about. I  
22 understand that this isn't a substitute for going

1 to the examiner or the SPE or TC. What would you  
2 say as far as what would be the standard process  
3 that you would hope that the applicant would go  
4 through? First contact their examiner, if they  
5 don't get any movement there as far as getting the  
6 -- keeping the ball rolling in the examination,  
7 then go to the SPE, then go to the TC? Or at what  
8 point at which should they contact you?

9 MS. BICKEL: So they can call us at any  
10 point, of course, or contact us at any point, but  
11 we really do encourage people to go to the  
12 examiner and then the SPE and then the TC  
13 director. They do want to assist and I think  
14 really realistically, contacting us, those  
15 substantive issues are still going to go back to  
16 the TC. That's where that chain of command is  
17 where that kind of decision needs to be made. Is  
18 there something that, you know, needs to be  
19 changed in the office action or not?

20 So sometimes people, I think, maybe have  
21 a misunderstanding that we're going to take a  
22 separate look ourselves over at our core team. We

1 aren't doing that. We are relying on the team  
2 that we have and all the TCs to work with the  
3 chain of command for the examiner who is working  
4 on that application. And sometimes there's a  
5 miscommunication. As sometimes, Valencia said,  
6 maybe there's a training issue for somebody, but I  
7 mean, I think generally those things could get  
8 worked out if people went to the SPE and the TC  
9 director if they couldn't work it out with the  
10 examiner.

11 MS. CAMACHO: So would you say is it  
12 more for when there's perhaps a bump in the  
13 process versus substantive issues?

14 MS. BICKEL: So I can tell you how it  
15 got started or why it got started.

16 MS. CAMACHO: Perfect, thank you.

17 MS. BICKEL: So the reason it got  
18 started is because the commissioner at the time  
19 was hearing from people, when she would go out and  
20 speak, I have a problem and I don't know who to  
21 call to help me solve it. And so she came back  
22 and said, we need to start a Patents Ombudsman

1 program and so we did launch that. And that was  
2 why. It was really for those quirky things that  
3 you didn't know who to call. So you called us and  
4 then we had to figure out, well, who does this in  
5 the office?

6 But then it's kind of evolved into lots  
7 of status inquiries. We get more pro se  
8 applicants contacting us than attorneys I think  
9 still; is that correct? Okay. So it's about  
10 even. And you know, some of the calls that we get  
11 are to the substantive examination, but I wouldn't  
12 say that those are the majority. The majority are  
13 status inquiries or other things like that.

14 CHAIR JENKINS: So what Mindy is not  
15 sharing is she would be the one that you would --  
16 she answered the phone. So when I first started  
17 using the program, I'd get Mindy on the phone.

18 MS. BICKEL: That's right.

19 CHAIR JENKINS: And then I'd call for  
20 something else and I'd get Mindy again. And  
21 that's how I got to know Mindy. So this is really  
22 -- we were joking this is kind of her baby to

1 speak, and so it has evolved from, I know when we  
2 first started using it, so yeah, so very funny.  
3 But one thing I was wondering, too, is, again,  
4 it's been a phone type of response. Has it gotten  
5 a little bit more email oriented, or is it still  
6 mainly people picking up the phone and wanting to  
7 talk to a person?

8 MS. BICKEL: I think it's mainly people  
9 picking up the phone and wanting to talk. I mean  
10 sometimes we have a situation where someone's  
11 frustrated because they couldn't figure out where  
12 to go to resolve their issue. And they need to  
13 vent for a little while to someone on the phone.  
14 So I did, for the first two years, I answered all  
15 the calls myself, and there were times when there  
16 would be 45 minutes of I'm so frustrated, I'm so  
17 frustrated, and then 5 minutes of this is what I  
18 need to resolve the issue.

19 So we really can help with that. If you  
20 don't know who to call or what -- who can help you  
21 address that issue. That's a really good place  
22 for us to be because we can do that so you don't

1 have to get frustrated at not knowing exactly who  
2 handles that.

3 MR. GOODSON: Well, I commend you for  
4 your credentials in counseling and social work.

5 MS. BICKEL: Thank you.

6 MR. GOODSON: More specifically, if, you  
7 know, a lot of the stuff is cut and dry. What  
8 about the question of obviousness? Can y'all be  
9 any help with that?

10 MS. BICKEL: So again, that would be  
11 something if we got somebody sending us an inquiry  
12 with regard to an application and they disagreed  
13 with the examiner's position on obviousness, we  
14 would send that over to the TC, to our  
15 representative, which that would be an experienced  
16 SPE or a QAS in that TC. That person would look  
17 at the application in conjunction with the SPE of  
18 that examiner. And they would address that issue  
19 with the applicant. You're welcome.

20 CHAIR JENKINS: Great. And I wasn't on  
21 the phone with her for 45 minutes just to be  
22 clear.

1 MS. BICKEL: No it wasn't Marylee.

2 CHAIR JENKINS: Any other questions?

3 No. Mindy, thank you. Thank you for the quality  
4 team. Thank you, Valencia. Always interesting  
5 and new developments and much appreciated, and I  
6 hope the user community is listening so yeah.

7 So I believe next on the schedule, I  
8 think Mindy actually has gotten us a little closer  
9 back to our scheduled time, so thank you. It  
10 looks like I have David, PTAB? So I'll do a  
11 precursor. So I was very lucky, David and I  
12 several, several months ago were talking about and  
13 where it came from was what we were describing as  
14 fact and myth about issues before the PTAB. And  
15 so I immediately said, David, why don't you come  
16 to New York and we'll do a fact or myth  
17 presentation. And David graciously, with all of  
18 his travels, somehow fit us in, and we did the  
19 presentation actually last week, last Monday, with  
20 the IIPS which is a local IP bar association in  
21 New York. And it was very well received. Now I  
22 will qualify that, that we did, through the

1 association, provided a hot buffet dinner and wine  
2 and beer. So that may have been why it was so  
3 well received, but I think from that David said  
4 let us consider doing this for the PPAC  
5 presentation, too.

6 So we're going to do a variation on it.  
7 So with that, if you start with the agenda and  
8 then I'll try to help with the questions, so.

9 MR. RUSCHKE: Sure, thanks, Marylee.  
10 Okay, we'll just go with this. As Marylee noted,  
11 this is -- this stemmed from a lot of our studies  
12 that we've been doing, and one caveat that I  
13 always mention when we do start talking about  
14 statistics is statistics are statistics. And we  
15 try to present as much data as transparently as we  
16 possibly can to the stakeholders. So we do have a  
17 revamped website where we have all of our studies  
18 on there, but sometimes the message gets lost  
19 perhaps.

20 And again, sometimes the message is  
21 indeed in the eyes of the beholder. So what we're  
22 trying to do, again, is present as many statistics



1 as we possibly can in the most neutral form that  
2 we can in the most easily accessible way to the  
3 stakeholders. So with that, it's going to be a  
4 very heavy statistics presentation, but hopefully  
5 the way Marylee and I have essentially bundled the  
6 questions together, I think it might make a little  
7 bit more sense to folks listening online.

8 So again, let's see, there we go.  
9 Generally, we'll follow this agenda item. We've  
10 been spending a fair amount of time as the ex  
11 parte appeals as we'd like to but also, of course,  
12 on AIA trials. We will spend a little bit of time  
13 on the studies that we've done. Again, all of  
14 these statistics and data studies are on our  
15 website. The SAS guidance, I'm not going to spend  
16 an inordinate amount of time on SAS unless we get  
17 a lot of questions on that. It is a hot topic,  
18 that's for sure.

19 We have provided guidance via chats with  
20 the chief as well as agency-issued guidance. The  
21 director already this morning did talk about where  
22 we stand with respect to the claim construction,

1 notice of proposed rulemaking, and then of course,  
2 we always end with upcoming events and  
3 developments. So with that, I think here we go.

4 CHAIR JENKINS: Okay. So question, the  
5 ex parte inventory has been decreasing rapidly  
6 over the past few fiscal years. Will PTAB run out  
7 of work?

8 MR. RUSCHKE: We don't think so. One of  
9 the things that you might not be aware of is that  
10 we do have a board executive side of the board  
11 that's the non-judicial side. And one of the  
12 things that's very critical is to try to estimate  
13 our workload based on what we get in and what, of  
14 course, what our firepower is in terms of the  
15 judges that we have and the jurisdictions that  
16 they're working on. We have modified that  
17 considerably over the last year or two to try to  
18 be much more targeted in our ability to forecast  
19 our workload.

20 This is, indeed, the graph. We've  
21 probably seen this before, and you can see that  
22 four or five, well, five or six years ago, fiscal

1 years ago, we were at a high of over 26,000. Now  
2 at that point we use to call it a backlog. Now we  
3 actually call it an inventory because we're down  
4 in the FY18 to just below 12,000. Now we get  
5 approximately 1,000 in a month, so we're reaching  
6 generally steady state when it comes to our input  
7 as well as our output.

8 So we have about 12,000 in right now.  
9 We get 1,000 in a month. And we're trying to --  
10 instead of as you can see how the curve is coming  
11 down. Instead of having it come down  
12 precipitously, you can see how it's been leveling  
13 out. And so with our improved model that we have  
14 on our firepower with the judges, we're able to  
15 target that. Essentially, we're trying to get  
16 down to that even, steady state. So whatever we  
17 get in we'll be able to get out simultaneously.

18 CHAIR JENKINS: So question, do  
19 appellants still have to wait two and a half years  
20 for a decision on their ex parte appeal?

21 MR. RUSCHKE: Actually, no. They don't  
22 have to wait two and a half years. And I might

1 say that that's actually being somewhat generous.  
2 There were cases that we had pending at the board  
3 much longer than two and a half years, let's just  
4 -- to be perfectly honest. And that was some  
5 practitioners have told us that they actually like  
6 that. That they use the appeal process as a way  
7 of parking an application and waiting to see how  
8 the technology developed, those sorts of things.

9 Our goal is to come down to a one-year  
10 pendency. Right now this slide shows where we are  
11 on pendency based on technology center. Just to  
12 give you a little bit of -- it's a little bit of a  
13 busy slide, but what this does, the colored slides  
14 correspond to the present pendency within that  
15 technology group. The gray bar behind it, and  
16 then the number above that is showing the pendency  
17 exactly a year ago.

18 So you can see that within all of the  
19 technology centers, generally we have decreased  
20 the pendency year over year, in some cases fairly  
21 dramatically. The bar on the far right-hand side  
22 shows the overall pendency for all technologies

1       which says that a year ago our average was about  
2       18 months. Now we're down to 15 months this year.  
3       And you can see it does vary by technology group,  
4       and we'll get into that a little bit here. But we  
5       still have a lot of work to do, I think, in the  
6       business method and mechanical areas as well as  
7       bio/pharma and chem to some extent. But we're  
8       doing quite well in the four electrical computer  
9       technology centers which you can see in blue where  
10      we, again, are targeting essentially a year  
11      pendency.

12                   CHAIR JENKINS: Question, how has the  
13      PTAB been able to reduce appeal pendency?

14                   MR. RUSCHKE: One of the things that was  
15      sort of a byproduct of the AIA, and having to ramp  
16      up hiring with respect to the AIA post-grant  
17      proceedings was that we had -- when we were hiring  
18      a lot of judges in the early year, the 2012-2013  
19      timeframe, when they came onboard, they don't  
20      immediately go into AIA trial work. In fact, they  
21      frequently work on ex parte appeal work.

22                   And as a result of that, and we were

1 hiring a lot of electrical judges at the time,  
2 that's how the electrical backlog of inventory, if  
3 you will, came down significantly. And so that is  
4 how we have been doing that generally. But more  
5 specifically, we have instituted a couple of  
6 programs. One is called a quarterly appeals  
7 closeout goal. And what this does it helps reduce  
8 the judge's backlog with respect to the oldest  
9 cases first.

10           And we began this about six months ago.  
11 And we are, again, trying to reduce that very low  
12 tail, there's a very few number of cases but the  
13 ones that have been pending for an extremely long  
14 period of time. We want to get those out  
15 frequently. And you can see here in this graph  
16 that tail, which is essentially in the green;  
17 we've essentially reduced the tail as of July 2017  
18 in the blue down to July 2018 in the orange. And  
19 you can see that differential between the two  
20 years where those oldest ones have been targeted  
21 and been making sure that the judges work on those  
22 first prior to working on any new cases.

1           So again, what we're trying to do is get  
2           rid of the old cases first. It seems fairly  
3           obvious but not always easy to do and this  
4           closeout program has, indeed, I think done a good  
5           job with that. So you can see we have  
6           successfully targeted this oldest appeals reducing  
7           that tail. And we've reduced the maximum, and  
8           this is an overall maximum pendency was 36 months.  
9           We're down to almost two years now, year over  
10          year, just in about the six months that the  
11          program's been in place.

12           The other program that we've done, and  
13          we've been doing this for about a year now, is the  
14          technology rebalancing goal. And if you remember  
15          on the TC pendency slide, we were doing quite well  
16          on the electrical arts, but still needed to do a  
17          fair amount of work in the business methods side  
18          in particular. And so what we tried to do is  
19          redistribute the firepower, that's the judges'  
20          workloads, to bring the pendency difference  
21          between the appeals into closer alignment.

22           And what we had seen, again, was that

1 the electrical pendency was reducing significantly  
2 where the business method firepower relative to  
3 intake was rapidly increasing. The results of  
4 this after a year are shown in this slide here.  
5 You can see that prior to that line, that vertical  
6 line in the middle, prior to the rebalancing, we  
7 were seeing while the inventory was decreasing,  
8 the difference between electrical in the blue, and  
9 then business methods in the orange were  
10 diverging.

11 And so when we rebalanced the firepower  
12 with respect to the judges' jurisdiction, you can  
13 see that over the years since we've started now,  
14 we're bringing -- we essentially slowed down the  
15 electrical decrease, but we've also then narrowed  
16 the gap with the business methods while keeping  
17 those moving forward. So it's -- I think it's  
18 working quite well, but as you can imagine, we  
19 still have a fair number of business method cases  
20 that we're still working on. So that's where  
21 we're at right now on the ex parte appeal pendency  
22 and inventory.



1                   CHAIR JENKINS: So I'm just going to  
2 stop there for one second. Any questions before  
3 we jump to AIA? No?

4                   This I think is really helpful. I think  
5 people are always sort of feeling the ex parte  
6 appeals are a little bit of a stepchild. So it's  
7 good to hear that no, it's not, and we pay  
8 attention to that as well in trying to move the  
9 ball forward, so.

10                  MR. RUSCHKE: Absolutely.

11                  CHAIR JENKINS: Okay. So moving right  
12 along, question, IPR filings continue to grow.  
13 Are third parties filing any PGRs or CBMs?

14                  MR. RUSCHKE: The data's still fairly  
15 consistent that there is not a lot of filings  
16 happening in PGRs and CBMs, but we have broken  
17 out, as part of our analysis trends as making sure  
18 that we can divide things out by trial type, and  
19 here's a slide that you can see. Of course, we  
20 are talking orders of magnitude difference between  
21 PGR, CBMs, and IPRs.

22                  The growth rate in IPRs since FY,

1 essentially, FY14, essentially we're getting  
2 somewhat of a little bit of a sinusoid. So FY14  
3 at around 1,300, up to 1,700 in '15, 1,600 in '16,  
4 back up to 1,800 last year, that was our largest  
5 filings of IPR year over year. This year you can  
6 see that little dot over there. That's through  
7 the third quarter of our fiscal year. We are  
8 showing about 1,100.

9           So annualizing that data from FY18,  
10 we're probably going to end up somewhere around  
11 1,600 perhaps. So again, a little bit of a  
12 sinusoid, but it definitely, if you draw a midline  
13 between the last four fiscal years, we're  
14 averaging right around 1,600 IPRs a year. It's a  
15 little different when you look at the PGRs and  
16 CBMs.

17           Again, very small numbers comparatively,  
18 but PGRs, year over year, you can see it  
19 increasing. I'm not sure if we're -- again, if  
20 you look at it just up until FY17, one might  
21 conclude that it's doubling over and over and over  
22 again year over year. Again, small number so it's

1 hard to say. Right now at the end of Q3 we're  
2 essentially the same number where we were at last  
3 year.

4 CBMs you can also see we had a high back  
5 in FY14. Those have steadily fallen over the  
6 years, and right now over at FY18 we are standing  
7 at three-quarters of the way through the year at  
8 around 30. We did try to provide some additional  
9 data, let's see; here we go, by technology. We  
10 also had a request from stakeholders that they  
11 like to see the petitions data broken out by  
12 technology.

13 No surprise. We have seen electrical  
14 and computer data against seeing somewhat of a  
15 sinusoid, but that is indeed, by far the largest  
16 technology centers that we have before the board.  
17 That is followed by business methods and  
18 mechanical. Again, that's fairly stable year over  
19 year. I would point out the purple line there,  
20 the bio/pharma. That is one line that does seem  
21 to be increasing year over year. It might be  
22 slight, but that definitely does seem to be

1 increasing.

2           The chemical line also may be slightly,  
3 that's in green, slightly increasing, but again,  
4 not by much in comparative to the electrical in  
5 order of magnitude less. We do include the  
6 designs, but they are essentially in the single  
7 digits.

8           CHAIR JENKINS: Question, is the AIA  
9 trial institution rate as high as it was when the  
10 board started conducting trials nearly six years  
11 ago?

12           MR. RUSCHKE: It's not as high. This  
13 slide, we have broken out again to help with folks  
14 look at it on a year over year basis. And indeed,  
15 in very small numbers, but the very first year and  
16 into the second year, we were in the 87 percent  
17 and 75 percent range for institution rates. And  
18 that essentially has now come down over the years  
19 and we are hovering down in the low sixties on a  
20 regular basis year over year.

21           Now of course, we all know the Supreme  
22 Court came down with the SAS decision drastically

1        impacting our institution phase and the way we've  
2        been instituting case will remain to be seen how  
3        these are going to be instituted at this rate  
4        changes. We've just gotten done with a number of  
5        judicial conferences in all of our regional  
6        offices, and it was very interesting. SAS, of  
7        course, is a high priority and a very much of a  
8        hot topic for all of our practitioners. And we  
9        have been hearing from petitioners some  
10       interesting changes, potentially, in their  
11       behavior and their reacting to the SAS decision.

12                    I also might want to say we, again, in  
13        the interest of transparency and providing as much  
14        information as possible, we have broken out  
15        institution rates by technology now. And again,  
16        we're trying to make everything color-coded.  
17        Overall, again, it's right around 61 percent, but  
18        you can see that in the bio/pharma, which is the  
19        purple line, and the green, which is the chemical  
20        line, those are showing slightly lower institution  
21        rates versus the electrical, mechanical, and  
22        business method institution rates.

1                   Now I was looking at Jennifer, at her  
2                   expression. I think that does surprise a number  
3                   of the bio/pharma-chem folks, but that's the data  
4                   that we're seeing that there does seem to be  
5                   generally a lower rate on the chem pharma bio side  
6                   compared to other technologies.

7                   MR. WALKER: No, I said now because if  
8                   you look back to FY17 it was actually the highest.

9                   MR. RUSCHKE: Correct, which is  
10                  important. That's why I think that it's important  
11                  to provide stakeholders with the technology  
12                  breakout as well as the year over year breakout.  
13                  That helps a lot.

14                  CHAIR JENKINS: Let me go to the next  
15                  question. I don't know if this is the right time  
16                  to ask you this but one of the questions that  
17                  several stakeholders have asked is how is, and I  
18                  know you have addressed this in different ways,  
19                  but so how is the PTAB getting this information to  
20                  examiners, to other parts of the office? What  
21                  you're doing, how is, like, how is this with  
22                  quality? I think maybe another -- maybe you

1       addressing it might be an interesting explanation  
2       as well so.

3               MR. RUSCHKE:  Just in terms of the data,  
4       Marylee, or just in terms of the --

5               CHAIR JENKINS:  Yeah, because I think,  
6       again, we go back and Bernie's raised this too is,  
7       you know, the perceived inconsistency between you  
8       spent all this money trying to get a patent.  
9       You've worked with an examiner to get it allowed.  
10      Again, you've spent a lot of money, and then you  
11      get to the PTAB and it doesn't go very well.  And  
12      so how are we making all -- and the director is  
13      back.  How are we making -- what steps are we  
14      doing to try to make this a better process?

15              MR. WALKER:  And, David, could I just  
16      add because I was just reading some of the  
17      questions, and it does go to what the director  
18      said this morning about the one office concept.  
19      And I think you talked before a little bit, maybe  
20      could refresh the discussion about the feedback  
21      loop to the examining corps from PTAB, and you  
22      have other slides coming up to show the number of

1 claims that are --

2 CHAIR JENKINS: And I also think, too,  
3 people we -- you also have if there's an  
4 application that's pending, that's related to a  
5 patent that's being reviewed for IPR, that  
6 information is then -- Andy is shaking his head  
7 yes. That information is then shared with that  
8 examiner on the continuing application. I think  
9 it's interesting. I think you really have to keep  
10 repeating the message so.

11 MR. RUSCHKE: Sure, yeah. Thanks for  
12 that. Thanks for that. So we have a number of  
13 different ways to work with the patents group.  
14 And as you mentioned, I'll just pick up on the  
15 last one. There was a pilot program that was put  
16 in place so that the examiners who were working on  
17 a continuation application or CFP in the same  
18 family would be aware of all of the art that was  
19 being cited in the IPR.

20 I believe that's actually an automated  
21 system now so it pops up on the examiner's screen  
22 right away. And I think -- and we provide the



1 largest paper. So we provide the petition, we  
2 provide the response. So we provide all of the  
3 substantive papers, not the procedural stuff, but  
4 the substantive papers to the examiners in the  
5 family so that they're aware of what the PTAB is  
6 doing.

7 I believe the patents have done a study.  
8 Sometimes of course it might not be relevant if  
9 the patent or the applicant is pursuing claims  
10 that are somewhat different than what we're seeing  
11 at the board. So it may or may not be relevant,  
12 but at least we're providing the information to  
13 the examiner on those same claims.

14 One other thing that we do fairly  
15 frequently is we do help out on the training of  
16 the examiners with respect to not just the board  
17 procedures, but what we're looking for, let's say,  
18 in an appeal brief, for instance. And also what  
19 we would then recommend from an examiner answer  
20 standpoint. So we're helping the examination  
21 people figure out what we're trying to do to make  
22 sure that there is that communication between the

1 board and the examination corps.

2 One of the other things that we're doing  
3 actually with Valencia's group, and it stems from  
4 our provision 325(d) in our statute, is again this  
5 notion of we don't want to be redoing the work  
6 that has already been done by the agency. So if  
7 the same or substantially the same other arguments  
8 have been looked at by the agency, either through  
9 patents or the CRU, or frankly through the board  
10 in another IPR, we want to make sure what  
11 proceedings and what overlap we've seen so that  
12 we're properly applying that 325(d). And we're  
13 engaged in a study right now with Valencia's group  
14 to look at what is actually happening with respect  
15 to the work that's being done with the patent  
16 group, and then what the board sees it down the  
17 road.

18 MS. MARTIN-WALLACE: So David, if I  
19 could just add to that --

20 MR. RUSCHKE: Please.

21 MS. MARTIN-WALLACE: -- a few examples  
22 of how we collaborate together. So as David said

1 the training that we do together, we've also  
2 worked together on some webcasts for our  
3 examiners, for training for examiners as well as  
4 public webcasts that we've done together. We meet  
5 frequently.

6 We actually have three tiger teams that  
7 are working together between PTAB and patents  
8 working on case studies, working on development of  
9 new programs and initiatives for reaching out to  
10 examiners and having discussions. And we've had  
11 graciously offered by David and his team, we've  
12 had some appeal hearings where we've had examiners  
13 who were invited in to witness them so that they  
14 can see firsthand what's happening to their cases  
15 post issuance.

16 So quite a few, as well as we have  
17 frequent meetings where Andy Faile, Bob Barr, and  
18 I meet with David's senior team to discuss some of  
19 the issues that are happening. What we're seeing  
20 and some of the issues that the judges are seeing.  
21 So we actually have a lot of ways that we're  
22 collaborating right now along the lines of what

1 Bernie was offering.

2 CHAIR JENKINS: All right, so moving  
3 along, yeah?

4 MR. RUSCHKE: Okay.

5 CHAIR JENKINS: Question, is PTAB  
6 invalidating nearly all challenge patents?

7 MR. RUSCHKE: I would say that that's  
8 not true.

9 CHAIR JENKINS: I will say that he just  
10 laughed sitting next to me. I just want you to  
11 know that.

12 MR. RUSCHKE: But this is something  
13 that's -- that we hear quite frequently, and  
14 sometimes it comes out either nearly all or  
15 sometimes it's 80 percent, 90 percent. We do hear  
16 that fairly frequently. And I think it's  
17 important to address. Now here's our famous, or  
18 perhaps infamous, waterfall slide. Again, this  
19 was a dataset that we wanted to put out there, but  
20 this is a cumulative dataset since the beginning  
21 of AIA. This is not year over year. But it does  
22 show you that filing a petition, 8,700 to date,

1       only 2,200 have reached final written decision  
2       where you would actually have a decision on  
3       patentability. So there's a lot of things that  
4       happen in-between.

5                 The red is, of course, the  
6       pre-institution data, the blue is the  
7       post-institution trial data, a number of those  
8       cases settle, a number of those cases aren't  
9       instituted. As you saw overall, we're seeing  
10      about a 60 percent institution rate. In a number  
11      of cases, a small number of cases then also get  
12      dismissed or reach request for adverse judgments,  
13      et cetera.

14                So what we've been trying to say,  
15      though, and maybe this is an interesting slide,  
16      too, just on a settlement piece, typically overall  
17      it's about a third of the cases settled. But  
18      again, let's try to break this out year over year,  
19      and we have in blue post-institution, red  
20      pre-institution settlements. Right now we're  
21      settling in at around the low twenties. We're  
22      right around 23 percent settlement overall.

1           We, of course, are aware that some folks  
2 do not view settlements as a positive necessarily.  
3 But I think in terms of advising your client, this  
4 data, hopefully, can be helpful and say that at  
5 this point, these are the settlement rates that we  
6 are seeing in AIA trial work. But I do want to  
7 say, this is probably -- this next slide is a  
8 fairly new slide that we've broken out again, year  
9 over year, to try to put a little bit more  
10 granularity on the data that we present.

11           And I do want to address this issue of  
12 nearly all patents that are challenged are found  
13 unpatentable at the PTAB. You can imagine where  
14 that started from. If you recall the institution  
15 rates initially were around 87 percent. So that  
16 was right back in FY14, 87 for 75 percent. So  
17 there was a very high likelihood that you would be  
18 instituted on and this slide here is showing once  
19 you are instituted on, what are your chances of  
20 survival as a patent owner at final written  
21 decision.

22           And you can see that the data has

1 changed year over year. But you can see in those  
2 early days, indeed, the invalidation rate was  
3 quite high. And frequently, people would lump the  
4 no claim being found patentable, and the some  
5 claims being found patentable, that's the purple  
6 line, together, and there's where you could get  
7 this 85, 80 to 90 percent invalidation rate. I  
8 can see how in the earlier years that narrative  
9 took hold, but I think this important part of this  
10 data is showing that in the top red line where we  
11 find -- which is essentially year over year, when  
12 we find in our final written decisions that no  
13 claim is patentable, that has essentially been  
14 dropping since FY15 by about 15 percentage points  
15 from 73 percent down to 58 percent.

16 Not too unsurprisingly, where we have  
17 found all claims patentable at final written  
18 decision over the last two fiscal years has  
19 actually increased by 15 percent, from 12 percent  
20 to 27 percent. So the initial gap, which was  
21 essentially 61 percent, is between the red line  
22 and the blue line in FY15, has now been

1 essentially converging in FY17 to around 21  
2 percent. That's a fairly significant shift in  
3 what the PTAB is finding at final written  
4 decision.

5 We're still seeing overall that there's  
6 mixed results in about 15 percent of all cases.  
7 But this is a result of making sure that when you  
8 look at the data year over year it might be a  
9 little bit different trends than if you look at  
10 the bulk data, because any change that we're doing  
11 now in 1 or 2 final written decisions or even in  
12 100 written decisions that we do a year, is not  
13 going to affect the 2,000 written decisions that  
14 have been going on since AIA.

15 So I do highlight this slide because I  
16 think it points out how, indeed, the early  
17 narratives about the high invalidation rate could  
18 easily have taken route, but that I advise folks  
19 to look at this slide and see how that's changed  
20 year over year particularly if you go from a 61  
21 percent unpatentable versus patentable delta two  
22 years to essentially a 31 percent delta year over



1 year in FY17. Is that clear? I know it's a lot  
2 of data there, but I think it's a message that we  
3 try to get home, and sometimes it doesn't  
4 necessarily get out there because people are using  
5 cumulative data from the beginning of AIA, and  
6 that will give you very different results.  
7 Whereas if you look at this year over year trend  
8 data, that actually is showing, I think, somewhat  
9 of a different story.

10 MR. WALKER: And David, I get -- it's  
11 very interesting. I guess you would say that's a  
12 proxy for improved patent quality?

13 MR. RUSCHKE: It could be.

14 MR. WALKER: Because the institution  
15 rates are also dropping, and so the no claim  
16 patentable is also dropping, all claims patentable  
17 increasing, so you have three data points there  
18 that would show presumably that patent quality is  
19 increasing, right, or no?

20 MR. RUSCHKE: Well, again, part of you'd  
21 have to look at it, Mike, since IPRs could be  
22 patents that issued many, many, many, many years

1       ago, you'd have to actually get into -- you have  
2       to parse it out as to which -- when they issued,  
3       if you will, and do that sort of overlay. But  
4       generally, you might say that, but I would just  
5       caution jumping to that necessarily without  
6       knowing exactly when the patents issued.

7               MR. LANG: From our viewpoint, I mean,  
8       the primary filter is actually before the petition  
9       stage when petitioners decide whether or not to  
10      file, and it could have been early on in the  
11      procedure people didn't have a lot of experience  
12      with it. They were reluctant to. Then they saw  
13      that it could be successful, and they became more  
14      optimistic, and filed more, and that naturally  
15      dropped the institution rate a bit. That's one  
16      possibility.

17             MR. RUSCHKE: Yeah, we've heard that as  
18      well.

19             MR. LANG: But overall, I think your  
20      message is a very correct one, and I think that  
21      refocuses it on people that this is, in many ways,  
22      a balanced procedure that gives people, both

1 patent owners and petitioners, a fair shot. I  
2 mean, we can certainly all be upset in individual  
3 cases where we, as a petitioner or as a patent  
4 owner, weren't successful, and I've certainly had  
5 some of those to complain about myself. But I see  
6 this as a procedure that's very successful and  
7 important piece of our patent system, and should  
8 continue, and there may be changes, but hopefully  
9 they won't take away from that successful record.

10 MR. RUSCHKE: Well, I do want to  
11 reiterate what you say, too. Again, statistics  
12 are statistics except if you're the one that falls  
13 on the other side of the statistics. And so that  
14 is we completely understand that. So that's why  
15 it -- and we've been -- and the director's been  
16 meeting with a number of stakeholders where they  
17 have actually brought in data to us saying like  
18 that's -- your data's all well and good and we  
19 understand that, but this is our personal  
20 experience.

21 And I have to say, those interactions  
22 with those stakeholders where they've actually

1       gone in and looked at their portfolio, their  
2       experience before the board, that's been very,  
3       very powerful to us. It actually does inform you  
4       that the experience that chose clients and those  
5       attorneys in those companies are actually dealing  
6       with on a day-to-day basis. So that's, I think, a  
7       very, very helpful piece.

8               And just to close out the one answer on  
9       this question, we have this slide. We're trying  
10      to revamp it a little bit. This actually, what we  
11      call our ultimate outcome for patents and AIA  
12      trials. So now this slide is looking at from the  
13      very beginning, when the petition is first filed,  
14      to the final disposition at the end of the trial  
15      phase.

16             What happens to your patent along that  
17      way? And again, it's all built off that waterfall  
18      data. And we provided this data based on a per  
19      petition basis, which is in green, and a per  
20      patent basis, which is in blue. And we've  
21      defined, essentially, a patent being unchanged  
22      from beginning to end, meaning you didn't get

1 instituted on. The case was settled, or claims  
2 were found patentable at the final written  
3 decision stage.

4           So there's a number of different ways  
5 that your patent remains unchanged throughout the  
6 entire process. And throughout the entire PTAB  
7 process, we're finding 58 percent of patents,  
8 that's the blue bar, which translates into 69  
9 percent of the petitions filed. Your patent  
10 remains unchanged. Now of course, we've heard  
11 again that we probably shouldn't be -- some people  
12 feel that we shouldn't be including settlements in  
13 this data. Of course, your patent does remain  
14 unchanged. It's hard for us to say whether any  
15 settlement that you reached was a positive  
16 settlement for you or not.

17           So we are going to try to carve that out  
18 of our data to make it very, very clear that the  
19 things that it -- were influenced by PTAB, we had  
20 control over, versus what you, as parties, settled  
21 out as. But I do think it's an interesting slide,  
22 going again, to the analogy of at what point of

1 the trial what do you advise your client. The  
2 message that we're saying, when you get a petition  
3 filed on day one, this is the dataset that you  
4 might want to look at in analyzing the advice you  
5 give to your client.

6 The bottom two bars are, again, is where  
7 we have essentially found that all claims are  
8 unpatentable, and we do that in 21 percent of all  
9 petitions filed, excuse me, 29 percent -- 21  
10 percent of all petitions filed, and 29 percent of  
11 all patents filed. So again, we're trying to  
12 provide data in different formats to you at  
13 different stages of the proceeding that help guide  
14 you and the work that the IP community is doing  
15 with their clients.

16 MR. GOODSON: Can you back up one slide?

17 MR. RUSCHKE: Sure.

18 MR. GOODSON: I find this fascinating,  
19 your last set of points, that I would expect some  
20 claims to be in-between all and no, and it doesn't  
21 turn out that way. And to me that's -- it seems  
22 out of kilter. On the other hand, I think it's

1 proof that the system is working. People are  
2 looking -- the judges are looking at these claims  
3 very seriously.

4 MR. RUSCHKE: Well, thanks, Mark, and I  
5 would point out, I, too, find that interesting,  
6 too, that the mixed results has just been fairly  
7 stable. I think we're going to have to be -- keep  
8 a close eye on this, though, because SAS, with the  
9 binary decision, is going to impact this data.

10 So it's somewhat unfortunate because  
11 that's going to be April 24th, 2018 is going to be  
12 a big statistical divide on not only on the  
13 institution rate, but on exactly what you're  
14 seeing here, because whereas before, we might have  
15 carved out certain grounds and not gone forward  
16 with them. If we do decide to go forward, we're  
17 going to be bringing in grounds that previously we  
18 might not have brought in.

19 So I think you're going to find the  
20 mixed results to go up. That's my prediction  
21 right now, just as a result of the Supreme Court  
22 decision. And that goes along with what the

1 director has been very, very strong on, and I  
2 think it's the right way to go, of course, is to  
3 provide to the patent owners and the petitioner,  
4 at the decision to institute stage, as much  
5 information as we can with respect to both  
6 patentability and unpatentability at that  
7 preliminary stage. But make sure that both  
8 parties understand where we're going forward. So  
9 that when we do go forward you can understand, we  
10 have to find at least one claim, one ground to  
11 have a reasonable likelihood of unpatentability,  
12 but maybe not the rest of it, and the rest of it  
13 will come out in the statistics, Mark. And I  
14 think that's a really good point. Thank you for  
15 raising that.

16 CHAIR JENKINS: So before we go on to  
17 the next subject, on online comment/question  
18 jumping back to the interplay between the PTAB and  
19 the examiners. And questioning the fact that if  
20 the examiners have the expertise in the subject  
21 matter, and they've reviewed art, and then that  
22 same art goes to an AIA trial, and shouldn't there



1 be some difference given by the judges to the  
2 examiner and the review. And to be fair, too, I  
3 mean, the examiner is spending a significant  
4 amount of time, probably doing some sort of  
5 exchange, both by filings and possibly by  
6 interviews in person. That they really have --  
7 they have the record, so to speak, so.

8 MR. RUSCHKE: Yeah, that is a great  
9 question, and to some extent it's -- we've heard  
10 from certain stakeholders as well, particularly in  
11 bio/pharma and the chem group to some extent. A  
12 lot of those patents have been examined for a long  
13 time. So there is a lot of art that has been  
14 found. There's a lot of art that has been  
15 considered. With respect to this level of  
16 deference, I point out the following.

17 In about the last six to eight months we  
18 have put out seven, I believe informative  
19 decisions on the factors that we will look at with  
20 respect to reviewing an examiner's work product.  
21 And those factors, of course, include the level of  
22 analysis that the examiner did, was it in-depth,

1 was it cursory, was it just on an IDS, was it on a  
2 large IDS, was it on a small IDS, those sorts of  
3 things. Cited in a foreign search report, the  
4 similarity of the references that were being shown  
5 versus what was found with the examiner.

6 I mean, petitioners have figured this  
7 out to some extent, right? If you put the exact  
8 same art in front of us that the examiner looked  
9 at, that's a harder -- that's an uphill battle as  
10 opposed to if you find other art. Now that said,  
11 if it's similar and we've also had one of our  
12 factors uses the word cumulative, if it's  
13 cumulative art, that might be, again, a reason why  
14 we do not institute because the office has already  
15 looked at it and analyzed it.

16 But the question that you raised, I  
17 think, is very important is this level of  
18 deference. You will see in our cases that there  
19 is some ability to try -- that we're trying to  
20 find and hone in on the standard of looking at the  
21 examinations -- examiner's work product, and what  
22 level of deference that deserves. And it does

1       deserve deference, of course. Now what we're  
2       encouraging patent owners and petitioners is to  
3       help us in that process.

4               I would point you to a case, an  
5       informative case, Becton Dickinson, which lists  
6       the factors that we have been looking at with  
7       respect to 325(d) which is revisiting the  
8       examiner's work product. And in that list of  
9       factor, nonexclusive list of factors, we talk  
10      about what level of error that we would have to  
11      essentially look at on the examiner's side were we  
12      to go forward.

13              We, actually, would like to have the  
14      stakeholders' help on formulating what that means  
15      to them and what level of deference we should be  
16      giving to the examination corps. It's -- we  
17      already give a level of deference, and we have  
18      seen that in a number of situations on 325(d)  
19      where we did not go forward on those grounds  
20      because the examination corps had already looked  
21      at that.

22              Big caveat, once again, April 24th SAS.

1 We have used 325(d) frequently in order to limit  
2 the range of issues and only go forward on those  
3 -- I think that's me. If somebody could turn off  
4 their livestream I think that's -- there's a delay  
5 and that's what we're hearing. Thank you.

6 SAS is creating some issues on 325(d)  
7 where before we would not go forward on certain  
8 grounds. Now we have to go forward on certain  
9 grounds if we decide to go forward at all. So  
10 that's creating some strange dynamics on this  
11 325(d) side that certainly hasn't been  
12 anticipated, I think, by the Supreme Court and  
13 SAS.

14 MR. KNIGHT: David, I think it's a -- I  
15 don't expect you to answer this right now but I  
16 think an interesting legal issue arises on that  
17 deference question because I understand how under  
18 325(d) you don't have to look at our -- already  
19 looked at by the office. But to give deference to  
20 what the examiner did kind of I wonder how that  
21 would work under our preponderance of evidence  
22 standard in the statute that the board must

1 determine patentability by a preponderance of  
2 evidence, and whether that's consistent with  
3 giving deference to the examiner's opinion.

4 MR. RUSCHKE: That's exactly right, but  
5 again, you know, you divide it out that -- we get  
6 to the preponderance piece if we're in trial.  
7 Before that when we decide under 325(d) whether to  
8 even go to trial, those factors and that level of  
9 -- and maybe deference might not necessarily be  
10 the word, but how are we going to analyze the  
11 examiner's work product. And again, we find from  
12 that the petitioner, frankly, and then the patent  
13 owner in response, the petitioner is saying he  
14 clearly erred. He made an error, referring to the  
15 examiner, he overlooked, he misapprehended. So  
16 there's a lot of different word -- verbiage that  
17 have been used.

18 And again, it's -- I think it'll fit  
19 fine with the preponderance standard which is  
20 post-institution. What we're trying to find out  
21 is what level of, you know, what factors, and what  
22 level of analysis, frankly. The example, again,

1 that we have seen is if the examiner had an IDS  
2 with only three references on it, and those are  
3 the 3 references before us, that's a different  
4 situation, perhaps, than when there's 1,000  
5 reference IDS and those 3 references are somehow  
6 in here, but the examiner never applied it.

7           Clearly, and I think in the informative  
8 decisions that you've seen, when the examiner has  
9 looked at that reference, and has found those  
10 claims patentable, that is a situation that is  
11 right for 325(d) where we will not go forward and  
12 institute on those claims, all pending SAS.

13           CHAIR JENKINS: Want to move on, yeah?

14           MR. RUSCHKE: Sure.

15           CHAIR JENKINS: So motions to amend.

16           MR. RUSCHKE: Hot topic.

17           CHAIR JENKINS: So question, under what  
18 circumstances will the PTAB grant a motion to  
19 amend?

20           MR. RUSCHKE: As the director said, we  
21 have been looking at PTAB up and down, every which  
22 way, and this topic is indeed a hot topic. And at

1 our judicial conferences that we've taken through  
2 all of our regional offices as well as here, we  
3 spent an entire hot topic session in the afternoon  
4 trying to get feedback from the stakeholders as to  
5 what they were looking for in a revised motion to  
6 amend practice.

7 As the director noted, this is something  
8 that's a very high priority for him, and also for  
9 the board, and hopefully you'll be seeing  
10 something on this from us soon. But one of the  
11 hallmarks, again, that we've seen, and this is  
12 from our motion to amend study. We have to have  
13 compliance with, at a minimum, with of course the  
14 statutory provisions, 101, 112, 102, 103,  
15 otherwise we will just not grant the motion.

16 And as a result of that, you can see in  
17 this slide that the reason we haven't been  
18 granting those motions to amend are these  
19 statutory and regulatory reasons. And that,  
20 again, it's not complying with the basic statutory  
21 provisions, or underneath 316 where there was not  
22 a reasonable number of substitute claims, the

1 claims weren't narrow, or there wasn't written  
2 description support. There was new matter for the  
3 proposed substitute claims.

4           So the reasons we're denying the motions  
5 is not because we don't feel like it. It's  
6 actually when you do the analysis, just as the  
7 examination corps would do it, it would not pass  
8 those patentability requirements in the statute.  
9 Now that said, and this is where the director, I  
10 think, is honing in and asking PTAB to take a look  
11 at the amendment practices, why is that? Why are  
12 there not -- why is there not an ability for the  
13 patent owner to amend claims in a way that  
14 actually complies with the statute?

15           And again, the highlights that he  
16 mentioned this morning, I would like to reiterate.  
17 There is the requirement of trying to get all the  
18 work done with the one-year period, that's for  
19 sure. But again, is it a way that we can provide  
20 multiple opportunities for the patent owner to  
21 amend, provide guidance earlier on in the process,  
22 so that the patent owner doesn't get a decision on



1 all claims, including their substitute claims, at  
2 the final written decision stage.

3 So it's those inputs that we've been  
4 receiving from stakeholders, I think, that have  
5 been informing, as he mentioned, how we would  
6 modify the amendment process to make it a robust  
7 process so that patent owners can, indeed, know  
8 what they need to do in order to meet these  
9 statutory requirements. I will say, this is  
10 post-Aqua Products on this slide. There are very  
11 few that have been filed from day one. There just  
12 has been, and that's what this slide shows year  
13 over year, fiscal years.

14 We've always been right around 50 or 60.  
15 Aqua Products came down October 4th, which,  
16 luckily for us, is actually right at our fiscal  
17 year. So this is an easy dataset to look at. So  
18 FY17 is pre-Aqua Products. FY18 is post-Aqua  
19 Products. This data is only through the first  
20 half of the year, and you can see that there might  
21 be a slight uptick, that since the burden was no  
22 longer on the patent owner, per Aqua Products,

1       that there might have been a slight increase in  
2       motions to amend being filed.

3                 Now of course, those have to work  
4       themselves through the system. So we're not sure  
5       if the burden being removed from the patent owner  
6       is actually making a difference as to those  
7       motions to amend, whether they're granted or not,  
8       so stay tuned. But this is at least a little bit  
9       of data post-Aqua Products indicating that there  
10      might be an uptick in motions to amend being filed  
11      by patent owners. I know we're -- I just want to  
12      point out as, well, we did have an informative  
13      decision, if you're not familiar with it, Western  
14      Digital.

15                This is actually to replace some of the  
16      precedential and informative decisions that we had  
17      out there where the burden was placed on the  
18      patent owner. So those have been de-designated,  
19      and this one has been designated in its place. I  
20      highly recommend that you go through this as both  
21      patent owner and petitioner. We're trying to  
22      include this informative order in the vast

1 majority of our cases to provide guidance to you.  
2 And again, it just helps provide where we are at  
3 this point after Aqua Products.

4 CHAIR JENKINS: Okay, multiple petitions  
5 studies, question, are gang tackling and serial  
6 petitioning prevalent at the PTAB?

7 MR. RUSCHKE: This is something we hear  
8 a lot of. And we still hear about it quite a bit.  
9 I think when we put out our initial multiple  
10 petition study about a year ago that was fairly  
11 helpful. Trying to at least frame the  
12 conversations and frame people's discussion on it.

13 But again, there's going to be a wild  
14 card with SAS. And petitioners' behavior is going  
15 to be very, very interesting to see if they are,  
16 indeed, filing more petitions, perhaps more  
17 petitions and more focused, fewer petitions, the  
18 exact same number of petitions. We just don't  
19 know. So this multiple petition data study which  
20 is through a year ago of 2017, we'll have to see  
21 how SAS affects this going forward.

22 But generally, this multiple petition

1 study, this is where we're talking about, on this  
2 slide at least, the petitions per patent, and of  
3 course, this is very important that we get the  
4 right denominator. This is the number of  
5 petitions per patent. So this is -- goes to the  
6 notion that patent owners are feeling that they  
7 get hit with one petition, and if that one doesn't  
8 stick then there's another one, and then there's  
9 another one that, and another one that.

10 And what we're seeing with the data is  
11 that quite a few, about 87 percent of them,  
12 patents challenged by PTAB by one or two  
13 petitions. Some people might say that two  
14 petitions is too many, but that's what we're  
15 seeing. When we're seeing these serial petitions  
16 over and over and over again, it does to get  
17 fairly low percentages about four percent. We're  
18 only seeing about one percent in those higher  
19 numbers, and then seven or more is essentially 1.3  
20 percent. So that's what we're seeing in terms of  
21 the serial nature of petitions that patent owner  
22 has to see petitions over and over and over again.

1 In terms of gang --

2 MR. KNIGHT: David?

3 MR. RUSCHKE: Yes, sure.

4 MR. KNIGHT: You know, one thing that I  
5 think would be interesting, I don't know if you  
6 have this, is when, you know, when multiple  
7 petitions are filed, is the patent owner asserting  
8 the petition in subsequent suits against multiple  
9 parties, because that would be completely  
10 justified.

11 MR. RUSCHKE: Right. Well, I have a  
12 little slide on that later.

13 MR. KNIGHT: Okay.

14 MR. RUSCHKE: It's a little bit -- we  
15 can get that data to some extent because they have  
16 to tell us if there's, you know, co-pending  
17 district court litigation. But it's not  
18 incredibly easy for us, necessarily, to include  
19 that in the dataset. But we do touch on that a  
20 little bit which I think is an important point.

21 This next slide, though, goes to the  
22 gang tackling of it. And again, this is a

1 situation where codefendants, as Bernie just  
2 raised potentially, somehow working together in  
3 order to gang tackle a single patent owner. And  
4 what we are seeing is 85 percent of patents are  
5 challenged on a single -- by a single petitioner.  
6 So it's one petitioner, one patent owner. The  
7 largest gang, if you will, according to this is  
8 eight. And seven and eight, well, actually, it  
9 looks like from five, six, seven, and eight those  
10 sorts of gangs are fairly small numbers. Again,  
11 85 up to 95 percent are either challenged by one  
12 or two petitioners.

13 CHAIR JENKINS: Is that in a particular  
14 -- could you say that's in a particular  
15 technology?

16 MR. RUSCHKE: You know, that's -- I  
17 would love to have this broken down by technology.  
18 We don't. What we do have broken down, I'm not  
19 sure if I have my data in this slide, like I don't  
20 think I do -- oh, I do actually, are orange  
21 book-listed patents. Now those get at the  
22 technology piece and it's fairly easy for us to do

1       that because we -- if they're listed in the orange  
2       book we know what they are. The rest we have to  
3       actually manually hand count and figure out what  
4       technology they go to and divide out the data.

5                So I do have orange book-listed data on  
6       that. Let me see if I have the -- I don't have  
7       that in the slide deck, but it is on our website.  
8       And we have done very similar data for the 389  
9       orange book-listed patents that are -- that have  
10      come before the PTAB. And if I remember  
11      correctly, I don't want to misspeak on that. The  
12      numbers are fairly similar but not identical. So  
13      maybe I'll just refer you to the slides online as  
14      opposed to trying to remember off the top of my  
15      head and misspeak.

16               CHAIR JENKINS: Want to go to the next  
17      question?

18               MR. RUSCHKE: Please.

19               CHAIR JENKINS: Are petitioners filing  
20      serial petitions and relying on previous PTAB  
21      decisions to inform their later petitions?

22               MR. RUSCHKE: So this is the second bite

1 at the apple problem, and also known as the  
2 road-mapping problem. We've seen that  
3 unfortunately quite a bit. Again, perhaps patent  
4 owner might have sued somebody post DI, in which  
5 case, I've -- if you were defending that lawsuit,  
6 I could see why you would want to look at the DI,  
7 and then that might not be anything that the PTAB  
8 can do. But what this graph shows is when the  
9 petitions are filed, and that's what we can look  
10 at.

11 Anything before the patent owner  
12 preliminary response, and certainly before the DI,  
13 I don't think should be looked at as road mapping  
14 or second bite of the apple. Now the reasoning  
15 why they filed multiple petitions we're not sure  
16 of, although under General Plastic, factor five  
17 says please tell us why you filed a second  
18 petition because we want to know, and that's going  
19 to be part of our analysis. But about 80 percent  
20 of the petitions are filed without the benefit of  
21 seeing the POPR or the DI.

22 What you really need to look at is that



1 16 percent in that red line -- in that red pie  
2 piece. Those are the potentials for road mapping.  
3 It doesn't mean that there's road mapping  
4 happening. There could be subsequent litigation.  
5 There might be additional claims being inserted in  
6 the litigation. There might a change in claim  
7 construction that occurred during the litigations.  
8 Hard to say, but this is the data that we're  
9 generally seeing in terms of road mapping and  
10 second bite at the apple.

11 The other one, the next slide here,  
12 which is, I think, kind of interesting, takes a  
13 little bit of explaining, but it goes to this  
14 whole notion as well when you talk about rounds of  
15 petitions. Rounds of -- essentially a round is  
16 filed essentially before receiving a DI on one of  
17 those petitions. So this, again, goes to the fact  
18 that 95 percent of petitions are filed before the  
19 petitioner has a first round and has been able to  
20 see a DI.

21 So again, this is saying that there  
22 might be road mapping, and there might be a second

1 bite at the apple happening, but at least under  
2 this definition of how we look at the roads pre a  
3 DI, there isn't a lot of that happening. But  
4 again, if you were in the situation where that is,  
5 and we've heard from certain industry groups that  
6 this is definitely happening, this, at least, on  
7 an overall basis, we're not seeing it. It might  
8 be different by different industry areas.

9 CHAIR JENKINS: Changing top -- oh,  
10 Jennifer, you have a question? No? Okay.  
11 Changing topics, yeah? Expanded panel study,  
12 question, does the PTAB expand panels to reach a  
13 particular result in a case?

14 MR. RUSCHKE: So again, expanded panels  
15 have been a hot topic as well on and off. The  
16 director addressed that this morning, and so I'm  
17 not sure I'm going to spend a huge amount of time  
18 on it. This results from some of our standard  
19 operating procedures all of which are under  
20 review, and in particular, how we designate -- how  
21 we do paneling, expanded paneling, precedential  
22 and informative decisions are all part and parcel

1 of this process of reevaluating SOPs.

2 My only message here in answering this  
3 question is that we do find this to be, when we've  
4 expanded panels, not only the expansion itself to  
5 be rare, but again, to get a particular result is  
6 even rarer. And in the just over two years that  
7 I've been the chief judge, we have never expanded  
8 a panel in order to change the underlying result.  
9 And in fact, if you look at the entire history of  
10 AIA, we have expanded panels in only two  
11 instances, in only two, to where the result, the  
12 underlying result, was changed, and that was upon  
13 rehearing. And it was the same issue which is  
14 same party joinder which is another very hot  
15 button issue at the board.

16 So this slide here is just saying  
17 essentially, if you look at the numbers, you know,  
18 we've done of 6,000 decisions on institution, 23  
19 have been expanded. Results, underlying results  
20 haven't changed. Interlocutory orders, again,  
21 thousands of interlocutory orders, we can't even  
22 count them. It's happened about 31 times and

1 we've never expanded in over -- in about 2,000  
2 final written decisions. So it is, indeed, rare  
3 and even rarer to change the underlying result.

4 But all of this is under review so stay  
5 tuned. Hopefully, you'll be seeing something very  
6 shortly that will help clarify this and help  
7 clarify the precedential process as well.

8 CHAIR JENKINS: Great. Okay. Moving  
9 forward, going back to the orange book comment  
10 previously in the study, question, are AIA trial  
11 results for pharma patent owners worse than for  
12 other technology areas?

13 MR. RUSCHKE: So again, if you're the  
14 person that's patent is found unpatentable, yes.  
15 They are worse. We have to look at overall  
16 statistics. When we look at our overall  
17 statistics here on the right-hand side is all  
18 other technologies. We've been able to carve out  
19 the orange book-listed patents. Again, if you  
20 recall from our earlier stage, we're seeing at  
21 least right now, again, this is cumulative data,  
22 where we find mixed results on all technologies in

1 about 15 percent of the cases. Again, this is  
2 cumulative data.

3 The dark blue is 66 percent where we  
4 find no claims patentable and 17 percent to have  
5 all claims patentable. If you break out the  
6 orange book-listed patents, that's the donut on  
7 the left-hand side, we're seeing two trends. One  
8 is it's much more balanced. It's much more of a  
9 50/50 split on patentable and unpatentable for  
10 orange book-listed patents. And you don't find  
11 those mixed results very much. It's either all or  
12 nothing on the orange book side where we're  
13 finding on all technologies there could be a  
14 possibility for mixed results.

15 I do have this slide here which, in the  
16 interest of time, I don't think we necessarily  
17 need to go through, but as again, this is talking  
18 about when you have an orange book-listed patent,  
19 and you're originally challenged at that very  
20 first petition stage, we're seeing 83 percent of  
21 those patents being unchanged by PTAB all the way  
22 through the process. And in 14 percent, that's

1 the dark blue wedge, where we're seeing all orange  
2 book -- all instituted claims being held  
3 unpatentable. So again, looking at the entire  
4 timeframe of whether they're changed and unchanged  
5 by the PTAB.

6 CHAIR JENKINS: Okay. So going to a new  
7 topic studies, is the PTAB conducting any other  
8 studies?

9 MR. RUSCHKE: We're constantly  
10 undergoing a lot of -- looking at a lot of  
11 studies, and one thing we have been getting some  
12 feedback on is what would you like us to be  
13 tracking with respect -- when we have these major  
14 decisions such as SAS and such as Aqua Products.  
15 So if they have any suggestions, please send them  
16 to us because it is a data piece that we -- it's  
17 better to get ahead of that. It's much easier if  
18 there's something that you're interested in  
19 particularly that we want to take a look at.

20 A couple of studies that we do have  
21 ongoing is a parallel proceedings study where the  
22 goals to exploring the interaction between the

1 parallel proceedings, that's the AIA reexamine,  
2 reissue, and this is a joint effort between PTAB  
3 and CRU. And also we do have one here underneath  
4 the section 325(d) study which is, again,  
5 coordinating with patents to look at when the  
6 examination corps looks at something, and  
7 underneath our statute 325(d) how much should we  
8 be reevaluating and redoing the examiner's work  
9 product. So those are the two big studies that we  
10 have ongoing both with intersecting with patents.

11 CHAIR JENKINS: Any idea when you'll be  
12 completed with the study?

13 MR. RUSCHKE: Well, we would have had  
14 them completed but for the Supreme Court,  
15 unfortunately. Our workload increased, and maybe  
16 just to give you a head's up, again, I know in the  
17 interest of time merely I was just going to say,  
18 you know, on SAS the simple -- I know this is a  
19 hot topic. We did put out guidance, but just so  
20 that we're all on the same page, when we looked at  
21 our existing workload in April when it came down,  
22 18 percent of all of the petitions where we had

1 already instituted on, we hadn't instituted on all  
2 claims. In 18 percent of all those petitions we  
3 hadn't instituted on all grounds.

4           So 18 percent claims, 44 percent grounds  
5 that required rework by the board. That's a  
6 fairly big lift. The judges have been doing quite  
7 an amazing job on making sure to try to get that  
8 all taken care of, to make all of our existing  
9 cases SAS compliant. We did have two chats with  
10 the chief, both on April 30th and June 5th. We  
11 highly recommend if you missed those, they're  
12 actually -- the transcripts are available online,  
13 including, not only the guidance, but also  
14 frequently asked questions. And you can see that  
15 on our redesigned website. If you look on the  
16 right-hand side column, and you'll see these FAQs  
17 for SAS that we've been putting out to try to  
18 provide additional guidance to all stakeholders.

19           It is a moving target, and it is  
20 evolving over time as we've seen and heard from  
21 the stakeholders when we've been out at our  
22 judicial conferences. Strategies are changing so



1 we shall remain to be seen. And so this will need  
2 to be updated. We're hoping to do another one  
3 hopefully in August. So stay tuned and we'll give  
4 you more information on that.

5 MR. WALKER: David, excuse me, a  
6 question from the audience was when can we expect  
7 the PTAB to issue opinions under SAS, or the  
8 timing?

9 MR. RUSHCKE: So that's a really good  
10 question. So luckily to some extent, you know,  
11 this federal circuit -- well, they've been  
12 remanding a number of cases to us particularly in  
13 those situations where at least one party has  
14 asked for a remand. But they've actually been  
15 providing some guidance to us underneath SAS.

16 In fact, you know, they did make a  
17 decision fairly quickly sort of affirming our  
18 initial guidance that not only claims, but also  
19 all grounds needed to be included. So I have to  
20 check to be honest with you, Mike. I mean, we did  
21 use the six-month extension period in about a  
22 couple dozen cases where we were just not able to

1 get the final written decision out in the year  
2 deadline because of all of the extra work that  
3 needed to be done because of SAS. And I would bet  
4 in about a third of all of our hearings we  
5 actually postponed those hearings in order to make  
6 sure that we were able to have, essentially, a  
7 single hearing on all the grounds and all the  
8 claims. So we would have, essentially, one record  
9 going forward.

10 I have to get back to you on that. I  
11 think there have been perhaps some cases going  
12 forward on SAS. Are you talking about final  
13 written decisions? Yeah. I'm not sure about how  
14 many of those we've had. Certainly, we've had  
15 decisions to institute under SAS go forward. I  
16 don't know the exact number of those, but since  
17 April, everything that was pre-DI has been SAS  
18 compliant at that point.

19 CHAIR JENKINS: Actually, Julie has been  
20 listening. Julie, you want to ask your question  
21 now? You hear me? You want to introduce yourself  
22 if you're able to? No? Okay. I know she's

1       there. She's been emailing me. Okay. Why don't  
2       we keep going?

3                   MR. RUSCHKE: Sure. The last is the  
4       NPRM which the director touched on. We are very  
5       heartened that we got 374 comments received.  
6       Very, we really, I think that really is a  
7       wonderful testament to the director's reaching out  
8       to the stakeholders and engaging them on this  
9       issue. And as he mentioned, we are working  
10      through the comments that we received. We will be  
11      responding as soon as we can, and again, you'll be  
12      hearing from us, I think, shortly on the NPRM as  
13      we get through that.

14                   And last but not least, just to wrap  
15      this up again, this is our revamped webpage. If  
16      you're missing what PTAB is doing and want to know  
17      what PTAB is doing, I highly recommend you make  
18      this your favorites. You can see upcoming PTAB  
19      events there. This is an old slide shot where we  
20      had the chat with the chiefs. As I mentioned,  
21      we're probably going to have another one here in  
22      August.

1           If you're worried about missing these, I  
2 highly recommend that you subscribe to the PTAB  
3 email blast. If you're unfamiliar with that, I  
4 think you just Google on the website email --

5           MR. BOALICK: It's the subscription --

6           MR. RUSCHKE: Subscription --

7           MR. BOALICK: -- the USPTO subscription  
8 center.

9           MR. RUSCHKE: And there'll be a list of  
10 subscriptions or email blasts that you can get.  
11 Just sign up for PTAB and then all of this stuff  
12 will just come directly into your inbox, maybe too  
13 much, but again, if we make cases precedential or  
14 informative, if you have a chief chat, if there's  
15 guidance going out, all of that sort of stuff,  
16 that's a great way to get information right  
17 directly into your inbox. And you can sign up for  
18 patents, too. And with that, I think we're at an  
19 end.

20           CHAIR JENKINS: I just want to commend  
21 the PTAB and all of its efforts, and David going  
22 out and really trying to engage with stakeholders,

1 getting the message out. Often very difficult  
2 with rule changes and new decisions coming down,  
3 but in trying to keep the user community informed,  
4 I think highly commendable. I do believe you  
5 should take a couple of days of vacation, so but  
6 for the user community it's all on the website.  
7 It's all accessible. And it's just something that  
8 we all should be appreciating for the level of  
9 commitment from your group and you.

10 MR. RUSCHKE: Well, and thanks, I  
11 appreciate the invite up to New York. That was a  
12 very nice crowd and it was a really nice  
13 organization that we hadn't had exposure to  
14 before. And I think the wonderful part about that  
15 is these sorts of environments where you really  
16 get to have a discussion, and you have hard  
17 questions being asked, right, I mean, there's a  
18 lot of hard questions about PTAB that get asked.  
19 And the more information and the more we can get  
20 out and handle those questions the better. So I  
21 appreciate the opportunities as well.

22 CHAIR JENKINS: Thank you. We're now

1 going to go to finance so, Tony?

2 MR. SCARDINO: Let me try that again.  
3 Good morning. All right. Always hard to follow  
4 such a great act in David Ruschke but I'm going to  
5 try anyway, at least talk about a different  
6 subject matter.

7 Typically, we go through three fiscal  
8 years concurrently. We're living in '18. We are  
9 preparing for '19 and we are developing the '20  
10 budget. So we'll go through that a little bit.  
11 Fee collections are just about as we planned them,  
12 off by like four -- short \$4 million which is more  
13 or less a rounding error. We can make that up in  
14 a day, so I don't know what it will be by the end  
15 of the year, but we are basically collecting fees  
16 according to plan. And as Andy mentioned this  
17 morning, filings are up a little bit, which is a  
18 positive sign. So we're happy to see that.

19 Spending is also pretty much according  
20 to plan. So you'll see here we are going to end  
21 the year, we think, as of today, with an operating  
22 reserve of roughly \$280 million. Our goal was to

1 end with a \$300 million operating reserve, so we  
2 would like to see that a little higher, and I'll  
3 be talking about that later in my slides as to how  
4 we're going to address that.

5           The 2019 budget, Congress has acted,  
6 both chambers, the House and the Senate, back in  
7 May. They marked up our -- the president's budget  
8 request. They actually gave a -- provided a  
9 funding level a little bit below the president's  
10 request, \$46 million lower. All this really means  
11 is if we do collect greater than what they  
12 appropriated, we would transfer money into the  
13 Patent and Trademark Fee Reserve Fund and then  
14 access through a reprogramming notification. So  
15 it's really just a cash flow issue. We'd get  
16 access to the money in the fall as opposed to  
17 during the fiscal year in September.

18           So not a major challenge for us, but we  
19 would be planning accordingly in terms of the  
20 spending side. Also the Senate report had some  
21 concern about the IP attaches, that they've  
22 consistently been asking us about, keeping that in

1 mind.

2                   The 2020 budget, that is due to the  
3 Office of Management and Budget the second Monday  
4 in September. So we're busily drafting that.  
5 PPAC will see a draft mid-August so in a few  
6 weeks. We appreciate your comments, understand  
7 that you don't have a lot of time to review it,  
8 but if you have any questions, please let us know,  
9 happy to get comments and feedback. That goes to  
10 OMB in September. They then review it for the  
11 fall. We go back and forth with them. We  
12 actually give them updated modeling projections  
13 and then we get what's called a final mark close  
14 to Thanksgiving time. And then we start  
15 developing the president's budget request to  
16 Congress. That'll be due in February.

17                   Strategic plan, the director last week  
18 had a town hall where he basically went over the  
19 specifics of the strategic plan to all staff. We  
20 had about 4,000 people, our staff, that were  
21 actually either in the room or on -- doing via the  
22 web. So it was very successful and Drew and Mary



1 also presented on the specifics of our strategic  
2 plan. That will be also provided for public  
3 comment later this summer, and then we believe we  
4 will be releasing it in final draft -- in final  
5 form this fall. So you'll see that soon.

6 MR. WALKER: Tony, excuse me. So a  
7 question just about how is that going to be  
8 available for public comment?

9 MR. SCARDINO: It'll be on our website.

10 MR. WALKER: Just be on your website?  
11 So people will go there, look, and then there'll  
12 be some time line to provide time --

13 MR. SCARDINO: Right. On there they'll  
14 be afforded the opportunity to provide comments.  
15 Yeah, and then fee setting authority, as we've  
16 been remarking every quarter, it is still  
17 anticipated to expire, fee setting authority, on  
18 September 16th, 2018 after seven years at sunsets.  
19 There are a couple of bills that have been  
20 introduced, one in the Senate, one in the House,  
21 to extend fee setting authority; one for eight  
22 years, one for ten years. So we're anxiously

1       anticipating that or hoping for that.

2                   As you know fee setting authority  
3       provides us the opportunity to ride out -- you  
4       know, help create the operating reserve which  
5       helps us ride out any ups and downs with fee  
6       collections, and also introduce new fees, as well  
7       as tailor some fees for sometimes for aggregate  
8       recovery of costs, and sometimes for specific  
9       recovery of costs. So that's actually a good  
10      entrée into -- I don't have a slide, but yesterday  
11      I noticed a public hearing was published in the  
12      federal register. This august body will be  
13      championing a hearing on September 6th. So we'll  
14      be back together in a little more than a month,  
15      and basically it will be to comment on our latest  
16      proposal to set or adjust patent-related fees  
17      pursuant to our Section 10 fee setting authority  
18      that would expire on September 16th.

19                   So the increased revenue would enable us  
20      to continue improving a lot of information  
21      technology that I know David Chiles will speak to  
22      later today including using things like artificial

1 intelligence for search in a patent examination  
2 field. So before you ask questions, some people  
3 would ask, well, you just set new fees in January.  
4 Why are you starting this process over again? We  
5 are starting this process over again because it's  
6 about a 30-month process. It takes a long time  
7 and it's for good reason, because we get a lot of  
8 public comment throughout the process, and we try  
9 to incorporate that so that any fee proposal that  
10 does go final has input from all interested  
11 parties.

12           So the last time we set fees, they went  
13 final January of 2018. We started that process in  
14 2015. We had a hearing in November of 2015, the  
15 PPAC did, you may recall. So it took us over two  
16 years after that hearing to actually put final new  
17 fees into place. So that's why we're starting the  
18 process now. So we anticipate that new fees would  
19 go into place fall or winter of 2021 actually, in  
20 fiscal year 2021. But we're starting that now to  
21 get there.

22           So in terms of process forward, the fee

1 proposal will be published no later than August  
2 29th. We have to give at least a week, but we  
3 anticipate that it'll be actually available  
4 earlier than that. Can't give you an exact date,  
5 August 29th, of course, is still almost four weeks  
6 away. We will get it to you before then. We just  
7 have to go through some logistics and making  
8 things 508 compliant so the public can see it. So  
9 it'll be on our website, public comment, and then  
10 hearing will be held on the 6th, and then the  
11 public will have a week to provide comments. And  
12 then PPAC will have till November to provide a  
13 report based upon comments and feedback that you  
14 get, just to kind of lay that out.

15           Testimony at the public hearing, written  
16 comments will be the first, but not the last,  
17 opportunity for public comment. So as I  
18 mentioned, that's why it takes 30 months. We will  
19 have a couple of different bites of this apple. A  
20 notice of proposed rulemaking, or NPRM, is  
21 anticipated to be published in late summer of  
22 2019, so roughly a year from now. A 60-day public

1 comment period will follow the publication of the  
2 NRPM, so the public will have another opportunity.  
3 And then we'll take that input into consideration  
4 for when we draft our final rule.

5 Final rule will probably be summer or  
6 fall of 2020, and then there's another 60-day  
7 delay between that and when the final rule goes  
8 into place and new fees will be established. So  
9 that will bring us to the fall or winter of 2021.

10 CHAIR JENKINS: Tony, obviously, maybe  
11 we can just step back a minute. The PPAC is an  
12 advisory committee to the U.S. Patent and  
13 Trademark Office. It's roughly been in existence  
14 for almost 19 years. We exist by charter which is  
15 accessible on the PPAC webpage, for further  
16 reading, but one of the parameters for being an  
17 advisory committee is that we are subject to  
18 working with the office with respect to any  
19 proposed fees. And putting together -- having a  
20 hearing, and it's all based on timeline, and also  
21 putting a report that we then submit to the office  
22 based upon what happened and the comments that we

1 get.

2           So obviously, this, for the user  
3 community who's listening, this is an important  
4 aspect of our committee, and we take this role  
5 very seriously. So one thing I want to share,  
6 too, is I actually -- Esther Kepplinger was chair  
7 at the time, but I ended up having to do the  
8 hearing that day. And one of the things that I  
9 was disappointed in was the response from the user  
10 community to comment on the past fees. So I  
11 encourage those who have an interest about  
12 commenting about the new fees, to be aware that  
13 they can provide testimony during our hearing on  
14 September 6th, and we encourage folks to please do  
15 that.

16           Because I think it not only is helpful  
17 for us in drafting a report to the office that we  
18 think will be meaningful, but also it's helpful  
19 for the office to hear what the user community is  
20 either indirectly or directly saying to us as a  
21 committee. So I think that's important to  
22 transcribe.

1                   MR. SCARDINO: We completely agree. I  
2 think the whole process is better with the more  
3 input that we get. Just want to remind folks that  
4 at the hearing we're there to introduce and  
5 explain any fee proposals but not to have an  
6 actual dialogue of answering questions there.

7                   CHAIR JENKINS: Right. Yeah, point well  
8 taken. It's not an exchange with the office.  
9 It's an ability to let the office hear your voice.

10                  MR. SCARDINO: Yep.

11                  CHAIR JENKINS: So that's a very mindful  
12 point to raise. I think the other thing, though,  
13 I think people forget. I know you gave a brief  
14 outline over what transpired and when the fees  
15 were proposed three years ago. But I think maybe  
16 you might want to step back just a little bit more  
17 and explain the importance of why the September  
18 16th date is so important to us, and how Congress  
19 has not acted in a proper fashion in order to us  
20 to be able to continue to have fee setting  
21 authority.

22                  There are, I mean, Dana will report on

1       this later, but there obviously are two bills in  
2       committee, one in the Senate, one in the House,  
3       but Congress has not acted on this. And one thing  
4       that the reason -- one of the key reasons for us  
5       having a hearing is because we need to plan ahead,  
6       and you have to have a hearing in order to have  
7       some sort of fee adjustment. But if you don't  
8       have authority anymore you have to do it before  
9       the 16th. I commend Congress to work now, this is  
10      a hugely important element, not just for the  
11      office, for the user community, and it's quite  
12      disappointing that they have not stepped up to the  
13      plate on this.

14                 So but can you explain a little bit more  
15      about why it's so important for the office to have  
16      fee setting authority?

17                 MR. SCARDINO: So there are many reasons  
18      why it's important to have fee setting authority.  
19      Before we had fee setting authority, we had the  
20      ability to raise fees across the board, it was  
21      called a CPI adjustment, right, and that's not  
22      targeted. So in other words, if a fee was



1 misaligned, oh, they'll just continue that or make  
2 it worse every year by possibly us increasing it  
3 by roughly inflation. With fee setting authority,  
4 we have the ability to adjust fees, which is we  
5 can introduce new fees, we can eliminate fees, we  
6 can adjust them up or down, right?

7           So the whole idea there is we can then  
8 encourage let's say good behavior, right, if we  
9 want to try to streamline the pan examination  
10 process, for example, we can charge greater fees  
11 for things that maybe would clog up the system a  
12 little bit. So it's basically good government.  
13 Any good organization would want to have the  
14 ability to adjust their pricing so that you have  
15 the most efficient process.

16           So sometimes we do introduce a new fee,  
17 and we would like to get closer to full cost  
18 recovery. And we're trying to get a balanced  
19 process. What we always want to keep in mind, the  
20 whole philosophy is low barrier to entry. So  
21 patent applications, filing, search, and exam are  
22 less than full cost, and then we make that up on

1 the back end with maintenance fees and kind of  
2 along the way. It's a good system. Most  
3 countries do this, but it's certainly not perfect.  
4 So the ability to adjust that at times is helpful  
5 especially as we may see the business model change  
6 a little bit.

7 We are noticing that third-stage  
8 maintenance fees are ever so slightly changing a  
9 little bit. We're seeing less being paid which is  
10 fine. We just need the ability to then change our  
11 business model a bit, because our costs remain our  
12 costs. There's no cost to a maintenance fee. The  
13 cost is, of course, all on the examination side  
14 and issuance. So if we get less money on the  
15 maintenance side, then we need to make -- possibly  
16 charge a little bit more on the upfront side. So  
17 without fee setting authority we would not be able  
18 to do that.

19 MR. WALKER: All right, Tony, just to  
20 underline something you said earlier. I mean, I'm  
21 reading the federal register notice and it says  
22 that the proposal for fees will be published by

1 August 29th. I think some people may have read  
2 that on August 29th.

3 MR. SCARDINO: No, no, we will --

4 MR. WALKER: Well, I'm just saying that  
5 because with the Labor Day holiday you're saying  
6 --

7 MR. SCARDINO: Yeah, absolutely.

8 MR. WALKER: -- you have like one week  
9 that's hardly enough time so --

10 MR. SCARDINO: Yep, yep.

11 MR. WALKER: -- the feedback from the  
12 community we received is sooner the better.

13 MR. SCARDINO: Right. I am absolutely  
14 committing to giving it to you before then, I just  
15 can't give you the exact date. Some of it's not  
16 within our control, but the parts that are within  
17 our control, and the folks -- the parts that are  
18 within our control are going faster than we  
19 anticipated. So that we will get you something  
20 hopefully, knock on wood, much sooner. I just  
21 can't you an exact date.

22 CHAIR JENKINS: And just to be clear,

1 too, the hearing that we have on the 6th is open  
2 to the public. You may attend.

3 MR. SCARDINO: It will also be webcast  
4 for you to look at.

5 CHAIR JENKINS: It'll also be webcast.  
6 You cannot give testimony. As we try to do during  
7 these meetings, generally, Mike and I are fielding  
8 emails and trying to include them in the  
9 discussion as well as other committee members as  
10 well. We will not be able to do that during the  
11 hearing.

12 MR. SCARDINO: Correct.

13 CHAIR JENKINS: So you can listen but  
14 you won't be able to send me emails. Just you  
15 can, but I won't answer them.

16 MR. SCARDINO: But people can attend,  
17 and then they can actually speak.

18 CHAIR JENKINS: Exactly.

19 MR. SCARDINO: Yes.

20 CHAIR JENKINS: Exactly.

21 MR. SCARDINO: This is our third  
22 go-round of public hearings on setting fees. So

1 we're still mastering this, but that is how the  
2 process works, correct.

3 CHAIR JENKINS: Exactly. Okay.  
4 Anything else from the committee on this very  
5 important topic? No? Mark?

6 MR. GOODSON: Oh, just a quick question.  
7 There is the meeting the 5th through 6th of  
8 September?

9 CHAIR JENKINS: The 6th.

10 MR. SCARDINO: 6th.

11 CHAIR JENKINS: Thursday.

12 MR. GOODSON: And is that for the PPAC  
13 or the finance committee?

14 CHAIR JENKINS: Ah, it's for everyone.  
15 It's for the entire PPAC. It's from 9 to 11 on  
16 Thursday morning, and, yes, it's for the entire  
17 committee to participate so, and the public, so,  
18 Jennifer.

19 MS. CAMACHO: Just one point of  
20 clarification. They can't -- folks who are  
21 watching on the webcast can't send you emails, but  
22 can they speak or --

1 CHAIR JENKINS: No.

2 MS. CAMACHO: No, okay. So it's a  
3 listen only?

4 CHAIR JENKINS: Yes.

5 MS. CAMACHO: Very good, thanks.

6 CHAIR JENKINS: Anything else? Okay,  
7 Mike?

8 MR. WALKER: Just one thing. A little,  
9 maybe a little lack of clarity on the federal  
10 register notice because it does say that members  
11 of the public can submit written comments on the  
12 PPAC's website, but then later it also gives  
13 written comments may be submitted to  
14 fee.setting@uspto.gov. So I guess there's a  
15 couple of avenues where that information can come  
16 in just to be clear.

17 MR. SCARDINO: Thanks for the  
18 clarification, yes. Both are available.

19 CHAIR JENKINS: Tony, anything else?

20 MR. SCARDINO: No, I just want to thank  
21 the committee in advance. I know there's a lot of  
22 work ahead between that hearing, your report, your

1 annual report, so we appreciate all of your  
2 assistance and help there. And we are here to  
3 provide any assistance you may need.

4 CHAIR JENKINS: Great. Okay. Great,  
5 thank you. With that, I do note the time is  
6 11:58, woo hoo hoo hoo, so we're not that late.  
7 We made up some time, thank you all. We are going  
8 to start promptly, promptly, at 1:00, so lunchtime  
9 now. Thank you.

10 (Recess)

11 MS. MAR-SPINOLA: Yeah, I'm on.

12 CHAIR JENKINS: Hey, oh.

13 MS. MAR-SPINOLA: Can you hear me,  
14 Marylee?

15 CHAIR JENKINS: Yeah, I hear you. Wow.  
16 And Jennifer said we could start, too, so great.  
17 Julie, why don't you do me a big favor and tell us  
18 who you are and so we can acknowledge you in the  
19 record for participating?

20 MS. MAR-SPINOLA: Okay, great. Shall we  
21 start? I don't think the web -- let me refresh  
22 that, too. But good afternoon, everyone. This is

1 Julie Mar-Spinola, Chief Intellectual Property  
2 Officer and Vice President of Legal Operations for  
3 Finjan Holdings. That was long. Our offices are  
4 here in Palo Alto, California. I apologize for  
5 missing today's meeting. I had intended to be  
6 there, but we just had some flight complications  
7 midway. So, thank you very much.

8 And also, I just wanted to say I  
9 couldn't connect in or be heard during the PTAB  
10 presentation, but I want to thank David and his  
11 team, particularly Janet Gongola, for putting  
12 together the slides and presenting today's  
13 presentation in a different format which I thought  
14 was pretty effective. And I hope the external  
15 stakeholders feel the same way.

16 CHAIR JENKINS: Julie, thanks. Noted  
17 and yeah. We're trying -- over the past year, I  
18 don't know if folks have noticed, but we really  
19 have tried to change the way the PPAC operates.  
20 Our meetings have been different in the sense that  
21 our topics have had more attention, so we've had a  
22 little longer to talk about issues. We've really



1       been listening to stakeholders and addressing  
2       questions. In fact, two of the questions from the  
3       afternoon session in particular were based on  
4       committee member input as well as stakeholder  
5       input. So, continue to reach out. We're trying  
6       to read your emails during the meeting as best we  
7       can and if we can fit in some questions during the  
8       meeting on your topic, we will try.

9               And so one thing, though. The Federal  
10       Register Notice for the finance hearing, I just  
11       want to just clarify a point that we were talking  
12       about before. Just want to note that in order to  
13       testify during the -- our public meeting for fee  
14       setting, there's certain requirements in the  
15       notice and I just want to read them quickly to be  
16       clear.

17               "If you do want to present oral  
18       testimony at the hearing, a request in writing  
19       must be submitted no later than August 29th.  
20       Requests to testify should include the following:  
21       The name of the person wishing to testify; the  
22       person's contact information, telephone, and email

1 address; the organization the person represents,  
2 if any; an indication of the amount of time needed  
3 for the testimony. Requests to testify must be  
4 submitted by email to Jennifer Lo at jennifer.lo,  
5 L-O, at uspto.gov. Speakers providing testimony  
6 at the hearing should submit a written copy of  
7 their testimony for inclusion in the record of the  
8 proceedings no longer -- no later than September  
9 13th."

10 So, please, if you are even considering  
11 participating, please read these rules in more  
12 detail. So, it will not be the possibility of  
13 folks attending the meeting and being able to  
14 testify without prior notice to the office. So,  
15 just to be clear. Okay?

16 So, with that, we're going to launch  
17 into the international portion for the afternoon.  
18 Welcome. Welcome, Shira. Welcome, Mark. So,  
19 boy.

20 MS. PERLMUTTER: Well, good afternoon,  
21 everyone. I'm going to touch on three topics.  
22 One is to talk a little bit about the Standing

1 Committee on Patents at the World Intellectual  
2 Property Organization. Second is to shed some  
3 light on what's happening with patent filings  
4 relating to China internationally. And then just  
5 a couple of miscellaneous points to make you aware  
6 of.

7           So, just to start with, the Standing  
8 Committee on Patents or the SCP. The real  
9 question is, what is the Standing Committee  
10 (laughter) on Patents and what on earth is it  
11 doing in Geneva these days? It's not something we  
12 talk about very often and as I describe it, I  
13 think you'll understand why at this point. So,  
14 the Standing Committee was established in 1998 and  
15 the idea was just to have an ongoing Committee --  
16 there is also one on trademarks and one on  
17 copyright -- that would discuss issues as they  
18 arose and provide some guidance about the  
19 development of international patent law.

20           And in the beginning, it was, in fact,  
21 discussing quite substantive topics, including  
22 harmonization of national law as well as

1 procedures. But that's broken down a bit. So,  
2 let's -- just to give you an idea of what  
3 happened, in the beginning, the SCP was, in fact,  
4 talking about harmonization and the Committee  
5 produced the text of what became the Patent Law  
6 Treaty and began to discuss a Substantive Patent  
7 Law Treaty.

8 But unfortunately, over time an impasse  
9 emerged between developed and developing countries  
10 with developing countries very much wanting to  
11 minimize the scope of patent rights and minimize  
12 enforcement of patents. And so that really led to  
13 a halt in what in WIPO terminology is called  
14 normative work or norm-setting, in other words,  
15 anything having to do with setting international  
16 frameworks and rules.

17 So, what we've been doing to get past  
18 this impasse is to move to what everyone calls a  
19 balanced workplan and, of course, the word balance  
20 is always key. No one can be against balance.  
21 And the idea behind this workplan is just to have  
22 items on it that all countries at different stages

1 of development are interested in. So, at the  
2 moment there is five topics: Exceptions and  
3 limitations to rights, patent quality including  
4 opposition systems and work-sharing, patents and  
5 health, confidentiality of communications between  
6 clients and patent advisors, and technology  
7 transfer. Now, before this makes you very  
8 nervous, just to stress on all of these topics the  
9 work that's being done is studies or experience-  
10 sharing rather than, again, a norm-setting kind of  
11 exercise.

12           Oops. So, there are a few challenges --  
13 I won't go into this -- where people have proposed  
14 various things that we don't find acceptable,  
15 including doing further work and adopting the  
16 recommendations of the UN High-Level Panel on  
17 Access to Medicines. And at the moment, what is  
18 happening, we just had a meeting a few weeks ago  
19 and the Secretariat presented two updated  
20 documents of past studies. One is on the  
21 Regulatory Review Exception or Bolar and the other  
22 is an updated Study on Inventive Step. And then

1 members describe their experiences with  
2 cooperation in search and examination, with making  
3 patent information publicly accessible, and with  
4 ensuring the confidentiality of communications  
5 between clients and patent advisors.

6           And going forward, next meeting will be  
7 in December and yet more documents and  
8 experience-sharing. So, the Secretariat is going  
9 to produce a new document on the research  
10 exception and an expansion of the Inventive Step  
11 Study including as it applies in the chemical  
12 sector. And there will also be a session for  
13 patent practitioners to come in and talk about  
14 their experiences in negotiating license  
15 agreements. So, some of this is just useful from  
16 an educational perspective and making sure that  
17 all countries have a chance to hear about best  
18 practices and about what is happening, including  
19 in the United States.

20           So, just finally, as you can tell a bit  
21 from this description, the status quo at the SCP  
22 at this point is a bit of a truce between opposing

1 factions and we're trying to do two things. At  
2 the moment, what we're trying to do is to focus on  
3 non-sensitive technical matters so that we can  
4 make some progress on a number of things and then  
5 to see if we can foster an overall positive  
6 environment for resuming normative work, for  
7 example, things having to do with substantive  
8 patent law harmonization.

9           Now, what's interesting is, a lot of  
10 that substantive patent law harmonization  
11 conversation has been going on outside of WIPO in  
12 Group B plus primarily and that's been because we  
13 couldn't make progress at WIPO, so a smaller group  
14 had to get together and try to take that forward.  
15 But if it could be shifted back to WIPO, we could  
16 expand it and that would be positive, as well.  
17 So, at some point we hope that will happen and we  
18 do see that a number of countries, especially in  
19 the developing world, have more developed and more  
20 professional IP Offices. A number of them have  
21 transitioned to become emerging economies and so  
22 we also see some light at the end of the tunnel in

1 terms of a more positive attitude to being able to  
2 work together on these substantive issues.

3 So, I don't know if there's any  
4 questions about the SCP. That's a very brief  
5 high-level overview of what it's doing.

6 Okay. So, to move on to China -- think  
7 I -- yes. So, there's obviously a tremendous  
8 amount about China and the press. A fair amount  
9 of it relates not only to the overall trade issue,  
10 but to a lot of the IP and technology transfer  
11 issues involved in some of the trade disputes  
12 currently underway. And we are doing some --  
13 spending some time looking at the data about what  
14 China is doing in the patent space around the  
15 world. So, what I'm going to do is to show you  
16 some information about filings out of the United  
17 States and then Mark in his presentation will talk  
18 about what we're seeing here at the USPTO.

19 So, first of all, if you look at these  
20 numbers, in 2016, worldwide patent filings  
21 exceeded 3 million, so they're going up 8 percent  
22 -- more than 8 percent higher than 2015. And as



1       you can see, the growth was driven overwhelmingly  
2       by China and about 40 -- almost 43 percent of the  
3       total worldwide patent filings were filed in  
4       China. So, that's quite a number. If you look at  
5       the filing trends for the IP 5 Offices, it's quite  
6       dramatic. That red line, of course, is China and  
7       you can see it going dramatically up and  
8       overtaking the other countries. And one point I  
9       wanted to make, as dramatic as that looks, the 1.3  
10      million applications from China reflected on that  
11      graph include only invention patent applications.  
12      And if you added utility model and design  
13      applications, the total would be three-and-a-half  
14      million, so almost three times as high. So, quite  
15      dramatic numbers.

16                   And then if you look at the patent  
17      applications at SIPO in China itself, there has  
18      been a substantial increase over the past decade.  
19      So, what's interesting -- well, it's all  
20      interesting, but (laughs) one of the interesting  
21      statistics is that while the filings from  
22      non-residents have increased, they are by far

1 dwarfed by the filings from China itself and  
2 that's over 90 percent of the filings are from  
3 Chinese applicants. So, we -- while we're trying  
4 to figure out exactly what that means, we suspect  
5 that it's because of government subsidies that are  
6 provided at the national, provincial, and  
7 municipal levels and that's a major driving force  
8 in these high numbers.

9           In terms of the fields of technology --  
10 oh, sorry. Let me first go to this. This is  
11 grants. So, the increase in filings has been, of  
12 course, accompanied by a growth in grants. And  
13 one other point, because we suspect that so many  
14 of the filings in -- by Chinese applicants are  
15 driven by the subsidies, there is also some reason  
16 to think that the commercial value of many of  
17 these patents may be low. You wouldn't take from  
18 it what you would take from a filing without a  
19 subsidy as to the potential value of the  
20 invention.

21           And then we've looked at the fields of  
22 technology and much of the growth is in the areas

1 of computer technology and medical technology.  
2 So, for computer technology, it increased between  
3 2015 and 2016 by 62 percent. And medical  
4 technology increased in that same period by 20  
5 percent. So, again, all of these numbers are  
6 really quite remarkable.

7 And then finally, the last slide, PCT  
8 filings. So, again, these numbers are going up.  
9 We keep hearing this from WIPO every time (laughs)  
10 we talk to them. And so in the international  
11 field -- in the international space, Chinese  
12 filers are obviously very active, as well.  
13 They're catching up with the United States and we  
14 are seeing that the annual rate of growth is more  
15 than 10 percent, so the numbers continue to rise.

16 So, I -- Mark, do you want to just talk  
17 about -- before I go to my other matters, do you  
18 want to talk about the staff or shall I finish  
19 first?

20 MR. POWELL: Yeah, I can.

21 MS. PERLMUTTER: I'll finish and then  
22 we'll go to your slides.

1 MR. POWELL: Oh, okay. Either way.

2 MS. PERLMUTTER: Yes.

3 MR. KNIGHT: Can I ask a question? So,  
4 for the U.S. Patent system, should we just be  
5 happy to collect all the Chinese fees or is there  
6 a negative impact, do you think, on the -- on U.S.  
7 Innovation and the U.S. patent system --

8 MS. PERLMUTTER: Yeah.

9 MR. KNIGHT: -- by all these filings?

10 MS. PERLMUTTER: I mean, I think that's  
11 what we're trying to understand and I don't --  
12 Andy, do you want to say anything about it?  
13 You've been doing some looking at this.

14 MR. TOOLE: Right.

15 MR. POWELL: Andy, I would just add that  
16 when you see what's going on here in the U.S.,  
17 which is a very granular look at national filings  
18 here in the U.S., it'll show what of that big red  
19 streak is actually winding up here as a cross-  
20 filing. So, noting that we've presented. I'm  
21 sure Andy has some economic insights, as well.  
22 So, Andy.

1                   MR. TOOLE: Sure. I -- and I think that  
2                   the biggest concern is about patent quality and  
3                   there's some evidence that all of the spike in  
4                   China is not driven by high-quality patents. The  
5                   jury is still out; there's no final conclusion.  
6                   But some initial evidence from some academics has  
7                   shown that there are fewer claims per patent that  
8                   are being filed in China.

9                   So, in terms of what's happening in the  
10                  United States, it really comes down to what we're  
11                  being sent and what we're reviewing. It's  
12                  obviously a bigger workload for our office, but  
13                  it's hard to say right now how it's going to  
14                  impact innovation in the United States. I mean,  
15                  again, the tradeoff is that there's a patent right  
16                  given and there's disclosure. If they're  
17                  disclosing something valuable, we can get a  
18                  benefit from that; if there's a patent right  
19                  given, then that's going to give them some  
20                  exclusivity.

21                  MS. PERLMUTTER: Yeah. But clearly  
22                  there is a question of what will be the impact

1 competitively of the relative amounts of  
2 innovation going on in both countries. And,  
3 Larry, I didn't know if you all know Larry Lian  
4 from our China team.

5 MR. LIAN: Yeah, thank you. Without  
6 getting into too much detail, but the very least,  
7 if you get a lot of patents, no quality, no  
8 (inaudible) commercial value, at the very least  
9 it's a burden on your freedom to operate opinions.

10 MR. WALKER: Now, on the issue of  
11 burdens and freedom to operate, one thing I've  
12 heard anecdotally from people in the IP community  
13 is that a number of these patent filings in China  
14 are copies of older granted U.S. patents from U.S.  
15 Patentees that are being filed in China, granted  
16 in China, and then being waived at companies  
17 outside China. And so now these U.S. companies  
18 are faced with having to deal with invalidity  
19 trials in China for inventions they made on  
20 patents they had and it's a huge burden. Is there  
21 some way the office is helping to address that  
22 issue or have you seen it, I should say that, I

1 guess?

2 CHAIR JENKINS: It is -- so, I can --  
3 personal experience. Even more than that, they  
4 file here on issued patents here which they have  
5 copied and then you have to challenge those  
6 patents before they go any further in the  
7 prosecution system and then they don't want to  
8 give up the U.S. patent application they filed  
9 because there's a timing issue over money that  
10 they obtain supposedly based on Chinese subsidies.  
11 So, it's a really complicated, expensive, "I see  
12 this coming onto the horizon" issue. And even if  
13 you look at the small microcosm of the trade mark  
14 issue that they're presenting, I mean, this is  
15 what -- this is even more cumbersome, more  
16 time-consuming, more expensive. So, sorry.

17 MR. HIRSHFELD: Can I --

18 CHAIR JENKINS: Yeah.

19 MR. HIRSHFELD: -- chime in?

20 CHAIR JENKINS: Sorry. Oh.

21 MR. HIRSHFELD: One point is, I believe  
22 what Chair is talking about, most of the numbers

1 are international numbers or numbers in China and  
2 at WIPO; Mark does have numbers on U.S. filings.  
3 So, before we draw too many conclusions about  
4 Chinese filing in the U.S., let's listen to those  
5 numbers because I think the change right now is a  
6 lot less in the U.S. in terms of Chinese filings  
7 and what we're seeing worldwide. Just my  
8 perception, but Mark will have those numbers.

9 MR. WALKER: Well, he's pulling --  
10 putting it together. To be clear, my question was  
11 on Chinese patents in China.

12 SPEAKER: Right, right.

13 MR. WALKER: Okay, yeah.

14 SPEAKER: Right, so --

15 MR. SEIDEL: Well, can I just -- one  
16 more opinion back to Bernie's original question.  
17 No, I don't think we're okay with just taking the  
18 money. Right. And if you go back to Tony's  
19 presentation, our fee structure is set up so it's  
20 a lower bar for entry, so we'd be putting in a lot  
21 of -- we would not get cost recovery for examining  
22 potentially applications that are not going to



1 mature into patents.

2 MR. KNIGHT: Right. That's a great  
3 point because you recoup the money on the  
4 maintenance fees. Yeah. Great, Rick. That's a  
5 great point.

6 MR. LIAN: Very quick. I kind of  
7 forgotten the original question, but let me just  
8 (laughter) share just a matter quickly. It  
9 happened actually way before I joined USPTO  
10 programs, practitioners holding two copies.  
11 Unfortunately, I didn't take a picture or take a  
12 (inaudible) patent. Utility model patents that  
13 Shira mentioned, which is a form of unexamined  
14 patents, a public program, two patents literally  
15 identical, each with (inaudible) utility model  
16 patent, so it does happen. I don't know -- I  
17 don't have any number to what extent. SIPO has  
18 been doing something. I'm not sure how effective  
19 it is, but let -- let's move on and we can talk  
20 offline on the details.

21 MS. PERLMUTTER: Yeah. And point taken  
22 and we will look into it and report more back to

1       you. So, we're aware that this happens. We need  
2       to think about what more can be done.

3               CHAIR JENKINS: Another question from,  
4       actually, Julie. Are there numbers showing how  
5       many of the PCT filings by Chinese residents  
6       designate the U.S.? And maybe it's something --  
7       if you don't have it, then maybe it's something we  
8       could do --

9               SPEAKER: As a national stage entry?

10              MR. PEARSON: I mean, they all designate  
11      the U.S.

12              MR. POWELL: Yeah. Charlie points out  
13      --

14              SPEAKER: Yeah.

15              MR. POWELL: -- that they all designate  
16      the U.S. --

17              SPEAKER: That's right.

18              MR. POWELL: -- in the current system,  
19      so.

20              MR. PEARSON: The numbers of entries,  
21      that's the other issue and I think we do have that  
22      information; I don't have it with me.

1 MR. POWELL: Yeah.

2 SPEAKER: Okay.

3 MR. POWELL: We can --

4 SPEAKER: I prefer the chart.

5 MR. POWELL: -- get that information.

6 SPEAKER: Yeah.

7 MR. POWELL: If you don't have it, it's  
8 all right.

9 SPEAKER: You know what we're trying to  
10 say.

11 MR. POWELL: Yeah.

12 SPEAKER: Thanks.

13 SPEAKER: Yeah.

14 SPEAKER: -- and then I'll make my two  
15 other --

16 MR. POWELL: Perfect. Okay. Let me --

17 SPEAKER: You can skip by -- yeah.

18 MR. POWELL: Okay. While we're on the  
19 topic of Chinese data, I just wanted to share with  
20 you a few things here. There we go. And I know  
21 this looks like an EKG of a heart patient,  
22 (laughter) but if you just kind of follow the

1 general slope going on here -- if you look at, for  
2 example, design filings of the USPTO, over the  
3 last several years they've been generally quite up  
4 and we've had to increase our staff of design  
5 examiners and so forth accordingly.

6           If you take a look at the Chinese  
7 filings and this is not showing up, as far as the  
8 dates. They're the same timeline. Over the last  
9 four or five years, they have gone up, as well.  
10 But if you look at the numbers on the left-hand  
11 side, we're less than 200 a month on average right  
12 now. So, it's not -- in the trademark area  
13 apparently, they're getting really flooded with  
14 trademark applications, but ours have gone up, but  
15 not nearly to the extent of that.

16           This -- because of a broader question  
17 about just filing generally, this shows serialize  
18 filings, okay, (inaudible) at the USPTO. Just a  
19 reminder, serialize means having a new serial  
20 number, which means that we're not talking about  
21 RCEs. RCEs, particularly when they were lots of  
22 them, really skew the numbers, but think of this

1 as new inventions. Looking on the left, filed  
2 domestically, okay? No foreign priority, usually,  
3 62 percent. And that's actually up, which kind of  
4 sways the other way on the arguments that American  
5 innovators are giving up on the patent system.  
6 This -- that's actually up. So, that's on the  
7 right-hand slide. It's 38 percent of our new  
8 inventions are received from foreign offices or  
9 from foreign applicants.

10 Let me -- just because this is kind of  
11 small, I'm going to go to the next one. Of those  
12 38 percent, these -- this shows who's who. Okay?  
13 So, of our foreign applications, 38 percent come  
14 from Japan and the previous slide noted that  
15 overall that's 14. And that's actually way down  
16 because for years and years and years, fully one  
17 in five of our patent applications were of  
18 Japanese Oregon -- origin. Consider Canon and  
19 Toshiba, big consumer electronics area. So, Japan  
20 has leveled off. Korea has kind of come into the  
21 patent system, I would say, over the last 20  
22 years, okay? And as you know, they're -- have

1       gotten very patent-savvy and patent- litigious,  
2       for better or worse.

3                 Now, you see, China is up, okay? And of  
4       all our foreign filings, they constitute 12  
5       percent. Okay? And again, going back to this  
6       slide, that's 4 percent of our filings overall of  
7       new inventions, say. So, they are going up, but  
8       at least currently today it's not overtaking us.  
9       What I don't have here and we will try to get --  
10      we will get you for the next is where the rate of  
11      grants here because I think that begs to the  
12      quality, as Andy pointed out and others and Bernie  
13      and others. They're just filing stuff here and  
14      letting it go abandoned and not getting grants and  
15      what's the point? This just burdens our system  
16      and our fees. If they are, then we'll have to  
17      see.

18                And you actually have to look at this  
19      stuff because certain countries -- so, for  
20      example, Denmark, okay? Their grant rates are  
21      what you call surprisingly low and the reason is,  
22      is because they're heavy into medical devices,

1       okay, which is a very high-litigated, competitive,  
2       got to keep the broad claim field, and the rate --  
3       rates aren't high there. So, you actually have to  
4       look at the subject matter as well as the country  
5       of origin tried to have any good (inaudible)

6                 MR. HIRSHFELD: Hey, Mark. Can I jump  
7       in? Do you have the slide on the monthly UPR  
8       filings or --

9                 MR. POWELL: Yeah, I thought I did. It  
10       was the first one (crosstalk)

11                MR. HIRSHFELD: -- on the first one  
12       because I think that's an --

13                MR. POWELL: Oh, there. Yeah, I'm sorry  
14       it got skipped over. Yes. I think it would be  
15       good -- I think it's helpful that -- to talk about  
16       what this slide is.

17                MR. HIRSHFELD: Okay.

18                MR. POWELL: Because this puts into  
19       context the discussion we were having about trying  
20       to increase in U.S. Filing from China.

21                MR. HIRSHFELD: Right.

22                MR. POWELL: And this will put that into

1 context --

2 MR. HIRSHFELD: Okay.

3 MR. POWELL: -- and --

4 MR. HIRSHFELD: Yeah.

5 MR. POWELL: Okay. UPR is really all  
6 filings including RCEs, just to keep it simple  
7 like that. And as you can see, it's -- we've been  
8 generally up 1 percent, as a whole office.  
9 China's up. They -- again, but not huge volumes,  
10 okay? For China, which is a huge country, we're  
11 looking at 1,500 filings a month. That is not  
12 very much, okay? Now, and so we're not getting  
13 the big piece of that worldwide streak that Shira  
14 pointed out in her slide from -- and then again,  
15 we need to see what exactly is happening as  
16 outcomes for those, so.

17 MR. LANG: Are these statistics based on  
18 the (inaudible) location or the inventor location?

19 MR. POWELL: This is based on priority,  
20 okay?

21 MR. LANG: Priority, okay.

22 MR. POWELL: And it's good -- that's a



1 good question because you can look at filings from  
2 whatever in so many different ways. Priority is  
3 somewhat accurate, right? Although, a filer can  
4 file here without claiming priority no matter  
5 where they're from, right? You can look at the  
6 first- named inventor, you can look at -- and  
7 particularly PCT, you can look at the company  
8 filing because you can file as a corporation in  
9 PCT; it could be Siemens, but all the researchers  
10 are in Palo Alto. Okay? So, there are different  
11 ways, many different ways to look at it. So,  
12 you're never going to wind up with the same  
13 numbers, but in proportion by ratio it comes out  
14 about the same for everything.

15 MR. LANG: But to be clear, if a Korean  
16 company, let's say, files in the United States and  
17 Korea simultaneously for whatever reason, that's  
18 not going to count as a Korean --

19 MR. POWELL: Correct, correct. However,  
20 that is so rare, simultaneous filing. And it's  
21 really been an interesting subject and discussion  
22 among offices about what day is it. Okay.

1 (Laughter)

2 MR. HIRSHFELD: Mark --

3 MR. POWELL: So --

4 MR. HIRSHFELD: -- I'm going to --

5 MR. POWELL: Yeah. Go ahead.

6 MR. HIRSHFELD: Sorry. I didn't mean to  
7 cut you off if you were still --

8 MR. POWELL: Yeah. It's all right.

9 MR. HIRSHFELD: Just a couple of points  
10 about these two graphs, because I -- first of all,  
11 I think that they give you a visual which might  
12 not be entirely accurate because of the scale.  
13 So, when you look at the Y axis, it's very  
14 different in the total filings and just those from  
15 China. But when you actually do the math, so to  
16 speak, right, we have last year, as Mark pointed  
17 out on another slide, about 4 percent of the total  
18 filings are from China and about a decade ago was  
19 about 2 percent.

20 MR. POWELL: Right.

21 MR. HIRSHFELD: So, again, that's a --  
22 it's a slight increase, but somewhere around 2 or

1 4 --

2 MR. POWELL: -- more than 10 years ago,  
3 but it's still only 4 percent.

4 MR. HIRSHFELD: -- you can -- right,  
5 right. So, I'm not trying to draw any conclusions  
6 from that. I just want to make sure we're talking  
7 about accurate numbers. I --

8 MR. POWELL: Right.

9 MR. HIRSHFELD: I know Shira before and  
10 her team were talking about worldwide numbers and  
11 filings in China and those are much long -- much  
12 larger than the increase we're seeing in the  
13 United States. The only point I'm trying to make.  
14 Will we see that is something that we're watching  
15 for. We certainly -- as I said before, trademarks  
16 have seen a huge increase. The -- are they a  
17 leading indicator of what's going to happen to  
18 patent -- or to patents? We don't know, but it's  
19 something we're paying attention to.

20 MR. LANG: Last time, we talked a little  
21 bit about a problem of bad machine translations  
22 from, well, out of the non-U.S. Filings. Is that

1 something that has a geographic footprint?

2 MR. POWELL: Did you say machine  
3 translations --

4 MR. LANG: Yes, yeah.

5 MR. POWELL: -- as far as search tools?

6 MR. LANG: Well, machine translations --  
7 I mean, the -- you just -- bad quality  
8 translations being filed.

9 MR. HIRSHFELD: So, I --

10 MR. LANG: (Inaudible) priority  
11 elsewhere and, I mean, is that -- is there a  
12 pattern where certain countries are (inaudible)

13 MR. HIRSHFELD: I don't know the answer  
14 to that question. We certainly have a significant  
15 problem of U.S. Applications being filed at our  
16 machine translations that absolutely drives  
17 examiners crazy and I was an examiner, as many of  
18 us over --

19 MR. POWELL: Sure.

20 MR. HIRSHFELD: -- here and we all  
21 followed that issue.

22 MR. POWELL: Right.

1                   MR. HIRSHFELD: I don't know if it's  
2                   from any particular areas or not; it's actually a  
3                   really good question for us to look into.

4                   MR. POWELL: I will jump in, though, and  
5                   at least from the IP 5 Offices and the Global  
6                   Dossier environment. Each of China, Korea, and  
7                   Japan provide machine translations and they're  
8                   actually quite good. I mean, not great, but  
9                   they're better than, like, Google Translate where  
10                  you get just random, you know, and they can't even  
11                  translate French, right? (Laughter) But the  
12                  Japanese particularly have been working for so  
13                  many years on their AIPN system, they call it.  
14                  That -- that's a dictionary basis on this very  
15                  ban-oriented, so.

16                 MS. CAMACHO: Mark, I --

17                 SPEAKER: Okay. I'm going to --

18                 MS. CAMACHO: I have a quick question.  
19                 I always -- we have an agreement with China on the  
20                 Patent Prosecution Highway, right? Is --

21                 MR. POWELL: Yes.

22                 MS. CAMACHO: -- that right? So, have

1 we seen any increase in request or petitions under  
2 that program?

3 MR. POWELL: Not any more than normal,  
4 no. It's kind of whittling out because our first  
5 action pendencies have gone so far down, they're  
6 simply less available. And as you may know, in  
7 China they do not act on a case until it's public,  
8 so they don't do anything until 18 months. And  
9 we're already at 16 months first action pendency,  
10 so they're generally not going to be available for  
11 (inaudible)

12 MS. CAMACHO: Do you know if China has a  
13 foreign filing license requirement?

14 MR. POWELL: I'm sorry?

15 MS. CAMACHO: Do you know if China has a  
16 foreign filing license --

17 MR. POWELL: I am certain they do, yes.

18 MS. CAMACHO: They do?

19 MR. POWELL: I believe just about every

20 --

21 MS. CAMACHO: So, it's --

22 MR. POWELL: -- country does.

1 MS. CAMACHO: -- mostly likely --

2 MR. POWELL: Yes, yes.

3 MS. CAMACHO: -- that be filed in --

4 MR. POWELL: Yes.

5 MS. CAMACHO: -- China?

6 MR. POWELL: Yes.

7 MS. CAMACHO: First filed in China.

8 Yeah, got it. Thank you.

9 MR. POWELL: Okay. I'm going to turn  
10 this back over to Shira.

11 MS. PERLMUTTER: We're keeping this  
12 exciting by going back and forth. (Laughter) I  
13 don't need the slide.

14 MR. POWELL: Oh, okay.

15 MS. PERLMUTTER: It's okay, so --

16 MR. POWELL: Okay. I thought that's --

17 MS. PERLMUTTER: Just --

18 MR. POWELL: -- where you were, but  
19 (inaudible)

20 MS. PERLMUTTER: Yeah. No, it is. So,  
21 I just wanted to alert you to two other things.  
22 One is that we are very closely following a

1 proposed waiver from the supplementary protection  
2 certificates in the EU. I don't know how many of  
3 you are following that and interested in it, but  
4 it's the mechanism through which the EU extends  
5 the term of protection for regulated products that  
6 are undergoing a marketing approval process.

7           And the Commission has proposed this  
8 waiver that would let producers of generics and  
9 biosimilars manufacture medicines for purposes of  
10 exporting them to countries in which the patent or  
11 the extension of the -- through the certificate  
12 has expired. So, it allows some manufacture ahead  
13 of time for purposes of exporting later.

14           So, we're worried about the proposal,  
15 we're worried about whether it might be extended  
16 to other countries, that other countries would  
17 say, "This is a good idea," and so we're following  
18 this very closely and discussing it with the  
19 European Commission and the member states. So, I  
20 did want to mention that.

21           And then last but not least, as you  
22 know, we're doing a lot of work in different parts



1 of the agency on the patentable subject matter  
2 issues and one of the things we're doing is  
3 planning a workshop with our colleagues from other  
4 IP Offices on that subject in October to talk  
5 about experiences, laws, and practices in each of  
6 our countries and determining subject matter  
7 eligibility in areas such as life sciences and  
8 computer-related inventions. So, this will be an  
9 opportunity to really talk to each other  
10 informally and openly and exchange experiences and  
11 information. We really are interested in making  
12 sure we understand the rationale and the policies  
13 behind each country's practices in this area and  
14 we think it'll be very helpful for all of us.

15 MR. WALKER: Shira --

16 SPEAKER: Go ahead.

17 MR. WALKER: -- just a quick question  
18 before Mark has started. So, this relates to the  
19 IP attachés and their diplomatic status. So, it  
20 was mentioned in Tony's slides -- I don't think  
21 you were here, but Tony had it in his slides, he  
22 mentioned it. I don't know if it was more

1 appropriate for you or Dana, but we talked before  
2 about elevating the rank of IP attachés so they  
3 could deal with the higher-level counterparts in  
4 these foreign governments. Any updates on the  
5 status for that, the question from our audience?

6 MS. PERLMUTTER: Nothing new yet. We're  
7 certainly still very interested in it and I know  
8 we have a lot of support and a lot of places for  
9 doing it because we think it would really enhance  
10 the effectiveness of the attachés. So, it's still  
11 something very much on the agenda that we're  
12 pursuing. But no immediate developments, at this  
13 point.

14 MR. WALKER: And is there anything user  
15 community to do to help the office on this or no?

16 MS. PERLMUTTER: Well, that's a good  
17 question. I think just expressing your views  
18 wherever appropriate and possible.

19 CHAIR JENKINS: We supported the  
20 designation in the PPAC report last year.

21 MS. PERLMUTTER: That's great. I  
22 remember that. Maybe again this year.

1 (Laughter) Thank you.

2 MR. POWELL: Okay. Now that we've  
3 concluded all of our statistics here, I can skip  
4 to the -- (laughter) office meeting. Okay. Let  
5 me just skip through this -- here we go. Okay. I  
6 wanted to talk about a couple of programs here,  
7 just to give you quick updates.

8 As you may remember, we've had  
9 collaborative search pilots going on with the  
10 Korean and Japanese offices. We've been exploring  
11 that possibility with other offices including  
12 Germany and the UK. Those are in the Paris route,  
13 okay? Over the last several years, we've also  
14 been working in the PCT system to try to see what  
15 we can do in-so-far as collaborative search and  
16 exam in that environment. In the past, we've had  
17 two pilots limited to -- actually, to Korea and  
18 the EPO (inaudible) for which we have results. It  
19 was suggested, I'm not certain by which office,  
20 but it was agreed to that we should try something  
21 in IP 5 to see to what extent anything new could  
22 be learned or the system improved. So, beginning

1 at the 1st of this month, we're undertaking a --  
2 what we call a PCT Collaborative Search and Exam  
3 or CS&E Pilot to assess what can be done in the  
4 PCT among multiple searching offices.

5           Essentially, without getting into too  
6 much detail, an applicant has to opt into this.  
7 And in this process, a -- the initial ISA, the  
8 selected ISA, will conduct a search and share  
9 those searches with each of the other IP 5  
10 Offices. It would be designated as peer  
11 searchers. Who would then comment, supplement,  
12 add to a common search report to be provided to  
13 the applicant. And it's not a great number of  
14 these coming up and I'll -- think I've got a slide  
15 to show that, earlier. Or rather, later.

16           Okay. So, the number of applications  
17 will be 100 per initial ISA, main ISA. Okay? So,  
18 that in the end, each office will handle 500 cases  
19 total. We actually have already gotten 18  
20 applications, which surprised me because it's very  
21 difficult to get the word out. Although, this is  
22 a free program. In the end, what will the results

1 be? Will it be that there is some measurable  
2 improvement over a collaboration with only one or  
3 with only two other offices? What will have cost  
4 offices to do, right, for whatever benefits that  
5 might accrue? What have or could be the savings  
6 and prosecution cost that were -- I'm not sure  
7 what happened to the slides.

8 (Laughs) I'll just keep talking.  
9 The slides disappeared. (Laughter)  
10 To what degree would applicants  
11 actually save money by not having  
12 an enormity of subsequent  
13 prosecution costs in multiple  
14 national phase offices? And I'll  
15 keep talking. Oh, there we go.  
16 Look at the -- at least with the  
17 background back. Let me just take  
18 my slides up here real quick.

19 CHAIR JENKINS: Well, I'll help here a  
20 little bit.

21 MR. POWELL: Okay.

22 CHAIR JENKINS: So, one thing that I've

1       struggled trying to understand why the user  
2       community is not more responsive to these  
3       collaborative programs. It's -- you get to fast  
4       track, for the most part. You -- there's a free  
5       element involved; you don't have to pay for it.

6               MR. POWELL: Right.

7               CHAIR JENKINS: You get your patent  
8       application arguably faster, I guess you could  
9       say. But it just has not had the buy-in, so --  
10      and I know you and your team have worked very,  
11      very hard --

12              MR. POWELL: Right.

13              CHAIR JENKINS: -- to try to get the  
14      message out in a variety of different medium.

15              MR. POWELL: Yep. And Drew has talked  
16      about it and Andrei doesn't agree. It's just the  
17      general conservative nature of the IP community,  
18      right? It was the same with PPH and it's kind of  
19      before my time, but I hear it was the same with  
20      the PCT, that Former Commissioner Mossinghoff, who  
21      was around when that started, was -- after 40  
22      years, I could count them -- count the numbers of

1 ones we had on both hands and that was it. And --  
2 but then now, PCT of course is more -- most of the  
3 (inaudible) around the world.

4 Ah, we have slides again. But yeah, I  
5 think it's just getting the word out. It was the  
6 same with the Patent Prosecution Highway. What  
7 really helped was to have a user advocate of the  
8 PPH to really -- office is going to talk a lot,  
9 but we had Alan Casper of Finnegan who's a  
10 well-known speaker and he was a very big advocate  
11 for that program. So, we're hoping to find a good  
12 advocate in the IP sector. Perhaps Marylee could  
13 be the main one to preach the gospel of  
14 Collaborative Search and Exam.

15 CHAIR JENKINS: Mike just nominated me.

16 MR. POWELL: Right.

17 MR. VIDOVICH: I nominate --

18 MR. POWELL: So --

19 MR. VIDOVICH: -- the PPAC.

20 MR. POWELL: No, but you're right. It's  
21 just a matter of getting the word out and getting  
22 some success stories and then getting people to

1 talk about them, right? And while the  
2 improvements in quality ought to seem obvious, you  
3 have to study this stuff because you need to know  
4 to what degree and why. Is it truly our lack of  
5 access to this body of foreign prior art, a  
6 detriment to doing thorough searching here?

7 I mean, and again, to what degree will a  
8 filer save money in the end, having reduced  
9 prosecutions of cost and all of the national  
10 offices into which he files? And if we charged a  
11 fee for that, the savings and prosecution cost  
12 could far outweigh that and it would -- it could  
13 be worth it to the outfits. And so those are  
14 things we're trying to explore here. But you're  
15 right, Marylee. I think it's just a matter of  
16 staying out there and ringing the bell about it,  
17 which we will continue to do.

18 Okay. Let me see. I think I pretty  
19 much covered -- of course, we have on our website  
20 international cooperation on the left. You'll  
21 find a whole segment about this in there, as well.  
22 Right there, PCT Collaborative Search. And then



1 you'll find the information on virtually all of  
2 our program.

3           Just a very brief update. We've talked  
4 about this before. This is the Access to Relevant  
5 Prior Art, kind of a benign name. But what it is,  
6 is, of course, trying to use electronic means to  
7 help applicants comply with their IDS burden by  
8 putting into the application file information that  
9 we already have access to so that the applicant  
10 doesn't have to file an IDS in a certain case.  
11 This is actually a pretty complicated project and  
12 it is tied to our improvements, to a degree. What  
13 we're starting with is we're starting with  
14 applications in the 120 chain in the U.S., okay,  
15 because there's no database issue with the  
16 information that we already have. With that, we  
17 will have built a platform for other information  
18 to be added to, as we go down the road.

19           There is a tie into the development of  
20 our search, our new patents and then search namely  
21 in the loading of documents. We do have access to  
22 citations, for example, in the Global Dossier.

1 But what we -- what is needed is the actual  
2 documents themselves to the extent that we can get  
3 them. And hopefully, we will be able to in  
4 subsequent phases make those machines searchable.

5 But my point and my presentation here  
6 was just to be very brief and to let you know is  
7 coming out and I believe there's going to be a  
8 Federal Register Notice that should be out very  
9 shortly on the beginning mechanics of it, so  
10 please take a look at it. And we hope to get  
11 people to find interest in that. I would think  
12 that they would. (Laughs)

13 MR. WALKER: On the point of interests  
14 in it, I have a question from our colleague, Jeff  
15 Sears. Access of Relevant Prior Art, will the  
16 office engage in any commentary regarding the  
17 impact of automatically importing prior art into  
18 the file (inaudible) on the Rule 56 duty of  
19 disclosure?

20 MR. POWELL: Okay. So, Rule 56 and the  
21 Doctrine of the Duty Disclosure is a judicially  
22 created doctrine and we cannot change that. Okay?

1 We can help applicants reduce their burden in  
2 complying with it. Right? That's really the  
3 simple answer there. Now, it may be that as we go  
4 along changes to rules with 98, 99, they could be  
5 tweaked to account for any process mechanisms that  
6 need to occur. What we're trying to figure out  
7 now is the applicant office examiner interaction  
8 in terms of timing, notification, and that sort of  
9 thing. Those are not -- they're not simple issues  
10 to iron out, so -- but no, we can't change the  
11 duty of disclosure itself, but we can hopefully  
12 help reduce the costs in complying with it.

13 MR. WALKER: Yeah. No, I guess, it's --  
14 I mean, I -- this (inaudible), but I imagine  
15 question is whether or not the PTO could opine on  
16 the fact that with prior art automatically  
17 imported into the file, the need to do this is not  
18 seen by the office as a requirement to comply with  
19 Rule 56. I mean, I don't know.

20 MR. HIRSHFELD: So, happy to opine on  
21 that, absolutely. Once we have it in the file, we  
22 do not need applicants to submit it. Our plan for

1 the prior art project, and this is in the Federal  
2 Register Notice, is to -- as Mark said, it's not  
3 going to be all applications. We will notify the  
4 applicant that this information has been  
5 automatically pulled in and therefore they do not  
6 need to do that, also.

7 CHAIR JENKINS: So, just to be clear,  
8 too, and then because that information has  
9 automatically been pulled in, the examiner will be  
10 required to review that information automatically  
11 pulled in. So, and normally in IDS, they check --

12 MR. POWELL: Yes.

13 CHAIR JENKINS: -- off the box --

14 MR. HIRSHFELD: Correct.

15 CHAIR JENKINS: -- right?

16 MR. HIRSHFELD: Correct.

17 MR. POWELL: Yes.

18 CHAIR JENKINS: So, we'll get --

19 MR. HIRSHFELD: That information will be  
20 initialed and it will be put on the face of the  
21 patent when the patent (inaudible)

22 MR. POWELL: Right. It essentially

1 becomes an office citations of record, as an  
2 examiner would do in the old Form 892 when he  
3 cited prior art (inaudible), you know.

4 MR. HIRSHFELD: Yeah. The best way to  
5 think of it is, we're doing the IDS submission,  
6 (laughs) right? At least for those references.  
7 And once it's in the file, it will be treated the  
8 same way as any other IDS submission.

9 MR. POWELL: I see Mark. You have a  
10 question?

11 MR. GOODSON: Oh. Just backing up 20,  
12 minutes, a little more regarding machine  
13 translation. I am curious as to how it works, to  
14 what extent you know. As an example, we would --  
15 an electrical engineer, we talk about grounding.  
16 In Britain, it would be called earthing.

17 MR. POWELL: Correct.

18 MR. GOODSON: Okay. What happens when  
19 -- is the machine translation, is it functional  
20 translation or is it word-per-word?

21 MR. POWELL: It actually depends on what  
22 you're using the translation for, okay? So, if

1       you're trying to translate patent documents, the  
2       best solution has been dictionary-based  
3       approaches. And now the more sophisticated ones  
4       are using AI to improve their dictionaries,  
5       whereas before dictionaries would be manually  
6       improved. So, over a long period of time, a  
7       machine would translate, say, a Japanese document  
8       into English, right? And as you may know, and  
9       with Japanese, there are certain terms which there  
10      is no Japanese word for and so you'll see a  
11      document that goes -- you see the Japanese  
12      characters, then you'll see "oscillator" in  
13      English, right? And those are things that had to  
14      be learned over time by a machine.

15                 Now, if you look at machine translations  
16      for searching, WIPO has a really interesting  
17      approach to this which I think is a really good  
18      one. Rather than trying to machine translate  
19      databases of information, what they do is they  
20      translate the search strings into the native  
21      languages of the databases of information. Right?  
22      So, you type a search string in, it translates

1       that search string into Russian, French, whatever,  
2       and then gets those databases in their native  
3       languages. So, you need only improve the  
4       translation of the search developing tool rather  
5       than trying to have to re-translate all of the  
6       documents you have as machine translation improves  
7       over time. So, it's an old (laughs) problem, but  
8       it's actually doing quite well.

9               And what surprises me personally is that  
10       there's not more just free machine translations  
11       out there that are any good; there really aren't.  
12       I mean, they'll -- they do some. Google  
13       Translate's a very popular one and you can get it  
14       on your -- you're going on a trip overseas, you  
15       can sort of get a translation enough where you can  
16       figure out where you're going and not get lost.  
17       But again, translating patent material is not  
18       really English. (Laughs) And it's kind of  
19       technolegalese or it's patentese. There's no  
20       other language like it. So, yeah.

21               CHAIR JENKINS: Okay. Bernie, one more  
22       question, then we got to move on. Yeah.

1                   MR. KNIGHT: Okay, Mark. A little bit  
2 off topic, but maybe related to the last question  
3 is, the work-sharing initiatives are great. I was  
4 wondering, are there any initiatives with our  
5 foreign partners to look at their IT systems to  
6 see if they're -- because I've always heard that  
7 our foreign counterparts, their IT systems for  
8 search examination and issuance are in some ways  
9 superior to ours and I don't know if that's true  
10 or not. But is there -- do you have any  
11 discussions with our international partners about  
12 sort of sharing software and that sort of thing  
13 that might help our systems?

14                   MR. POWELL: Well, we do share a lot of  
15 information about features more than anything,  
16 right? So, and Rick can probably speak to this.  
17 Every office is on its own IT road map, right?  
18 And it's supported by its own budget and by the  
19 ambitions of the office and investments they want  
20 to make in IT. Our office is on a bunch of legacy  
21 systems that we're trying to get off of.  
22 Conversely, the EPO has embraced its legacy system



1 and they have no intention to get off of it, okay?  
2 Now, they may not be able to provide some of the  
3 features we'll be able to provide down the road  
4 and so on.

5           They really are different, right? They  
6 work differently. So, for example -- and  
7 obviously, sharing software is a security problem  
8 and everything else and that sort of thing, but  
9 learning what they do. I mean, the Korean office,  
10 for example, has always had really nifty search  
11 tools where you drag the pointer over a thumbnail  
12 to patent document and the abstract comes up. I  
13 mean, just features and handy things like that,  
14 that we try to share with our examiners and our  
15 test groups to see if those will be features that  
16 they've -- they would find useful.

17           And IT is not easy, as Rick knows. And  
18 I will share once again with you that the Japanese  
19 spend hundreds of millions of yen on trying to  
20 replace their system several years ago and  
21 completely failed and had to start over, just  
22 called it a loss. So, I don't know. Rick, do you

1 have anything you might want to add to that?

2 MR. SEIDEL: No, I would just say as we  
3 talk about more and more work-sharing,  
4 international cooperatives and so on, there's just  
5 a natural tendency to have the discussions go into  
6 IT. So, that happens all across the world. But I  
7 think it might be a good segue into our next one,  
8 talking about AI. I think AI is really -- the  
9 Director mentioned it earlier as certainly a  
10 priority. I think that would be a good topic for  
11 further discussion. I think that's maybe where we  
12 hear a lot of things about different countries  
13 kind of taking the lead. I'm not sure that's  
14 necessarily true. I think we're all challenged  
15 with Mark's term of patentese. How do we make  
16 machine learning better in this very complex  
17 field?

18 CHAIR JENKINS: Great. So, we're going  
19 to transition. (Laughs) Thank you. Thank you for  
20 that segue. Shira, Mark, thank you so much. So,  
21 now we're going to not go immediately to AI, but  
22 we're going to talk about -- the economy? I don't

1 know. (Laughs)

2 MR. TOOLE: Yes. Well --

3 CHAIR JENKINS: You're going to give us  
4 an update.

5 MR. TOOLE: So --

6 CHAIR JENKINS: Andy Toole.

7 MR. TOOLE: Yes.

8 CHAIR JENKINS: Based upon the  
9 persistence of one of our --

10 MR. TOOLE: Thank you.

11 CHAIR JENKINS: -- Committee members,  
12 Dan Lang, repeatedly -- and I --

13 MR. TOOLE: Okay.

14 CHAIR JENKINS: -- do listen. So, we  
15 find -- we have found time to bring you to the  
16 table, so to speak. So, you are Acting Chief  
17 Economist for the U.S. Patent and Trademark  
18 Office?

19 MR. TOOLE: Right, exactly. And thank  
20 you very much. I really appreciate the  
21 opportunity, actually, to talk about the critical  
22 work that the Office of Chief Economist does for

1 the USPTO and our stakeholders.

2           So, today -- let's see if I can advance  
3 these slides. Oh, there we go. So, today I would  
4 like to touch on four areas. First, I would like  
5 to set the stage by providing a little bit of  
6 background about the Office of Chief Economist  
7 also referred to as OCE. You'll hear me saying  
8 that. Second, I would like to highlight some of  
9 the important ways that we contribute to the  
10 priorities of the USPTO. Then, touch on some  
11 research work and just a couple of the IP findings  
12 that we have. And finally, highlight some of the  
13 ways we support and engage the stakeholders, which  
14 I think is pretty fascinating.

15           So, the Office of Chief Economist was  
16 established in 2010 under the Former Director of  
17 David Kappos. At that time and even today, we're  
18 seeing significant worldwide growth in the use of  
19 intellectual property. And the innovation  
20 ecosystem in the United States, and actually  
21 globally, is becoming more complex. It's quite  
22 clear that there's an ongoing need to understand

1 the role and contribution of intellectual  
2 property, not just patents but intellectual  
3 property more broadly, to innovation and economic  
4 growth.

5           So, as such, the Office of Chief  
6 Economist advises the Director and the Chief  
7 Policy Officer, Shira Perlmutter, in four key  
8 ways. First, we provide deep analytical  
9 capabilities for USPTO initiatives. We undertake  
10 research and analysis to shed light on the role  
11 and impacts of intellectual property in the  
12 innovation ecosystem. We monitor and interpret a  
13 growing number of empirical studies that are  
14 coming out in legal, economic, and policy journals  
15 and publications. And we also promote awareness  
16 and understanding by providing better data --  
17 better access to quality data for our  
18 stakeholders.

19           From an organizational standpoint, the  
20 Office of Chief Economist sits within the Office  
21 of Policy and International Affairs, alongside and  
22 working symbiotically with the policy teams, the

1 Office of Governmental Affairs, the Global  
2 Intellectual Property Academy, and the attachés.  
3 When our office is fully staffed, we have four  
4 Economists, one Deputy Chief Economist, and one  
5 Chief Economist.

6           Importantly, I would like to emphasize  
7 the value of the analytical capacity and research  
8 work that we do. So, for instance, our work helps  
9 to build the evidence base needed for improving  
10 the intellectual property system. And an improved  
11 intellectual property system will lead to more  
12 reliable and predictable patenting and patents.

13           Our work helps to promote USPTO's  
14 collaboration and integration in policy  
15 environments both in the United States and abroad.  
16 And we also have a number of different types of  
17 outputs that we disseminate through peer reviewed  
18 articles, working papers, and reports.

19           When I thought about priorities for our  
20 office, I broke them into two groups: those that  
21 originate within the USPTO and those that  
22 originate outside the walls of our organization.

1       So, with respect to priorities within USPTO, the  
2       Office of Chief Economist continues to work on a  
3       variety of different initiatives.  Since the  
4       passage of AIA, we've worked collaboratively with  
5       the CIO -- the CFO, excuse me, to support the fee  
6       setting process.  In particular, we're estimating  
7       elasticities to try to understand better how  
8       applicants are responding to fee increases and  
9       decreases.

10               The Office of Chief Economist is working  
11       with Patent Operations on a number of priorities  
12       and issues.  For the Examination Time Analysis  
13       Initiative, the OCE facilitated outreach to  
14       external international experts in the areas of  
15       personnel economics and organizational incentive  
16       systems.  That effort culminated in two learning  
17       events where we brought USPTO folks together with  
18       four experts to share ideas and learn about  
19       alternatives.  OCE continues to look into  
20       examination incentives using quantitative modeling  
21       as part of that effort.

22               Under the Chief Policy Officer, OCE

1 administers the Thomas Alva Edison Scholars  
2 Program, which was established in 2012. This  
3 program enlists the services of academic  
4 researchers either as distinguished scholars or  
5 research fellows. They come to the USPTO to study  
6 issues that are important to the mission of the  
7 agency and in the public interest. So, for  
8 instance, some of the things that the Edison  
9 scholars have done for us in the past, they've  
10 studied machine learning for prior art searching,  
11 they've looked at patent allowances, patent claim  
12 clarity, abusive patent litigation by  
13 non-producing entities, and the impact of patents  
14 on firm performance. Some of these findings are  
15 being used in a lot of our discussions with our  
16 stakeholders and even by folks in the White House  
17 and on the Hill.

18 We also respond in our office to a  
19 number of other requests. We often provide  
20 talking points to the Director and other senior  
21 management, and we provide guidance to the Office  
22 of Chief Communications Officer on a wide variety



1 of issues such as gender and diversity and  
2 patenting, government interest patents, local and  
3 regional trends in patents and trademarks.

4 In terms of external priorities, we work  
5 often with the Office of the Under Secretary and  
6 through that Office we get involved in White House  
7 initiatives. I will mention two of them that  
8 we're involved in a couple of minutes, but the  
9 Former Chief Economist was a co-lead on USPTO's  
10 Cancer Moonshot Patent Challenge which was part of  
11 the White House Cancer Moonshot Taskforce.

12 Working with the Office of Governmental  
13 Affairs, we respond to different Congressional  
14 initiatives. For instance, after the passage of  
15 AIA, there were a number of studies required to be  
16 done by the agency. The Office of the Chief  
17 Economist was deeply involved in those. We have  
18 some ongoing work with the Office of Governmental  
19 Affairs right now.

20 Further, we work with teams in OPIA to  
21 review and respond to policy positions and reports  
22 for forums such as the G20. We respond to

1 international organizations such as the  
2 Organization for Economic Cooperation and  
3 Development and the World Intellectual Property  
4 Office, so OECD and WIPO.

5           Turning to some research, in  
6 collaboration with the Department of Commerce  
7 Economics and Statistics Administration, OCE  
8 originated a report series on IP-intensive  
9 industries. This series compares a broad set of  
10 performance indicators between industries that use  
11 IP intensively and those that do not, and IP  
12 intensity is measured by use relative to  
13 employees, so the total count of patents per  
14 employee, for instance. Indicators that we've  
15 looked at in those studies are direct employment,  
16 total employment, wages, contributions to value  
17 added, gross domestic product, exports, and  
18 imports.

19           The first study was released in 2012 and  
20 was very impactful. Other jurisdictions did  
21 simulate the study, but I meant to say -- it's  
22 stimulated studies there. So, for instance,

1 Europe and China, they also followed on and copied  
2 our studies. So, in some sense it was both a  
3 stimulation and a simulation. (Laughter) And we  
4 released an update in September 2016 of the  
5 IP-intensive industry's report and that study  
6 showed that IP-intensive industries show growth in  
7 direct employment, total employment, wages and  
8 value added, and share of GDP. There was some  
9 decrease in the value of service exports, however.  
10 The 2016 update was and is being used to frame  
11 policy and trade discussions by the White House,  
12 members of Congress, and the U.S. Trade  
13 Representative.

14 We have a lot of other research at our  
15 office. For instance, we have a new product  
16 called Data Highlights in which is designed to be  
17 informative about IP data trends and is intended  
18 to use graphics to illustrate those trends so it's  
19 not a highly complex and overly sophisticated  
20 statistical approach. One example is our recent  
21 Data Highlights report, Collaboration and  
22 Ownership on Patents Issued to Chinese Inventors.

1 And in that, we trace Chinese inventor teams over  
2 time and find out who they collaborate with and we  
3 also look at the owner at grant of patents with  
4 Chinese inventors to see if they're owned by U.S.  
5 Or other national entities.

6 We have a substantial analytical report  
7 which involves statistics on patent examination  
8 quality, court litigation, and PTAB trials. We  
9 created a primer on patent prosecution and the  
10 examiner performance appraisal system to help  
11 those on the outside who are doing all of those  
12 additional empirical studies and promoting them on  
13 the Hill, for instance. We try to give them an  
14 understanding about what's actually happening  
15 inside the walls of the PTO.

16 One of the things that we found is that  
17 many of the studies that are being done and are  
18 critical of the USPTO, reflected a  
19 misunderstanding of what actually is happening  
20 with respect to patent prosecution and examiner  
21 appraisal systems. So, we're trying to help build  
22 out that knowledge and provide people with a

1 better chance of getting it right.

2           We have two new working papers. One is  
3 the new metric on patent thickets, which is  
4 related to licensing and is used, of course, to  
5 characterize the degree of transaction costs in  
6 secondary markets for intellectual property, so  
7 when patents are sold, bought and sold. We have a  
8 paper that looks at the trademark registrations  
9 among U.S. firms which derived out of a  
10 collaboration with the Census Bureau. And many,  
11 many other things as well. So, I would urge  
12 everyone to go to our website,  
13 [www.uspto.gov/economics](http://www.uspto.gov/economics), and just browse and find  
14 the particular types of outputs that you're  
15 interested in looking at.

16           We engage in a number of collaborative  
17 projects with the U.S. government and with foreign  
18 entities. With the White House, we are currently  
19 leading an interagency taskforce for the  
20 Intellectual Property Enforcement Coordinator, the  
21 IPEC. That interagency taskforce is charged with  
22 building out research capacity and research

1 findings in four critical areas of intellectual  
2 property. One of them is counterfeit goods;  
3 another, trade secrets; a third is patent  
4 litigation; and finally, commercial scale piracy.

5 We were also involved with the White  
6 House Lab to Market Initiative, which is intended  
7 to facilitate the commercialization of federally  
8 funded research and development and discoveries  
9 that come out of that funding. We are engaged  
10 with the U.S. Trade Representative in a Trade and  
11 Investment Working Group. And we are  
12 collaborating with the small business  
13 administration to look at the Small Business  
14 Innovation Research Program and Small Business  
15 Technology Transfer Program and try to shed some  
16 light on the interaction of these subsidies for  
17 innovation and patenting.

18 In terms of international  
19 collaborations, we're working with the UK IPO on a  
20 joint economic study. We are contributing a  
21 chapter to a WIPO book that's looks at global  
22 innovation in mineral mining. We're looking at

1 the U.S. Mineral mining innovations using patent  
2 data, of course. And we're also contributing to  
3 the World Trade Organization effort on trying to  
4 characterize trade and knowledge across national  
5 borders.

6 We support the stakeholders and engage  
7 with stakeholders in a number of ways. We have a  
8 newsletter that anyone can sign up for if they're  
9 interested and it gets sent out roughly quarterly.  
10 But one of the most important ways we engage with  
11 stakeholders is through participation, organizing  
12 and cohosting conferences. Our flagship  
13 conference is the Northwestern University Searle  
14 Center USPTO Conference on Innovation Economics.  
15 This is one of the two top conferences in the  
16 world on innovation economics. It attracts  
17 scholars from all over the world who present  
18 recent work on the impact of intellectual property  
19 on the economy.

20 We also engage in various policy  
21 discussions at the Brookings Institution and other  
22 places around, D.C. and other spots. We are part

1 of the OECD Statistics Task Force and the WIPO  
2 Chief Economist Network. Those organizations  
3 bring together economists and statisticians from  
4 18 different IP Offices around the world on a  
5 semi-annual basis for the OECD. And it's a way of  
6 staying in touch with what other offices are doing  
7 and actually coordinating on data efforts, which  
8 is one of their main priorities.

9 To save stakeholders' time and money, we  
10 have created research-ready public datasets based  
11 on USPTO public data. We actually facilitate the  
12 use of the USPTO's public data by taking, let's  
13 say, XML formatted datasets and putting them into  
14 user- friendly formats and defining variables in a  
15 very clear way. This facilitates stakeholder use  
16 of information. And finally, we also have  
17 PatentsView. PatentsView is a visualization and  
18 analysis platform with over 40 years of USPTO data  
19 on granted patents. So, let me take a couple of  
20 minutes here just to talk about PatentsView. I  
21 think it hasn't been understood well enough.

22 So, PatentsView is a public-private



1 partnership and it's been formed with all of the  
2 entities that you see on the slide, including  
3 Berkeley and the American Institutes for Research.  
4 Below the title where it says public-private  
5 partnership and to the right of PatentsView are  
6 five tabs. I realize that they're not very  
7 visible; I apologize for that. But the first  
8 three tabs are visualizations. The first one says  
9 relationships, the second one, locations, the  
10 third one, comparisons.

11           The final two tabs include what's called  
12 list search and data sources and those two are for  
13 sophisticated data users who want to create their  
14 own database. They can do a list search, define  
15 the variables and the parameters, have it sent to  
16 them through email, and they can do bulk downloads  
17 of granted patent data through the bulk download  
18 page. And there's a community page, as well. But  
19 within the first three tabs there are  
20 visualizations and these visualizations are  
21 supposed to help people who are unfamiliar with  
22 patent data to really start to get to know the

1 data and understand patent information.

2           So, if you were to click on the  
3 relationships tab -- that first one to the right  
4 of PatentsView name -- you would actually see this  
5 graphic. This is a network visualization of the  
6 100 top cited patents. The orange circles are for  
7 assignees. They're sized by the number of patents  
8 the assignee has. For instance, Apple, it has  
9 11,213 patents at the time that this screenshot  
10 was taken, which is late in September of 2017.  
11 The blue circles are patents sized by the number  
12 of forward citations and the yellow circles are  
13 inventors sized by the number of patents that  
14 inventor has participated in.

15           And one of the other features of this, I  
16 should mention, is, we go through a disambiguation  
17 process where we link inventors by creating a  
18 unique ID across different patents. And so you  
19 can know that Andy Toole, Andrew Toole, Andy A.  
20 Toole were the same inventor and not three  
21 different inventors, counted three times, but the  
22 same inventor that was on all three patents. So,

1       that's called disambiguation. It's actually a  
2       highly regarded value-add on the data.

3                 To the right, people can click on a  
4       number of different filters. You can see that  
5       it's shaped like the United States, so you can  
6       pick California and it would highlight the  
7       California network graph.

8                 I thought it would be interesting, in  
9       this last couple of slides that I have, to  
10      highlight some of the feedback from the user  
11      community. So, for instance -- and that's my next  
12      slide, but I don't want to go there yet. That's a  
13      good one, too. But for instance, one of our users  
14      in MIT says, "Thanks for making this a valuable  
15      tool freely available to the public. As an  
16      academic researcher, I deeply appreciate and  
17      strongly believe that public access to good  
18      quality data is a powerful accelerator of  
19      scientific and technological progress." So, we're  
20      getting a very positive reception among  
21      stakeholders.

22                 And to further push that point,

1 PatentsView was featured in November 2016 article  
2 in Scientific American in which these network  
3 graphs of the inventor relationships within three  
4 companies were juxtaposed. So, for instance, this  
5 is the network image for Facebook, but there was  
6 also one for Tesla and Intrexon and the inventor  
7 networks and the kind of invention process at  
8 these private companies were compared visually in  
9 that article. Moreover, PatentsView was selected  
10 by the Association of Public Data Users as the  
11 best visualization in the federal government  
12 category for 2017.

13 I would just like to leave you with a  
14 quantitative feel now for how stakeholders are  
15 responding to PatentsView. This is for the  
16 Application Programming Interface, API, which is  
17 used by developers to access data, so that's  
18 another more sophisticated way which information  
19 is distributed. And you can see here that we've  
20 had -- in 2017 up through this date, again in  
21 September, a 74 percent year to date growth in API  
22 usage, 104,000 queries per day, on average, and

1 27.9 million queries between January and September  
2 of 2017. So, it's very busy.

3 Anyway, thank you very much. Appreciate  
4 this opportunity to talk about the office.

5 CHAIR JENKINS: So, unfortunately, we  
6 have three more topics and I need to get done with  
7 them very quickly so we meet our timeline. And  
8 clearly, clearly, we need to bring you back, so.

9 MR. LANG: Yeah, yeah, yeah.

10 CHAIR JENKINS: Very noted.

11 MR. LANG: I'm going to hold off on my  
12 questions of discussion because of what Marylee  
13 said, because --

14 CHAIR JENKINS: Yeah.

15 MR. LANG: -- we're very -- very  
16 interesting to hear about your work and I look  
17 forward to talking more in the future.

18 MR. TOOLE: Thank you.

19 CHAIR JENKINS: So, can we jump right  
20 into AI?

21 MR. TOOLE: Absolutely. So, most of the  
22 conversation on AI is going to be with Tom Beach.

1 He's going to show us all sorts of really  
2 interesting and cool things. But what I would  
3 like to tell you about quickly is an event that  
4 we're planning. OPIA is going to be hold a  
5 conference on artificial intelligence in IP  
6 policy.

7 This event has been scheduled for  
8 December 5th of this year and our purpose is to  
9 explore these emerging capabilities in artificial  
10 intelligence and try to understand how it might  
11 influence intellectual property policy. Now, you  
12 know that OPIA has a number of policy teams and so  
13 the structure of the event is actually going to be  
14 panels by different policy teams. So, trademarks  
15 is going to have a group there, copyrights is  
16 going to have a group, enforcement's going to have  
17 a group, patents is going to have a group,  
18 economics, and also we're going to have an  
19 international panel to go ahead and try to explore  
20 this intersection between AI and intellectual  
21 property policy.

22 Our audience is broad. I don't

1 anticipate the general public will be a large  
2 fraction of the audience, but I think we will get  
3 a lot of policy makers, law practitioners, and  
4 those others who are quite interested in what's  
5 happening in this AI space. It will be here in  
6 the Madison Auditorium again on Wednesday,  
7 December 5th. And so that's the planned event,  
8 and all of the great details of AI, Tom is going  
9 to provide. (Laughs) Here. Yeah. Go ahead.

10 MR. BEACH: Thank you, Andy. My name is  
11 Tom Beach. I am one of our Portfolio Managers and  
12 I serve another role as our Data Strategist. We  
13 have David Chiles here and Debbie Stevens. We are  
14 all from OCIO. Just to give you an overview, this  
15 is a lot of information that we're going to try to  
16 cram in 15 minutes, so bear with. I will attempt  
17 the impossible.

18 So, we are -- where we are headed.  
19 We're an agency that has been, previously, as  
20 indicated, in a world of very descriptive  
21 terminology, ad hoc reporting, and being able to  
22 just assess sort of transactionally what we're

1       doing. And we need to move into a more advanced  
2       and modeling and cognitive assistance space  
3       because of the ever-rising oceans of prior art,  
4       the distribution of data sources and information  
5       that's out there in the world.

6               And so with that comes a definition,  
7       right? So, AI is something talked about all the  
8       time everywhere and everyone seems to have sort of  
9       their own interpretation of what it is. So, I  
10      picked a definition here. It's -- folks can read  
11      it. Basically, that it's any machine that mimics  
12      a cognitive function that humans associate with  
13      other humans' minds. So, it can learn, it can  
14      give you information.

15             I also saw an interesting Tweet that's  
16      sort of a little different than this about what  
17      the definition is because we've got natural  
18      language processing, deep machine learning, word  
19      embedding, these very complex concepts.

20             And the other one is, AI is not an  
21      inscrutable magic. It's not impossible. It's  
22      math and data and computer programming by regular



1 people, okay? This is the other definition.  
2 People who make AI are not unicorns. They are  
3 people who like math and data and computer  
4 programming. So, this is why we're going to see  
5 this technology disperse and grow and be prolific,  
6 right? So, with that said, I'm going to move  
7 forward in terms of what the agency is looking at  
8 in terms of opportunities for AI.

9           Because this is scoped to PPAC, there is  
10 obviously other areas about opportunity throughout  
11 the organization in our other 12 business units,  
12 but I'm going to talk mostly today about what  
13 we're looking at in terms of the patent world.  
14 And we're looking at people -- so, this sort of  
15 creates a unique opportunity for us. We have a  
16 highly structured workforce, we are well trained,  
17 it's a rapidly changing environment, complexity of  
18 examination exists, and existing infrastructure in  
19 next gen, as part of the IT updates that we'll  
20 talk about next, are there to be put in place so  
21 we can have (audio gap)

22           So, I'm trying to move forward. So,

1       keeping that in mind, I really want to focus on  
2       the fact that while we are represented here by  
3       OCIO, this is a complete and utter partnership  
4       with patents. We are organization, right? We  
5       need to solve the patent's business problems,  
6       right? OCIO is here to really provide the  
7       technology, meet the needs, but along the way we  
8       can sort of do proofs of concepts to validate, do  
9       rapid prototyping in order for our agency to be  
10      able to, as we want to do, leap-frog other  
11      agencies around the world and really get ourselves  
12      to a state that really improves effectiveness and  
13      creates predictability in terms of the outcomes of  
14      our patents.

15                   And so these are some of the efforts  
16      that have been ongoing and I'll draw your  
17      attention at the bottom, which, I think, came up  
18      earlier, continuing to engage with IP Offices  
19      regarding -- regarding API activities and whatnot.  
20      So, we do have a working group, too, as part of IP  
21      5. It's the IT group, right? And so in that --  
22      those sessions that I have attended, we have

1       discussed from XML sort of data sharing all the  
2       way to AI. Every time I have gone and done a  
3       presentation there and participated in that, the  
4       feedback we get is we're doing far and above away  
5       anything that anyone else is doing.

6                 Similar concepts. Today, we're going to  
7       talk about two of them, classification prediction  
8       and search. But other offices are doing trademark  
9       image searching. There's a couple things that  
10      everybody's doing, but they're looking at  
11      different approaches. But we haven't given away,  
12      of course, our secret sauce, but the conversations  
13      have been very fruitful and very much sort of,  
14      "What are you doing next," and that's -- in fact,  
15      we had one office ask if they could license what  
16      we were developing. So, that should tell you  
17      where we are.

18                All right. So, the areas of where we're  
19      trying to do AI efforts. As I mentioned, it's  
20      based on sort of the not- so-exciting world of  
21      ingestion; that's -- goes to data quality. If  
22      garbage in, garbage out, right? But then if you

1 get gold in, you get gold out. And so when we  
2 have a strategy around AI, we really need to  
3 double down on the fact that we can't build AI on  
4 something that's not really strong. It's not a  
5 strong foundation.

6 So, we're now taking an approach of  
7 doing a due diligence strategy on what it is and  
8 where it's going to play a role and where is it  
9 valuable, right? And that goes back to theme of  
10 proof of concepts, partnering, solving business  
11 problems, and some of them are right here, which  
12 are classification, automation, and patent  
13 searching, a work product consistency and quality.  
14 We've really on that initial scale I showed you  
15 moved to -- our world into big data environments.  
16 We have these now. We have the analytic  
17 capabilities that we've never had before. We're  
18 able to sort of consume them and expose them in  
19 ways to examiners that we just have never been  
20 able to unlock. And so knowledge management's  
21 another one and continued effort around looking  
22 at, what is the standard outside of the USPTO?

1                   In fact, on our market research  
2                   engagements with companies, the feedback has been,  
3                   "Wow, you're one of the -- you're way ahead of  
4                   other agencies." So, we take that as a compliment  
5                   in terms of where our strategy is, what are we  
6                   trying to solve, and what -- where are we going to  
7                   go.

8                   So, now we're going to kind of go deep  
9                   real quick, so -- and fast. Continue, right?  
10                  Fast and deep. I -- I'm getting the cues.

11                  So, pre-classification. So, this is an  
12                  example of how can we leverage AI for consistency  
13                  purposes, right? If we could all get around a  
14                  thing that gives us a predictable result -- and we  
15                  all know the complication around CPC; different  
16                  than USPC, right? It's the whole invention, it's  
17                  a series of symbols versus U.S. Classification,  
18                  which was the most comprehensive claim, right?  
19                  We've shifted. Paradigm shift, big problem, how  
20                  do we solve?

21                  Machine comes along and says, "I'm going  
22                  to take all these data sources," which you can

1       see, "And then I'm going to create over 300,000  
2       CPC models for every single CPC classification.  
3       So, any new document that comes in, I'm ready for  
4       you. I know where to put you and I also know how  
5       to rank you accordingly to give you most  
6       comprehensive of the inventive feature overall.  
7       And if you wanted one that was based on claims, we  
8       could also do that." So, we're able to have this  
9       sort of predictive model that we can use as a  
10      feedback loop when it's exposed to the user  
11      community, right?

12                 But also, really, what's kind of cool  
13      is, we're testing it out in ways that say, "Hey,  
14      maybe we can save us time and money or give us  
15      recommendations," or really allow for what I like  
16      to call the 50-yard line. Let's start the  
17      examination process with some pre-curated  
18      information about the case. And the most  
19      interesting thing here is that the success level  
20      of classification, assuming that humans do it  
21      correctly -- so, back to the original point. If  
22      the humans do it right, the computer's only going

1 to be as good as that, right?

2           So, what we found is, where we are  
3 today, by leveraging these sort of technologies,  
4 unsupervised ensemble algorithms -- I mean, I know  
5 that sounds like gobbledy-gook to a lot of people,  
6 but ensemble's an important word. It's sort of  
7 like allowing you to choose the best of result set  
8 in any sort of real time, where AI is able to sort  
9 of fight itself to find out the best answer and  
10 compute over and over and over again. That's kind  
11 of the big mystery. They're just computing power  
12 really, really, really fast and then says, "Your  
13 answer's this." I mean, it would have taken  
14 somebody else hours.

15           So, where we're at was, the subclass  
16 level looking at roughly 94 percent predictive  
17 rate of finding the matching CPC code on the  
18 document. Not bad, right? So, this is some  
19 technology we built at the group level, 87  
20 percent, and it drops, right? And we get to the  
21 lower subgroup, that's -- that gets to be, "I put  
22 it here, you might put it there." But at the end

1 of the day, if this is able to do this and we can  
2 dimensionally provide this information in  
3 examination, we're now helping navigate the  
4 examiner along the path of most consistent  
5 prosecution, right? Where you should be looking,  
6 where are similar places that you should also be  
7 looking.

8           And this will get into the concept of  
9 patent searching. So, you can read all this;  
10 you've probably seen it before. In short, what  
11 we're really looking at is getting away from a  
12 Boolean sort of text search and we do harness that  
13 expertise, but what we want to augment in that is  
14 an important point here, right? We're looking at  
15 augmentation and copiloting, right? We're not  
16 looking at complete black box automation.

17           So, it's sort of, here is a system that  
18 instead of just forcing you to come up with the  
19 right words, it is introducing all these  
20 suggestions of concepts and synonyms and I don't  
21 mean just one word that matches another. Like,  
22 conceptually, how is it used in that technology?



1       So, I use the example -- I worked in offshore oil  
2       and gas. We had this thing called the Christmas  
3       Tree. Sits at the bottom of the ocean, they made  
4       a movie about it when it blew up. But if I say  
5       "Christmas" and no "tree," I don't get the result  
6       sets I want. But I am on a system that not only  
7       helps me do that. It already knows that that's  
8       the technology I work in. So, what it's giving is  
9       an extrapolation of the traits of the document.

10                 Maybe a good analogy would be like it's  
11       a library. Some of us may remember Dewey Decimal.  
12       Right? It's the way you found that -- you either  
13       had to know an author or sort of know a genre.  
14       This, instead of that, would just say, "I like  
15       books that -- investigations that happen in  
16       Chicago," kind of a thing. And that way, it's  
17       finding out a curated dataset based on concepts,  
18       right, and relevancy of those concepts, because  
19       that's the mathy part. Right? You can take words  
20       and make mathematical signatures.

21                 And so it's able to allow these traits  
22       that an examiner would say, "Hey, I think this is

1 relevant or not. Give me some prepackage relevant  
2 documents, give me a pre- search," right? Because  
3 the traits of this given application is matching  
4 up with all the traits of these other documents  
5 without having started a search at all. So, you  
6 start at a 50-yard line. But unique to that is,  
7 we want to tell you why it's relevant. We can't  
8 just give you a list of documents and say, "Here  
9 it is. Go." What it needs to be is something  
10 that says why was this relevant so the examiner  
11 could ultimately and always possess the power of  
12 relevancy to the documents to each other and the  
13 value of them. So, again, a 50-yard line  
14 approach.

15           Oops. And so some -- and additional  
16 efforts that are on the way. So, enrich citation  
17 data is an effort to basically use emerging  
18 technologies to meet harmonization needs. So, we  
19 create and do 102, 103s, everybody else does XYAs,  
20 and so instead of spending -- we're trying to look  
21 at spending the right amount of funding to the  
22 right IT versus looking at how do we extract

1 information out of what we have to meet these  
2 needs without creating newer and larger cost by  
3 using these kind of tools. This was able to allow  
4 us to meet those kind of harmonization agreements  
5 between offices by leveraging something called  
6 emerging technology.

7           So, browser-based cognitive assistance.  
8 That was a mouthful. So, basically, what that  
9 means is we transition in IT updates. The reason  
10 it really matters that we have migrated off of our  
11 legacy systems and into a browser-based system as  
12 it unlocks a huge platform for us to be able to  
13 leverage all kinds of resources. So, we can do  
14 federated source researches based on web --  
15 publicly available information everywhere. So,  
16 these kind of -- while they don't sound  
17 super-exciting when I say it's web-base, what it  
18 does change is that it allows us to create and  
19 build machine learning AI capabilities. Parts of  
20 the workflow process unlock them through a  
21 browser-base because PE2E tools, as the  
22 examination tools are completed with our search

1 rollout, will all be browser-based, right?

2           And so what's really exciting is that  
3 we're now able to get here and then we can do, as  
4 Director Iancu likes to say, leap-frog ourselves  
5 into the next evolution. And we have already  
6 shown progress in that. In our big data efforts,  
7 we have been tremendously successful exposing all  
8 kinds of information and we'd like to follow-up  
9 with how that potential area goes.

10           The AI side of the House is really -- we  
11 want to take a steadfast approach on a strategy  
12 that makes sense, right? It just doesn't -- like  
13 I said, we want something that is a copilot that  
14 doesn't diminish the efforts that the examiner  
15 does. So, an examiner always has to remain an  
16 expert. We're very, very cognizant of the  
17 unintended consequences, right, of making it so  
18 it's codependent, right? We want copiloting.

19           Just -- I want to hit on some themes,  
20 right? So, and less of the tech talk, but it's  
21 all in there if you want to read it. And looking  
22 at also the term generator, that's just another

1 way of synonyms. We're looking at image searching  
2 in unique ways. You can look at images by pixel,  
3 but you can also, interestingly enough, look at  
4 patents as a closed domain because we have  
5 figures, right? And figures with descriptions and  
6 description terms. So, it's an interesting way of  
7 also looking at image searching. So, now we can  
8 find out other like figures based on this -- the  
9 meta- tagging of the terms that were on in there.

10 So, there's a lot of interesting work to  
11 be done there. And we're looking at deep machine  
12 learning chat bots. Basically, those are -- we  
13 work in a closed domain. Again, what that means  
14 is the world of the MPEP is a given document and  
15 if you kind of look at the sort of concept of  
16 maybe a chat bot that you could just say, "What's  
17 a 102," it tells you all the answers from the MPEP  
18 versus always having to go back to that, that  
19 unless you type in a query correctly, you're going  
20 to get the wrong result.

21 What these machine learning capabilities  
22 allow us to do is measure and harness what

1 questions are being asked, right, so we know what  
2 the concerns are. Maybe need new training, right?  
3 In this particular area, folks are asking a lot  
4 about it. So, these are just sort of explorative  
5 areas for which the partnership, like I said at  
6 the beginning, is really critical.

7           With that said, I'll close this portion  
8 out. Do I do it? Okay. So, go to the next one?  
9 Okay. We're going to go straight to the next one.  
10 All right. IT updates. Going to pull this out  
11 real quick. We have the same cast. Andy, you're  
12 welcome to stay. It's fun that you're here.

13           (Laughter) So, this is our PE2  
14 Examination Products, as many of  
15 you already probably looked at this  
16 information. I'm going to hit on  
17 some of the highlights. I heard  
18 earlier that there was talk about  
19 RPA or the relevant prior art.  
20 This is another example of this  
21 notion of getting information  
22 quickly to -- and accessible to the

1                   examiner to not only just have it  
2                   there, but to meaningfully measure  
3                   it so that we can create a  
4                   baseline, right? What's a good  
5                   search, what's a 50-yard line for a  
6                   jump-off point if we're going to  
7                   get into an evidence- based  
8                   decision around predictability of  
9                   patents. So, RPA's a good example  
10                  of leveraging that technology and  
11                  exposing that information as far as  
12                  it goes with Docket Application  
13                  Viewer, item number one.

14                  And then official correspondence -- I'm  
15                  going to actually just sort of jump into these  
16                  slides because we want to go quickly. These are  
17                  some of the recent milestones. What is up here,  
18                  in short, is that by the end of the calendar year,  
19                  the second of the third migration from a legacy  
20                  system to a NextGen will be OC. All examiners  
21                  will be fully off of that, of the Examining Corps,  
22                  come December, which is huge. Right? That's a

1 big Herculean lift in things to the patent's  
2 organization, in particular OPIM, for this  
3 coordinated effort, right?

4           This was -- we had some learning lessons  
5 here. We had to pause for a minute and restart.  
6 And we were highly successful at that and I think  
7 that demonstrates the fact that more than one  
8 business unit wants to see the success of the  
9 agency, right? We want to get it right. It's  
10 been a theme that Drew has allowed as OCIO to have  
11 the opportunity to do and what's been really  
12 effective, I think, for our leadership is that now  
13 we have the opportunity to get it right before we  
14 put it out there and before we get that sort of  
15 first impression, right? So, that's been really  
16 exciting for official correspondence.

17           We only have three TCs left, I think.  
18 It's the 3,900 CIU, 2,800, and 3,700. Did I get  
19 that, Debbie?

20           MS. STEPHENS: (Nodding)

21           MR. BEACH: Correct, good. All right.  
22 Search. This is coming along. It's -- we want to



1 get it right, again. We've been doing a series of  
2 stress tests. We actually took to the approach  
3 of, "Please break it. We want you to break it.  
4 That's what a stress test is." We allow up to 400  
5 users on at the same time to kind of come in there  
6 and either break the system and figure out what  
7 the problem is before we try to scale and rollout.  
8 And that's just -- it's been a coordinated effort  
9 that has less stigma and more opportunity because  
10 we're getting a lot of positive feedback from this  
11 process.

12           And, in fact, one thing I would like to  
13 add is, what was done differently with search than  
14 we've ever done before is we looked at Parity Plus  
15 enhancement and have actually deployed them.  
16 There's a highlight on text, on image, which was  
17 one of the top priorities for the Examination  
18 Corps when they did deployment last week. So,  
19 we're not going to sit here and measure ourselves  
20 that -- did we build the model A for it today just  
21 like they did in 19-oh, whatever. We decided to  
22 go with more of a -- an exciting round to go.

1           Twofold, adoption is part the equation,  
2           but also, it's a long-felt need that we look at  
3           the PE2E investment not just about the middle  
4           section. I think that's kind of how it was  
5           explained, sort of the examination, but the future  
6           enhancements and then the other piece is, a lot of  
7           the POM and infrastructure pieces that are sort of  
8           long and overdue. So, while we concentrate mostly  
9           on these efforts, there's a lot of other spend  
10          that goes on to ensure that these systems will  
11          continue to these systems will continue to  
12          succeed.

13           Patent Center is another one that we're  
14          proudly moving along and we have some  
15          communication efforts, which I'm going to have  
16          Debbie take a talk on. And just so you know, for  
17          those that are using Patent Center, we're -- we  
18          went to DOCX. That's a big switch for us. That's  
19          very important that we're able to get the text  
20          starting at the beginning of the process and  
21          continue to have images necessary as the  
22          authoritative source of data. It is an

1 opportunity for the agency to have different wins  
2 within our processing within the organization.  
3 And so that's a slow rollout and we're very  
4 excited about that. We can go to the next slide  
5 and allow Debbie to chime in.

6 MS. STEPHENS: Sure. Thanks, Tom. So,  
7 I think here it's kind of a little bit of an  
8 infomercial for us. Our current PKI technology is  
9 using certificates, authentication, and we're  
10 moving towards the end of the lifecycle for that,  
11 so this slide speaks to that infomercial that we  
12 would like to mention to PPAC and help socialize  
13 that we really need your help in messaging to our  
14 user community that the time is now to create your  
15 MyUSPTO accounts and start using those accounts.  
16 As we mature not only the Patent Center tool as a  
17 replacement for EFS Web, but the PKI certificate  
18 technology, we hope to have a full migration by  
19 December 2018.

20 And so this slide speaks to our ask of  
21 PPAC to go ahead and start creating your MyUSPTO  
22 accounts, start using them. In October, we would

1 hope that you would have the account and start  
2 migrating your certificates to that particular  
3 technology and then in November have the  
4 sponsorship be ready for you to use. So, as a  
5 user you would sponsor someone within your firm or  
6 company to act on your behalf. So, this is the  
7 timeline that we're proposing. Again, the key  
8 dates are now to establish your MyUSPTO account  
9 and start using them. And then in October,  
10 migrating them from the PKI certificate to the  
11 accounts, as well as November, the establishment  
12 of sponsorship, that's a part of the tool that  
13 would be essential for our complete migration by  
14 the end of December 2018.

15 So, I just feel like it would be an  
16 opportunity here to reach out to PPAC. We're  
17 certainly, as a community, internally sharing that  
18 message across all business units such that we  
19 have a whole communication team touching all the  
20 different business units and reaching out across  
21 the USPTO engagement and outreach efforts to  
22 socialize and stress the importance of the

1 engagement, as well as the migration and  
2 sponsorship. So, I --

3 MR. BEACH: Okay, thanks.

4 MS. STEPHENS: -- appreciate that. Tom.

5 MR. BEACH: Yeah. Yeah, sure. Thank  
6 you. And last but not least, she's covered some  
7 of the benefits that you guys can read.

8 Next, I'll talk about CPC collaboration  
9 tools. There's continued work there, both on the  
10 management and the collaboration tools. This  
11 allows us to get into this world of corrective CPC  
12 classification because if a document's not in the  
13 right place, it's hard to find. So, in short,  
14 basically what's going on here. So, when you work  
15 internationally on these kind of topics, you  
16 really have to have sort of tools and databases  
17 and a -- the ability to sort of have a common  
18 cause and then sort of have a -- what I would call  
19 a quality review, sort of. Do we both agree, as  
20 in the other offices, in ours that it's located  
21 correctly in the same place?

22 One thing that's important to know is

1       that when we look at these analytical tools when  
2       -- with CPC, you get a kind of comprehensive  
3       symbol set and if a specification's just all about  
4       semiconductors and how you make them and kind of  
5       how it's made and then the first claim is that  
6       just this -- a chemical formula. Right? We just  
7       -- that's one of the things that we really want to  
8       focus on, is that the subcombination combination  
9       or the ability for the applicant to file basically  
10      what looks like a chemical compound, even though  
11      if you use the body of the specification as your  
12      classification mechanism, it may or not have  
13      pointed you in the right direction. So, I think  
14      that's important to talk about.

15                 Global Dossier, we did not have any  
16      projects in FY 18, but we like to talk about it  
17      because it's, I guess, the coolest thing that's  
18      been done lately. So, there are projects in FY  
19      19, so that's the good news for this one. So,  
20      starting next PPAC we can report on Global  
21      Dossier. I think we're looking at some alert  
22      systems to make it a little more real- time,

1 knowing what's going on with other offices in  
2 terms of their prosecution efforts.

3 Legacy system retirements, this goes  
4 back to sort of the original point, which is, it's  
5 been a bit of a road here, but we are starting to  
6 knock off some systems in the next year or two,  
7 and I think that goes to the persistent effort of  
8 the organization at large and working the business  
9 unit to properly identify, migrate, do no harm,  
10 and bring the best to bear, right? Because these  
11 are complicated processes and we can't just turn  
12 them on, turn them off, and they're very  
13 integrated, which has been a challenge for us to  
14 really say, "We're going to turn this off, but oh,  
15 by the way, it services other things." And it's  
16 just -- it's a -- we were 3,000 people long -- not  
17 too long ago and systems were built and they were  
18 built on top of that and built on top of that.  
19 And so it's hard to do a heart transplant while  
20 you don't have the other machine, hook it up.

21 So, with that said, I will leave maybe  
22 time for questions. Did I do it? (Applause)

1 Thank you. I know I talk really fast, so  
2 hopefully that made sense.

3 CHAIR JENKINS: He brought us right on  
4 time. So, I've already negotiated with Dana while  
5 we were sitting here that I promise Jennifer  
6 legislative initiatives reporting will go first  
7 for November, okay? So, not last; Dana will go  
8 first. And if IT would like to follow Dana  
9 because you always get the short stick. I promise  
10 you that, as well, for November meeting.

11 MR. BEACH: Sure.

12 CHAIR JENKINS: So, with that.

13 MR. WALKER: Yeah. Just before David,  
14 Debbie, and Tom leave, just to say thanks for all  
15 the work you're doing. And congratulations on the  
16 OC retirement and maintaining the deadline in  
17 December 2018 because we've been looking at that  
18 deadline, that deadline hasn't moved. And also,  
19 for the user community, just a quick comment that  
20 under Mark's leadership, our Subcommittee, we give  
21 a lot of, I'd say in diplomatic terms, frank  
22 feedback to the IT Committee or the -- then the IT



1 Subcommittee and David and the team are very, very  
2 responsive. We have got a great process for  
3 keeping up-to- date with your projects. So,  
4 thanks for that dialogue because we do hear a lot  
5 of feedback about IT systems and we pass them  
6 along and the team has been very responsive to  
7 what we say. So, thank you for that. Really --

8 MR. BEACH: Sure.

9 MR. WALKER: -- been good working with  
10 you.

11 MR. BEACH: Good team.

12 CHAIR JENKINS: Thank you.

13 MR. BEACH: Okay.

14 CHAIR JENKINS: Dana.

15 MR. COLARULLI: So, the first thing I'll  
16 say is I probably could speak as fast as Tom does.

17 SPEAKER: Now you don't have to.

18 MR. COLARULLI: I guess now I don't have  
19 to. Second I'll say is, I hope there will be  
20 sufficient activity, Marylee, between now and  
21 November. Although, I have low hopes, (laughter)  
22 given --

1 CHAIR JENKINS: No worries.

2 MR. COLARULLI: Given that --

3 CHAIR JENKINS: You'll still go first.

4 MR. COLARULLI: Given selection here. I

5 -- but I --

6 CHAIR JENKINS: (Inaudible) go first.

7 MR. COLARULLI: -- appreciate I got that  
8 voucher, so.

9 SPEAKER: (Inaudible) before the  
10 election, right?

11 MR. COLARULLI: When is the next PPAC  
12 meeting? Is it --

13 SPEAKER: Before, before.

14 (Inaudible)

15 MR. COLARULLI: It's before the  
16 election. Even more exciting. (Inaudible) I'll  
17 still try to be brief and I had the opportunity to  
18 meet with the Executive Committee yesterday and  
19 brought in some of these updates already. I'll go  
20 through legislative activity on some of our  
21 operational priorities. The PPAC asked that I  
22 highlight some of the patent-related activity,

1 legislative activity, and then there's been quite  
2 a interest in some small business issues, both on  
3 hearings and in legislation that's generally  
4 supportive of the work we do here at PTO. So,  
5 with that overview, we'll go through a couple  
6 slides.

7 Tony had already touched a little bit on  
8 our funding. We are funded at slightly below our  
9 request due to a CBO score, both bills were  
10 reported out of their respective Committees in  
11 May. Tony also highlighted that the report also  
12 had some very positive words about our IP attachés  
13 program. I know Shira mentioned that, as well.  
14 We always like to see that. Unclear how they'll  
15 all move forward together when Congress comes  
16 back. The House right now is out of town for its  
17 annual August recess. They come back right after  
18 Labor Day. The Senate is in pro forma session.  
19 They'll continue to be in pro forma session right  
20 now until about August 13th, where they come back.

21 At least for the Senate, particularly  
22 the Judiciary Committee, which we spend a lot of

1 time with, they have a very active September  
2 coming up. Supreme Court nominee hearings among  
3 other issues will be taking a lot of the Senate  
4 Judiciary Committee's bandwidth. But expect the  
5 Senate to be around pro forma session for much of  
6 August, but then they'll be back before the House  
7 returns right after Labor Day.

8           They'll take up the appropriations  
9 bills, hopefully take some action before the end  
10 of the fiscal year, the end of September. If not,  
11 enter into a CR. Unclear what will happen, at  
12 this point. Likely, I think, as has happened in  
13 past years, we expect Congress to pass the CR and  
14 pass it onto the President. The length of which  
15 is unclear. But at least for PTO, commitment that  
16 we access all of our fees continues in the  
17 appropriations bills and we're happy to see that.

18           I'll mention two things. The first  
19 thing, fee setting authority, as I'm sure Tony  
20 also mentioned, expires September 16, 2018. We've  
21 been in many conversations with the Congress with  
22 hopes that they will move forward to extend our

1 authority and we've gotten a very positive  
2 feedback from the Judiciary Chairman in both the  
3 House and the Senate that they will do so. It is  
4 just a matter of time. And as I mentioned, lots  
5 of other competing issues in both Houses. There  
6 -- but likely, the Chairman will certainly move  
7 forward. We've also seen some other legislation,  
8 the Senator side from Senator Coons and Hatch, on  
9 the House side a companion bill with Chairman  
10 Chabot and Ranking Member Johnson. So, we're  
11 positive that this will move forward.

12 I'll also mention, there has been other  
13 legislation we've seen that reintroduces this idea  
14 of transitioning the PTO funding to a revolving  
15 fund and essentially takes PTO out of the  
16 appropriations process. This was a proposal that  
17 we saw in the leadup to the AIA. Compromise  
18 permission was adopted in the AIA, which generally  
19 has worked, generally has allowed PTO to access  
20 all the fees it collects. If we collect above  
21 what were appropriated, those fees go into the  
22 Patent and Trademark Fee Reserve Fund, which we

1       can access in the subsequent fiscal year. But  
2       interesting to see those provisions resurface in  
3       legislation.

4               On this slide, I'll also mention, the  
5       agency had been looking for a three-year extension  
6       of its TEAP authority. This is the Telework Act  
7       of 2010 to allow us to run a pilot program, to  
8       allow employees to waive their right to  
9       reimbursement for federal travel when we ask them  
10      to come back. And in turn, they allow -- they --  
11      we allow them to change their duty station to  
12      wherever they'd like in the country. It's been  
13      extremely successful for the USPTO, as we've said,  
14      loved by the employees. Yesterday, the Senate  
15      passed the National Defense Authorization Act,  
16      which included a provision to extend that  
17      authority to December 31, 2020. We're very happy  
18      to see that move forward. It's on its way to the  
19      President and we expect him to sign it shortly.  
20      But that's good news for the agency.

21              So, recent patent bills that have been  
22      introduced, they have been a small flurry of

1 activity. The -- in addition to the STRONGER Act,  
2 which was introduced earlier, at the end of last  
3 year. Two new bills, one by Representative  
4 Massie, another by Representative Rohrabacher just  
5 last week, and those two bills add to the  
6 discussion of what reforms may be needed to the  
7 patent system. It adds to discussion in terms of  
8 adding to what the STRONGER Act had already talked  
9 about. Now, as we've discussed at this meeting,  
10 many of the things in the STRONGER I think we  
11 could move forward with, with authority under --  
12 the USPTO already has and, in fact, the agency is  
13 looking at doing that and has moved forward in  
14 some of those things.

15           These two bills introduce a series of  
16 other suggested provisions, notably, two things  
17 that the American Invents Act had done. One,  
18 transition the U.S. from a first- to-invent to a  
19 first-inventor-to-file system. Both of these  
20 bills would revert the U.S. back to a  
21 first-to-invent system. Both bills also would  
22 repeal the provisions that established the Patent

1 Trial and Appeal Board and abolish those  
2 proceedings IPR and PGR. So, those are two very  
3 dominant provisions in these bills. I already  
4 mentioned the resurfacing of the revolving fund,  
5 proposal of that in both of these bills, as well.

6 Now, significantly, the bills differ  
7 slightly in a couple aspects. The Massie bill  
8 would overturn eBay. That was a Supreme Court  
9 case identifying when an injunction is proper.  
10 The Massie bill also addresses other Supreme Court  
11 cases, including the Lexmark case on patent  
12 exhaustion, and has a number of other features,  
13 many of which I've listed here, so I won't go into  
14 detail there.

15 The Inventor Protection Act, which was  
16 the Rohrabacher bill, again, has some provisions  
17 that are different. It would create a category of  
18 applicant and owner inventor-owned patents and  
19 subject them to special venue rules and judicial  
20 procedures in the courts and subject them to the  
21 special rules in front of the PTO, as well. So,  
22 we're still looking at those provisions to see



1       what the impact would be, but that's the focus  
2       there, creating a special category of patent  
3       applicant or patent owner and subjecting them to  
4       special rules.

5                 In addition, that bill addresses issues  
6       of willfulness and introduces a loser pays  
7       provision, again, targeted at trying to -- from  
8       some of the statements made about the bills  
9       leveled the playing field between smaller entities  
10      in the system and larger entities. So, a series  
11      of two bills adding to the public discussion about  
12      potential reforms in the system.

13                I did want to highlight one bill of  
14      general significance for both patents and  
15      trademarks and the PTO generally and that's the  
16      Small Business Innovation Protection Act. This  
17      bill has moved forward both in the House and in  
18      the Senate. Each body has sent to the other House  
19      for action an identical bill. It's unclear which  
20      one will move forward. Regardless, the identical  
21      language is supportive of much of the work that  
22      PTO does and particularly focuses on ensuring that

1 we're working with the Small Business  
2 Administration to provide clear and high-quality  
3 training particularly to small businesses.

4           So, if you take my comments on the  
5 previous two bills on patents as targeting this  
6 community, trying to level a playing field, I  
7 think this is also a helpful bill that ensures  
8 that SPA and PTO are working together to also  
9 provide assistance, guidance to this community to  
10 make sure that they can navigate effectively the  
11 patent system. Again, unclear when it might move  
12 forward. I think perhaps later this year, I think  
13 we'll see some legislative activity probably after  
14 the election.

15           Three hearings I wanted to highlight.  
16 One, oversight hearing of the PTO and Director  
17 Iancu had his second opportunity to engage members  
18 of the Congress. First time it was on the Senate  
19 side, now on the House side. Many of the same  
20 topics were discussed at this hearing. I would  
21 mention that the Director was asked about IP  
22 attachés, as well as much of our international

1 work that you've heard about today.

2           There was a focus on increasing filings  
3 from China on the trademark side and other  
4 enforcement issues in China and as well as many  
5 things that the Director has made his priorities  
6 certainly clarifying a lot around 101 and  
7 potential changes to PTAB. So, a very  
8 comprehensive hearing addressing a lot of the  
9 issues that their Director's had the opportunity  
10 to talk about publicly, also came in front of the  
11 House Judiciary Committee.

12           And then very quickly, two other  
13 hearings, both in front of the Small Business --  
14 the House Small Business Committee. The --  
15 interestingly enough, the Chairman of the House  
16 Small Business Committee has publicly said he  
17 would very much like to be Chairman of the  
18 (inaudible) at the next Congress. As a result, I  
19 think he's showed an increasing interest in many  
20 of our issues. I think that's a good thing.

21           The two -- series of two hearings that  
22 they've held did focus on issues that small

1 businesses have in navigating the patent system,  
2 both this hearing back in May and then more  
3 recently in July, featuring many of the  
4 stakeholders that we work with. Each of these --  
5 well, I'll say many of the witnesses highlighted  
6 that there is lots of resources at the PTO to help  
7 navigate the system and did focus on some of the  
8 unique challenges that they have. So, again, I  
9 think good -- a good focus.

10 We've subsequently gone up on the staff  
11 level and briefed the Staff of the House Small  
12 Business Committee on the work of the Office of  
13 Innovation Development, the Office of the Global  
14 Intellectual Property Academy, highlighted in  
15 particular some of the China road shows that we've  
16 done around the country. We've done a number this  
17 year already, have a couple more coming up in New  
18 York and other -- and Chicago in the balance of  
19 this year. Very interested in all of those  
20 activities, again, reflecting well on PTO.

21 With that, Marylee, I'm going to end and  
22 find some new things to report on first on the

1 agenda the next PPAC meeting. (Laughter) Thanks.

2 CHAIR JENKINS: Going to hold you to  
3 that. (Laughter) Any questions?

4 MR. WALKER: Well, let me correct the  
5 record that our next meeting is after the  
6 elections.

7 CHAIR JENKINS: After the election. Ah,  
8 noted. Noted for the record. Any questions for  
9 Dana? No?

10 MR. GOODSON: Yeah, I had one. And I  
11 know it doesn't make any difference to if one of  
12 these bills pass, but they're all forward-looking  
13 bills; they're not retroactive, are they? Like,  
14 first-to-file versus invent -- first-to- invent.

15 MR. COLARULLI: The provision there,  
16 yes, I think it's forward-looking. It wouldn't  
17 have retroactive -- it'd be very difficult to  
18 unravel that, if that was the case.

19 MR. GOODSON: Okay.

20 MR. COLARULLI: But yeah, that's right.

21 CHAIR JENKINS: Great. On behalf of the  
22 Committee, I just want to say what a great

1 meeting. I also was very reflective on the time  
2 this afternoon and we have so many great topics  
3 that the PTO is addressing and working on. And I  
4 will make sure these folks come back and give us  
5 some more details and maybe give us some examples  
6 of what specifically they're working on, because I  
7 know people like to see examples.

8           The Director has joined us again and  
9 which I -- (laughter) welcome back again. And I  
10 just, again, want to support and share and applaud  
11 your leadership today. You actually haven't been  
12 here that long, so -- but you have them all moving  
13 in all sorts of directions. So, I think as a  
14 stakeholder, I think that's a very good thing for  
15 the office and for the user community and for the  
16 IP system, so.

17           UNDERSECRETARY IANCU: Well, thank you  
18 and thank you for your leadership of this  
19 Committee and this meeting and the various  
20 meetings that you hold. I very much appreciate  
21 everything that you do, Marylee, and also Mike,  
22 same for -- goes for you and to all the members of

1 the PPAC. And I think our Commissioner for  
2 Patents, Drew Hirshfeld, had something to say.

3 MR. HIRSHFELD: Well, I was only going  
4 to say thank you to everybody. A lot of work goes  
5 into this day, both on the USPTO side and the PPAC  
6 side and so thank you to all the USPTO people and  
7 the PPAC folks for all of their great work. We  
8 started a day that -- where I believe Andrei said  
9 in the beginning that we measure our time by the  
10 number of PPACs.

11 This is the first time that we actually  
12 -- Marylee, I have to give you lots of credit that  
13 you ended early or at least close to -- close.  
14 We're always struggling. For those of you that  
15 couldn't see Marylee on camera, when she was --  
16 when we were behind, she was giving the (laughter)  
17 hustle signal. So, she does a great job to keep  
18 us on line.

19 Another theme that I'd just like to  
20 point out is, somebody said earlier -- and I  
21 apologize for not remembering who -- that PTO is  
22 listening. Certainly, we are listening. The

1 gentleman to my left who has been great to work  
2 with over the last six months, I know he's humble  
3 and wants to add, but I know he's been meeting  
4 with many stakeholders. I'm in a number of those  
5 meetings. I believe those have reached probably  
6 about 60 or so different stakeholder meetings.  
7 So, we are listening. We're listening that way  
8 and in a variety of other ways. And I'd also like  
9 to add that PPAC is listening. As you notice  
10 today, there were a number of emails that were  
11 being read out from either members of PPAC who are  
12 not here or members of the public who are sending  
13 their comments in, and that is not something that  
14 has always been done in the past and I think  
15 that's good. So, if we can continue this  
16 dialogue, the better.

17           The last thing I will say is, I  
18 recognize the same faces through all the PPACs  
19 that have been to -- and I'm not talking about the  
20 PTO or PPAC staff. I'm talking about others who  
21 engage. And I believe that's because people who  
22 do engage in this meeting recognize its true



1 value. So, let me ask everyone who's involved to  
2 do one favor for all of us and that's spread the  
3 word about these meetings because I do think  
4 there's a lot of great discussion that takes place  
5 and the more people that engage, the better we all  
6 are. So, thank you to everybody and I don't know  
7 if -- Marylee, if you'd like to just officially  
8 close us.

9 CHAIR JENKINS: All right. I'm going to  
10 officially close and I thank both of you. And I  
11 think I was the one that said we do -- that you  
12 are listening and we listen, too. So, on that  
13 note, remind everyone that our next meeting for  
14 PPAC is September 6, Thursday; that's going to be  
15 the fee setting hearing. Mark your calendars.  
16 And you all know I usually ask, I like to move to  
17 close the meeting and do I have a second?

18 MR. GOODSON: Second.

19 CHAIR JENKINS: Second. Thanks, Mike.  
20 So, meeting closed. Thank you.

21 MR. GOODSON: Thank you.

22 (Whereupon, at 2:59 p.m., the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

PROCEEDINGS were adjourned.)

\* \* \* \* \*

## 1 CERTIFICATE OF NOTARY PUBLIC

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

14

15 Carleton J. Anderson, III

16

17 (Signature and Seal on File)

18

19 Notary Public in and for the Commonwealth of

20 Virginia

21 Commission No. 351998

22 Expires: November 30, 2020

