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MS. JENKINS: Are we ready to start?
Yes, yes, yes. I've got a nod, Mark we're going to start. Mark told me we should start. Are we good?
So, welcome. Welcome to the August 2nd PPAC Meeting. I looked at my notes from our main meeting and I keep saying time passes so quickly and it does. And here we are in August and very excited about the many initiatives that the office is doing, but I obviously will leave all the exciting news the Director. We usually start introducing the Director so I will do that.
Andrei Iancu, Under Secretary of Commerce to Intellectual Property and Director of the U.S. PTO. If you would share some comments and then at the end we'll go around and introduce everyone at the table. So, welcome.
MR. IANCU: Sure. Thank you Marylee.
So good to see everybody here once again. It's a pleasure to be with all of you and as I was
mentioning to Marylee before we got going, we're beginning to measure our lives by PPAC acts and PPAC increments. So this is my PPAC increment so to speak. But it's great to be together.

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

The patent was signed as usual by myself as a director but more importantly in this case it was signed by the President of the United States and also the Secretary of Commerce. The signing ceremony was at the White House in the Oval Office
and it was a remarkable event. First of all let me just say that it was important for me and for the office that the PPAC was represented at the ceremony. Marylee was there for the ceremony and I think she will agree that it was a very meaningful event for the IP system.

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

Obviously IP and the patent system are critically important to this administration but even more importantly they have become an increasingly important part of the economy and our growth. So patent 10 million is an opportunity for us all to recognize the importance of our system.
So other than the fun ceremonies we are also engaged in a number of activities and policy considerations. Let me talk about some of them, and in no particular order, but let me just start with section 101. Since we last met we have issued a couple of memoranda to our examining core about how to implement Section 101.

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

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

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

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

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

A few guideposts, we believe that amendments in post grant proceedings should be done during the post grant proceedings themselves. We think the statutes asks for us to allow for that. We think they should be completed under normal circumstances in the 12 months prescribed
by the by the statute. We think they should be
fully participatory because they are intraparty
processes, so that means that both the patent
owner and the petitioners should have an
opportunity to participate in the amendments.

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

Last time I believe I mentioned that
we're also looking at the initial search process.
The search that examiners conduct during the
initial examination; I believe that surfacing the
best prior art is critically important to
conducting a good examination and issuing good
patents. So we're looking towards helping
examiners do that search, perhaps with enhanced
technology, perhaps with other tools such as
training or collaboration between examiners and 
the like. And we have an internal task force 
that's focused on those issues. 
Overall and those are just some of the 
examples. Happy to answer questions if anybody 
has questions. We're working a lot of other 
issues as well. Overall I personally believe that 
it is important for the IP system and 
practitioners in the IP system beginning with 
folks at the PTO and all of you and everybody else 
who participates to engage in, what I call, a new 
dialogue about IP and patents and the like. 
I think it is critically important for 
our economy and for our country that as leaders in 
this field we communicate the importance of 
innovation, the critical role played by inventors 
and entrepreneurs in our innovation and 
entrepreneurial ecosystems and the great benefits 
all of this activity brings to the United States. 
So I think all the policy considerations should 
keep that in mind and the discussions should have 
that in mind and promote the great benefits of our
wonderful system.

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

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

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

MR. IANCU: Thanks for the question. So IT is obviously a very high priority for us. We are looking at all aspects of our IT systems. The IT systems are very important for our examiners to conduct their work on a day-to-day basis. They're obviously very important to our stakeholders because they interact with our office in large part through electronic means.
So one of the main things that we are looking at is trying to find ways to bring us to the most up to date technologies. So instead of continuously and incrementally update the systems, which we have to do. It would be great to find the very latest technologies and potentially perhaps leapfrog our current state. This is a long-term project, it's not something that can be done overnight. But we are looking at that and frankly a great place to start would be with a search activities and the state of the art technologies that can be added to help examiners with that process. So anyway that's just that's just one example and we're working towards all that.

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

MR. HIRSHFIELD: Sure. So there is no plan to slow down patents end to end and rather we have every plan to continue moving forward. I don't know if accelerate is the right word, I
think right now we're still determining the best path forward. I know that we've made some good progress with some of the examiners tools, particularly the official correspondence tool has been a success and I know we're making some steady progress in our search tool. So a long way to say that the patents end to end is continuing, is a big focus of ours, and will remain a focus.

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

And I think as part of your platform the business community has a sense now that patents are not as valuable as they were. And you have to Defend Trade Secrets Act so people are looking more at trade secret protection in lieu of patent
protection, which is not in my opinion a great
thing because you don't have the social contract
where you are trading publication of information,
of innovation, in exchange for the limited rate.

So congratulations for that effort.

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

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

All we have to do is look at our history
from the founding of the Republic until today, and
all the amazing technology and science and growth
that we have experienced in this country and
provided leadership to the world. And throughout
all that time, all that work was backed by our
patent system and for the patent system to
function as intended and as you're suggesting we
really need to have faith in the system. The
business community must have faith in the system.

And that's why it's critically important
to understand the needs of the business community.

Of course, the business community is not
monolithic. There are many, many different
interests and they cover a whole spectrum. There
are different technologies with different life
spans, different needs, different points of view.
That's why I believe that in everything we do we
need to have a very careful balance; we need to
listen to everybody. Understand the various
pressure points in the system and provide the
appropriate balance.

The last thing we need to do is to
ignore or downgrade the patent system that will
have a detrimental effect in my opinion across the board. Instead we need to have a robust system, strengthen the system in a balanced fashion.

Thank you.

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

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

I'm interested in hearing what else you see, what other opportunities you see as far as providing a little more predictability or certainty or simplicity in understanding the 101's. I'm constantly having to explain to investors for example 101 isn't an issue here or
why 101 is an issue. And also trying to understand issue patents that issued 10 years ago that would never issue today and what risk that poses to our company for example.

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

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

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

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

MR. KNIGHT: Director, I think the
initiatives on 101 are great and I think it does promote your initiative to enhance the certainty of the patent right so the business community and the patent community can rely on that right.

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

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

I did mention the NPRM regarding claim construction. I think this is an important issue
when it comes to predictability. If you think
about it, whether you're a patent owner who's
trying to build a business around her patent or
you are a member of the public, a competitor let's
say, that is trying to assess somebody else's
patent.

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

The boundaries, at least from an
objective point of view, should be the same no
matter who reviews it. And that's why we proposed
-- that's one of the main reasons we propose that
the claim construction standards should be the same. As I said we are reviewing the comments from the public and will reach our final decisions fairly soon.

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

So that's why I think having a robust amendment process is critically important and we have been working very hard at that and I think we will have something that will go a long way towards honing in claims during the post grant process.
There are a variety of other things we're working on. Let me mention one more thing that I did not mention in my opening comments, which is the question of the review panel itself. There has been some criticism out there about the way we sometimes enhance or expand the panel. I don't particularly subscribe to those criticisms but I hear them. So we are working towards clarifying that process, providing more transparency, both to the parties in the process as well as to the public. And again hopefully in the next several weeks or so we'll have more to say about that as well. So those are some examples.

MR. KNIGHT: If I may just one follow up. One item that when I worked here that I was always grappling with, that I always thought would sort of enhance the certainty of the patent right would be when you come out with guidelines for the patent examiners, to coordinate with the board, to make certain the board judges are on the same page so that they are following the same guidelines.
Because when I worked here a lot you know I would hear from the judges that they don't have to follow those guidelines, but the judges do report to you, you prepare their performance plans. So I would think that one great initiative would be to make certain that the board judges are following the same guidelines that the examiners are following.

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

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

One thing that I know I've always been lucky because I've been on the committee for six years and I know the office listens and I always
tell -- when I go out I always tell folks they are listening to you and I do believe that the initiatives that you're doing now help to show the user community that you truly are listening. And trying to hear as many voices as possible to give guidance and that helps the business, that helps the practitioners, that it helps the courts. And so all of these things and more that you're doing are very exciting and you know we commend you for doing this and in doing the initiatives on these different issues.

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

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

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

MS. JENKINS: So with that we'd like to
move on here. So at this point, one thing I'd
like to do differently -- just a little
differently today is I've had a lot of comments
that we don't express where people are from, so if
we could when you introduce yourself if you can
just express more than just being a PPAC member,
obviously briefly. So Pam you want to start?

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

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

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

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

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

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

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

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

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


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

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

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

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

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

MR. IANCU: Thanks for having me.
MR. FAILE: Okay. So in our combined operations and quality update, we have a number of different items to go today. I will start farming trends. So is there a clicker? Thank you. Thank you, Mark. I'm actually going to start with this side.

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

So as everyone probably knows by now, we run a patent model where we're basically looking at the work that we need to do in trying to match the appropriate staff. Obviously in patents, we can't just take a patent examiners and have them examine any technology. They're pretty much
rooted in a certain technology with a little
latitude on the left and right of that technology, but you're not generally going to assign a biotech
examiners to a computer system case, et cetera.

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

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

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

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

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

So one of the questions that we often get is about our filing rates and what have filing been doing. There seems to be a narrative that
filings have been dropping off over the years. So what I have here in this graph is hopefully attempt one to kind of dispel that particular myth. What you see here and you probably can't see the numbers on the bottom, at the very bottom is on the far left is 1995 the year of filings and on the far right is 2017. So you got a pretty wide spectrum of years.

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

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

This year we are actually seeing --
you'll see that line go up a little bit more.

We're currently at about a 1.7 percent increase
over last year. And we've modeled in our patent
model about 1.5 percent, so we're kind of on that
target. We'll land somewhere in that end zone by
the end of the year. Again very important for us
to be predicting that for making sure we have our
workflows adequately staffed.

Another a big part of our work is RCE's
and if you think about the ratio of work it's
roughly 70 percent of our workload comes in under
serialized filings, 30 percent comes in over
RCE's. It's been a relative constant off
throughout the years. So in our seas you see a
little bit more of a dramatic performance. You
see an increase around the 2000 and 2006
timeframe. And as we move up lately we've been
seeing a lot of different performance in RCE's,
they have roughly been coming down and they went
up a little bit and they're coming down.
Last year at the end of 2017 we had a negative 6.7 percent growth so we were 6.7 percent below what we had last year. And right now we're even a little bit lower that we're at 7.7 percent down from last year's numbers. So the RCE part of the equation is coming down, we consider that generally a good thing. We have a number of initiatives that were designed at trying to reduce the need for RCE's. At least in the aggregate, the numbers seem to be reflecting on that trend; that's an overall positive.

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

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

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

MR. FAILE: Yes, that's a good question. Those percentages are roughly the same. The continuation part of the filings is in the 20
They don't necessarily -- the fact that is a con doesn't necessarily affect staffing trends because we will match that to the technology and they'll generally inherit their technology from the parent case, to the extent the examiners not here, we obviously would reassign it to the extent examiners overburden, we possibly would reassign it. But generally the cons counts are would be matched up with the person that had the parent case.

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

MR. FAILE: That is accurate.

MR. KNIGHT: Okay.

MR. FAILE: So Bernie makes a good point. I probably should have pointed this out.
If you look at the end of the line dial back about 4 or 5 years to 2013, you'll see a very slow increase and that's anywhere from almost flat -- you know if that line was line was flat, we'd be at zero. You see an almost flat line to it's starting to creep up a little bit but it's still in the 1 percent, 1.5 percent increase.

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

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

MR. LANG: Are there discernable trends if you look at individual technology center areas, are there trends that differ from what we see in the aggregate?
MR. FAILE: Yes good question. So Dan if you were to take the slide down and break it down just by technology center, you would see a lot of different movement. If you move down to the work groups, which are getting more into a monolithic block of technology and you compare those across all the technology centers, you would see a lot of movement there as well.

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

MR. LANG: Of course, you know, very curious how it is of the different technology
areas, what's in the IT industry versus life science. But another question, do you see different trends in foreign filers versus U.S?

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

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

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

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

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

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

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

MS. JENKINS: It's a common question because people are obviously noticing the activity
in China and how their filings have significantly increased in China alone. And then how that impacts United States. And then obviously that impacts resources here at the Patent Office, examiners review. Great, thank you.

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

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

MR. FAILE: So now I'd like to introduce John Cottingham, he's the Director of the CRU. And we had a request last time; we went through some of our design statistics for our design TC2900. There was a similar request for the work
that John does in the applications in proceedings
that he handles in central re-examined unit, the
CRU. So John's going to walk us through that, so
John.

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

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

Next, the proceedings that we handle in
the CRU include all ex-party re-examine
proceedings along with supplemental examination proceedings. We just recently couple of years ago took over all reissue applications filed in utility applications and we still handled the legacy Inter-Party Re-examination Proceedings.

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

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

Next I'd like to go over some of the filings in the Central Re-examination Unit. On the left is the ex-party re-exam filing requests. It's broken out into the differing disciplines; blue is the chemical biotech, red is electrical, green is mechanical, and designs is the little purple one down there. So as you can see the filings have kind of like -- the chemical and
mechanicals have kind of steadily stayed and the
electricals have kind of tailored off in expertly
tailed re- examines.

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

Next is just how often we find a
substantial new question in the ex- party re-exam,
which is on the left, and forward the supplemental
examination requests. In supplemental exploratory
exams we order and re-examine 95 percent of the
cases and deny about 5 percent of the time. Where
in this supplemental examination request we will
find and SNQ with substantial new questions 71
percent a time and no SNQ about 29 percent of
time. But because there is a lot more party
re-examines -- I mean the numbers can fluctuate a
lot -- the percentages fluctuate a lot more in the
supplemental exams area.
Next is the Legacy Inter-Parties Re-examines. We still have some of these floating around, about 167 of them. Seven are with currently with this Central Re-examination Unit. The rest are either with the pending trial appeal board or at the CAFC at this time. We currently have one inter-party's re-exam reopened after a CAFC decision and six are currently stayed by the PTAB.

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

Time to conclude an ex-party re-examine proceedings in supplemental examination request. The left side, the blue side is for ex-party re-examination. The top line is the time for all ex-party exams to NIRC, which is the nudge to issue a re-exam certificate and that includes appeal. So you can see it's a much higher than if
we have an ex-party re-exam without appeal. It
goes a lot quicker. We're right around 12 months
or about a year to complete an ex-party re-exam
from start to finish as long as there is no appeal
in it. Yes?

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

MR. COTTINGHAM: We have a lot less
cases. That's really it. We have a lot much
bigger volume in the patent court as opposed to
what we have. And then for the supplemental exams
without appeal we average about 9 months to NIRC
and you can see even with appeal it's not much but
you got to remember there's only 237 of these or
so. So the numbers are just small.

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

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

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

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

MR. COTTINGHAM: We do operate in
separate areas. We do talk with PTAB on an
administrative level of like, hey we do have this, we're just you know, but we do not talk substance of the cases. The PTAB handles their proceedings and we handle our proceedings.

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

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

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

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

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


MS. MARTIN-WALLACE: Next we have

quality updates and before I introduce Marty

Rater, I just want to give a very quick update on

our Step Program, which is a training program we

have for our stakeholders, specifically attorneys.

And just behind where I'm sitting is the Acting

Director of the Office of Patent Training, Debbie

Reynolds and our Ating Deputy Director, Gary Welsh

who have done an amazing job with this program.

It's a three day program where we step

our stakeholders specifically attorneys through

three days of how we train our patent examiners on

each phase and it's been just overwhelmingly

successful to the point where we can hardly meet

the demand. We've reached out to now having them

across the country; our regional offices each have

a step program.

So I just wanted to remind everyone of

it and also say because of the demand, we started

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

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

MR. RATER: Thanks, Valencia. Good
morning everybody. So the Office of Patent
Quality Assurance obviously has their internal
classification program. We've talked about that a
couple times in recent meetings. As we go into
the fiscal year on that data, we're going through
a phase of calibration validation of that data.
And one of those important steps in calibrating
the data to make sure we're on the same
wavelength, if you will with our customer is our in our external customer perceptions survey that we do twice a year.

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

Overall quality, as you can see the green line we've kind of climbed up and it's stabilized. About 50 percent of our customers are saying that quality is good or excellent. We've got a steady line down there, that red line, that's the folks that say quality is poor or very poor. It be interesting -- I should have gotten
with Andy before this, right? Because if you
remember Andy's slide you remember that chart that
goes from 2009 up to 2018 where we're at and you
know a 30 percent growth in filings and you take
everything else that we've considered over the
time, you know CPC come in there. Mr. Walker
mentioned that we're into a headwind now on a lot
of stuff of case law. So maybe you look at this
in terms of that would maintain quality, at least
in the perceptions of our customers over that time
frame. It's not a bad way to look at this.

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

Because obvious, right? Folks might be
-- I've had three years of bad service, I've had three years of this one bad rejection, I can't just get out of my mind. I'm going to continue to call you fair until I see something good. All those people are at least willing to say quality is getting better. So we do see about 20 percent of our customers do say -- and that's primarily coming from those customers that are in that fair or good group.

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

I think you'll see as we kind of go through some of these more initiatives like customer experience, that's where we'll start to be able to explore those types of issues that might be keeping those folks at that 10 percent
and not willing to come out of here.

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

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

The problem is was we get to the total
end user, now they may be having the quality that
you add or detract from this system as part of
their decision matrix. So this is really the
examiners -- your interaction with the examiners
is what that is. And that's one of the things, as
we go back into this customer experience we've got
different personas and different customers, right?
Attorneys are a customer, agents, are a customer.
You know Mindy's going to talk about different
customers in the process. Those were different
sets of customers. That's something we would have
to explore a little bit further.

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

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

MS. CAMACHO: Are they randomly
selected?
MR. RATER: Yes.

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

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

As you can see it's relatively stable we're about plus or minus 3 percent on our sampling years on this. The demographics -- that's the other thing too, we ask our customers to identify or our respondents what technology did
you file most of your applications or what were
you speaking for, for this particular wave.
They're not speaking to a particular unit, but
they'll say hey most of mine were in chemical,
they were in electrical or they were in mechanical
disciplines.

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

And just an aside on that, any
nonresponse occasionally we'll stop and take a
look at our non-respondents and I think it comes
into play with this, okay you didn't respond,
we've gone back was short survey's and say we
realize maybe didn't have the time to fill out our
15 questions or give this a whole lot, will you at
least answer our question about what his overall
quality? Is it good, fair, or excellent? Our
nonresponse studies actually showed that our non
respondents were actually more satisfied about by
5 percent more satisfied than what -- so we like
to think they were catching this is a worst case
number and were catching the complaints, we may
not be not catching all the kudos. So by all
means I'll use this opportunity to solicit kudos
as well.

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

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

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

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

MR. RATER: Fantastic segue. So what I
will do is go to this next slide. We changed --
our so historically we've done the survey since
about 2006. It was a pretty wide scope, kind of
just how happy are you, any big issues and so forth? What we did is at the beginning of -- and is the first survey that we've done with this new scheme, we've actually gone to the customers now and say just like we're doing on our internal quality reviews, we want to go by statute and tell us how satisfied are you with the consistency, the clarity, and correctness of each one of those statutes.

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

This is not surprising for us when you consider that of 9 finals and finals going out the door, 75 percent of them contain a 103 rejection, often contain multiple 103 rejections; 101's, I'll be showing you a slide just in percent of total
rejections is only by 8 or 10 percent of total rejections. But a 101 is only 15 percent of our non-final and final rejections. Huge pain point and it might not be a key driver as well because relict data in just a second. There's no variance, pretty much everywhere there's a large bucket of people that are unsatisfied with 101.

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

MS. JENKINS: Question online -- and just a reminder that everybody in the online audience, is that we do read your e-mails and we try to incorporate your questions into the meeting as best we can. Is there a copy of the survey of what the questions are that people can see what
you're asking?

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

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

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

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

MR. RATER: Couldn't agree more.

Absolutely. This is just one piece and I think
this is going to be reported out with our internal
metrics. It's got to be not only the internal
reviews that the operations does of their own
including all these different customer segments at
different points in time where in that application
that thing needs to be measured.
We've struggled in the past a little bit trying to conduct some sort of transactional surveys. So we've got a little bit of a hesitation to respond while something is still in prosecution and unspecific application but maybe the environment is more ripe for that now than it was back when we first tried to do that back in 2004.

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

MR. RATER: And I think that's where we're kind of right now with this data is just kind of to keep us a little bit in check or are we
-- is this identifying maybe something that we're
not measuring internally that we should be put in
a little bit of light on? Or is it seeing the
same patterns? Are we totally missing something?

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

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

MS. MARTIN-WALLACE: So this -- before
you move there if I can just make one point,
Marty. So I think yours and Marylee's comments
are very valid and there are places where that as well into making sure that we're meeting the needs, we're improving in the appropriate areas.

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

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

We actually went into our big data environment and said, okay pull us all office actions and what percent of all the rejections
that are made -- so there could be multiple
rejections in a case -- what percent of those
rejections were 101 rejections? And we've
actually seeing a slight decline and actually the
fancy blue dotted line I put there is one that
Berkheimer memo went out and we've actually seen a
slight decline in the 101's going out the door.

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

This is the first -- remember I said we
looked at correctness, clarity, and consistency.
So we did the survey is very simple, how often
were the rejections you received under Title 35
years ago reasonable in terms of correctness?
Then we asked about 102, we ask about 103, 112A's,
112B's and 101's. What you're going to see in the
green bar, that's the percent of the customers
that said, hey it's a reasonable in correctness
most of the time so you see 102's and 112B's about
66, 70 percent of our customers. Pretty happy
with that.

Look at the far right, that's our 101's. That's where we have our largest, if you will,
dissatisfaction or concern coming from the
customer base. Again it didn't correlate or it
wasn't a big driver of overall quality
perceptions. And also remember when I said 20
office actions, well keep in mind, so this
perception could be based on 102 or 101 rejections
they received in that period we're asking to
evaluate. So this is the correct -- this data --
and I know we have shared these slides so
everybody can look at these and wonder in a few
hours from now. Same thing you're going to see in
the 101s and the terms of clarity. You're going
to see 102 rejections, 103, and you can see the
103 numbers now. That 56 percent agree that it's
kind of clear or that it's most of all the time.
That's very similar to our overall customer
quality number, and you're going to see that with these 103 data points. And again, we're asking everyone about the office actions they saw. They probably saw 15, 16 103 rejections in this survey period versus 1 or 2 101s.

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

So again, a very high level of measure. And then this was end of '17, and this is just kind of an idea of where we're going with this is
well, do we see similar patterns in that bar chart on our left. Just shows you we've kind of got this little U-shaped here when we look at it by discipline. Our compliance rates kind of showed the same similar type of little U-shape. Are we are least in the right alignment or do we think we're doing so fantastic in one area and the customers think we're doing horrible? But yet, we think we're doing awful in one area and we're putting too much focus, and there's a customer saying yeah, nothing to see here. Move on. We want to be in alignment with what you want, and this is kind of what we're doing.

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

CHAIR JENKINS: We always have time for Mindy. Marty, thank you. I also -- it is a team effort here. I also have an answer to the question about the survey. If you search for OPQA
external quality survey on the PTO website,
hopefully you will find it, so.

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

CHAIR JENKINS: There you go.

MR. RATER: We will check that.

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

Mindy, you want to talk about ombudsman?

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

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

MS. BICKEL: Oh, gosh, I'm sorry about that. So I am Mindy Bickel. I am the associate commissioner for innovation development, and I provide oversight to the Office of Patents
Ombudsman. And I'm just going to run you through kind of a reminder of what we do, and then give you a little bit of an update on what we're seeing now. So we started in 2010.

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

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

We do follow the standards of practice of the International Ombudsman Association. We are outside of the operations area, so we are, in that sense, independent. We advocate for the process. So we don't advocate for the person
who's called us, nor do we advocate for the
office. So we try to just make sure that the
right people are addressing the issue, and in that
way we're neutral and impartial, and we provide
confidence. You can contact us and remain
confidential. We'll put your issue into the
database and use it for tracking trends, but we
won't go further in addressing your issue unless
you agree to waive confidentiality.

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

This is just the structure of the
office. We have our team, and then we have
business unit reps in every part of the patent
office. So in the technology centers we rely on experienced SPEs or quality assurance specialists to handle the issues that are raised to us. We have every division across patents, or across the Patent and Trademark Office, actually, is represented. We have people who can help us if we get a question on maintenance fees. We have a representative if we get a question regarding PTAB.

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

And we do remind people that Patents Ombudsman is not a substitute for responding to office actions by the statutory deadlines. It's not a substitute for appeal or petition. And it's mostly certainly not a substitute for
communicating directly with the examiner, SPE, or TC director. And the TC directors strongly encourage people to contact them directly if there is an issue during examination. They do want to help and we've heard that from them that they encourage people to contact them.

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

You can tell us to -- what your phone number is, to call you back, or your email address, and the best time to reach you.
Actually, I did want to note it's probably very hard to see, but there is some blue links on the bottom of the page towards the bottom. And they relate to this slide.

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

The other thing we see increasingly are inquiries regarding the ADS. And people have some trouble filling that out correctly. And so we've
done a couple of things to aid the external
customers in filling that out. So we have done
some inventor info chat and a quality chat. We
are developing an online CBT that explains how to
fill out that form, and we're also providing
information and outreach material. And I think
that one is a really good example of how we've all
sort of working together with the folks in Rick's
area in OPM, the application assistance unit team
is working with Patents Ombudsman to sort of see
what we see and what we can do about that.

When you contact us, of course, if you
want us to help you, you need to provide some
information about your application, brief
description of the inquiry, telephone number, and
email address. We do caution people not to
provide too much information in an email because
we -- if it's too detailed, we might have to make
that of record and so we just want very brief
information like you have a question about an
office action, or you have a question about
maintenance fees. And we'll talk to you about
You can actually reach us between 8:30 a.m. and 8 p.m. courtesy of the regional offices who will answer the phones after 5 p.m. east coast time. And they will also route the issues. They'll put them in the database and route them as we do. And this is my contact information if you have any questions.

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

MS. BICKEL: Sure.

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

MS. BICKEL: So there's a number of -- probably the examination process is what most people want to hear about. And I think there are numerous situations in which someone might have a
difference of opinion on a position, and getting
the experienced QAS involved in speaking with the
SPE and taking another look at the application may
help move things along. It may be that the
examiner is correct, but they find some way to
maybe help move the application a little bit
further.

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

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

MS. MARTIN-WALLACE: So just to add a
little to what Mindy was saying. She mentioned
earlier that we have tentacles across the entire
agency, specifically in the TCs, the experienced
supervisors and quality assurance specialists that work with us are actually part of the program. They are our ombudsman representatives and there are two representatives in each TC.

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

MS. CAMACHO: Mindy, thanks for the presentation. I think this is a program that not a lot of people out there know about. I understand that this isn't a substitute for going
to the examiner or the SPE or TC. What would you
say as far as what would be the standard process
that you would hope that the applicant would go
through? First contact their examiner, if they
don't get any movement there as far as getting the
-- keeping the ball rolling in the examination,
then go to the SPE, then go to the TC? Or at what
point at which should they contact you?

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

So sometimes people, I think, maybe have
a misunderstanding that we're going to take a
separate look ourselves over at our core team. We
aren't doing that. We are relying on the team that we have and all the TCs to work with the chain of command for the examiner who is working on that application. And sometimes there's a miscommunication. As sometimes, Valencia said, maybe there's a training issue for somebody, but I mean, I think generally those things could get worked out if people went to the SPE and the TC director if they couldn't work it out with the examiner.

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

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

MS. CAMACHO: Perfect, thank you.

MS. BICKEL: So the reason it got started is because the commissioner at the time was hearing from people, when she would go out and speak, I have a problem and I don't know who to call to help me solve it. And so she came back and said, we need to start a Patents Ombudsman
program and so we did launch that. And that was why. It was really for those quirky things that you didn't know who to call. So you called us and then we had to figure out, well, who does this in the office?

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

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

MS. BICKEL: That's right.

CHAIR JENKINS: And then I'd call for something else and I'd get Mindy again. And that's how I got to know Mindy. So this is really -- we were joking this is kind of her baby to
speak, and so it has evolved from, I know when we first started using it, so yeah, so very funny. But one thing I was wondering, too, is, again, it's been a phone type of response. Has it gotten a little bit more email oriented, or is it still mainly people picking up the phone and wanting to talk to a person?

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

So we really can help with that. If you don't know who to call or what -- who can help you address that issue. That's a really good place for us to be because we can do that so you don't
have to get frustrated at not knowing exactly who
handles that.

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

MS. BICKEL: Thank you.

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

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

CHAIR JENKINS: Great. And I wasn't on
the phone with her for 45 minutes just to be
clear.
MS. BICKEL: No it wasn't Marylee.

CHAIR JENKINS: Any other questions?

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

So I believe next on the schedule, I think Mindy actually has gotten us a little closer back to our scheduled time, so thank you. It looks like I have David, PTAB? So I'll do a precursor. So I was very lucky, David and I several, several months ago were talking about and where it came from was what we were describing as fact and myth about issues before the PTAB. And so I immediately said, David, why don't you come to New York and we'll do a fact or myth presentation. And David graciously, with all of his travels, somehow fit us in, and we did the presentation actually last week, last Monday, with the IIPS which is a local IP bar association in New York. And it was very well received. Now I will qualify that, that we did, through the
association, provided a hot buffet dinner and wine and beer. So that may have been why it was so well received, but I think from that David said let us consider doing this for the PPAC presentation, too. So we're going to do a variation on it. So with that, if you start with the agenda and then I'll try to help with the questions, so.

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

And again, sometimes the message is indeed in the eyes of the beholder. So what we're trying to do, again, is present as many statistics
as we possibly can in the most neutral form that
we can in the most easily accessible way to the
stakeholders. So with that, it's going to be a
very heavy statistics presentation, but hopefully
the way Marylee and I have essentially bundled the
questions together, I think it might make a little
bit more sense to folks listening online.

So again, let's see, there we go.

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

We have provided guidance via chats with
the chief as well as agency-issued guidance. The
director already this morning did talk about where
we stand with respect to the claim construction,
notice of proposed rulemaking, and then of course, we always end with upcoming events and developments. So with that, I think here we go.

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

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

This is, indeed, the graph. We've probably seen this before, and you can see that four or five, well, five or six years ago, fiscal
years ago, we were at a high of over 26,000. Now at that point we use to call it a backlog. Now we actually call it an inventory because we're down in the FY18 to just below 12,000. Now we get approximately 1,000 in a month, so we're reaching generally steady state when it comes to our input as well as our output.

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

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

MR. RUSCHKE: Actually, no. They don't have to wait two and a half years. And I might
say that that's actually being somewhat generous. There were cases that we had pending at the board much longer than two and a half years, let's just -- to be perfectly honest. And that was some practitioners have told us that they actually like that. That they use the appeal process as a way of parking an application and waiting to see how the technology developed, those sorts of things.

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

So you can see that within all of the technology centers, generally we have decreased the pendency year over year, in some cases fairly dramatically. The bar on the far right-hand side shows the overall pendency for all technologies
which says that a year ago our average was about 18 months. Now we're down to 15 months this year. And you can see it does vary by technology group, and we'll get into that a little bit here. But we still have a lot of work to do, I think, in the business method and mechanical areas as well as bio/pharma and chem to some extent. But we're doing quite well in the four electrical computer technology centers which you can see in blue where we, again, are targeting essentially a year pendency.

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

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

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

And we began this about six months ago. And we are, again, trying to reduce that very low tail, there's a very few number of cases but the ones that have been pending for an extremely long period of time. We want to get those out frequently. And you can see here in this graph that tail, which is essentially in the green; we've essentially reduced the tail as of July 2017 in the blue down to July 2018 in the orange. And you can see that differential between the two years where those oldest ones have been targeted and been making sure that the judges work on those first prior to working on any new cases.
So again, what we're trying to do is get rid of the old cases first. It seems fairly obvious but not always easy to do and this closeout program has, indeed, I think done a good job with that. So you can see we have successfully targeted this oldest appeals reducing that tail. And we've reduced the maximum, and this is an overall maximum pendency was 36 months. We're down to almost two years now, year over year, just in about the six months that the program's been in place.

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

And what we had seen, again, was that
the electrical pendency was reducing significantly
where the business method firepower relative to
intake was rapidly increasing. The results of
this after a year are shown in this slide here.
You can see that prior to that line, that vertical
line in the middle, prior to the rebalancing, we
were seeing while the inventory was decreasing,
the difference between electrical in the blue, and
then business methods in the orange were
diverging.

And so when we rebalanced the firepower
with respect to the judges' jurisdiction, you can
see that over the years since we've started now,
we're bringing -- we essentially slowed down the
electrical decrease, but we've also then narrowed
the gap with the business methods while keeping
those moving forward. So it's -- I think it's
working quite well, but as you can imagine, we
still have a fair number of business method cases
that we're still working on. So that's where
we're at right now on the ex parte appeal pendency
and inventory.
CHAIR JENKINS: So I'm just going to stop there for one second. Any questions before we jump to AIA? No?

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

MR. RUSCHKE: Absolutely.

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

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

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

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

Again, very small numbers comparatively,
but PGRs, year over year, you can see it
increasing. I'm not sure if we're -- again, if
you look at it just up until FY17, one might
conclude that it's doubling over and over and over
again year over year. Again, small number so it's
hard to say. Right now at the end of Q3 we're essentially the same number where we were at last year.

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

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

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

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

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

Now of course, we all know the Supreme Court came down with the SAS decision drastically
impacting our institution phase and the way we've been instituting case will remain to be seen how these are going to be instituted at this rate changes. We've just gotten done with a number of judicial conferences in all of our regional offices, and it was very interesting. SAS, of course, is a high priority and a very much of a hot topic for all of our practitioners. And we have been hearing from petitioners some interesting changes, potentially, in their behavior and their reacting to the SAS decision.

I also might want to say we, again, in the interest of transparency and providing as much information as possible, we have broken out institution rates by technology now. And again, we're trying to make everything color-coded. Overall, again, it's right around 61 percent, but you can see that in the bio/pharma, which is the purple line, and the green, which is the chemical line, those are showing slightly lower institution rates versus the electrical, mechanical, and business method institution rates.
Now I was looking at Jennifer, at her expression. I think that does surprise a number of the bio/pharma-chem folks, but that's the data that we're seeing that there does seem to be generally a lower rate on the chem pharma bio side compared to other technologies.

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

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

CHAIR JENKINS: Let me go to the next question. I don't know if this is the right time to ask you this but one of the questions that several stakeholders have asked is how is, and I know you have addressed this in different ways, but so how is the PTAB getting this information to examiners, to other parts of the office? What you're doing, how is, like, how is this with quality? I think maybe another -- maybe you
addressing it might be an interesting explanation as well so.

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

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

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

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

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

I believe that's actually an automated system now so it pops up on the examiner's screen right away. And I think -- and we provide the
largest paper. So we provide the petition, we provide the response. So we provide all of the substantive papers, not the procedural stuff, but the substantive papers to the examiners in the family so that they're aware of what the PTAB is doing.

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

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

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

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

            MR. RUSCHKE: Please.

            MS. MARTIN-WALLACE: -- a few examples
of how we collaborate together. So as David said
the training that we do together, we've also worked together on some webcasts for our examiners, for training for examiners as well as public webcasts that we've done together. We meet frequently.

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

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

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

MR. RUSCHKE: Okay.

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

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

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

MR. RUSCHKE: But this is something that's -- that we hear quite frequently, and sometimes it comes out either nearly all or sometimes it's 80 percent, 90 percent. We do hear that fairly frequently. And I think it's important to address. Now here's our famous, or perhaps infamous, waterfall slide. Again, this was a dataset that we wanted to put out there, but this is a cumulative dataset since the beginning of AIA. This is not year over year. But it does show you that filing a petition, 8,700 to date,
only 2,200 have reached final written decision
where you would actually have a decision on
patentability. So there's a lot of things that
happen in-between.

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

So what we've been trying to say,
though, and maybe this is an interesting slide,
too, just on a settlement piece, typically overall
it's about a third of the cases settled. But
again, let's try to break this out year over year,
and we have in blue post-institution, red
pre-institution settlements. Right now we're
settling in at around the low twenties. We're
right around 23 percent settlement overall.
We, of course, are aware that some folks do not view settlements as a positive necessarily. But I think in terms of advising your client, this data, hopefully, can be helpful and say that at this point, these are the settlement rates that we are seeing in AIA trial work. But I do want to say, this is probably -- this next slide is a fairly new slide that we've broken out again, year over year, to try to put a little bit more granularity on the data that we present.

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

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

Not too unsurprisingly, where we have found all claims patentable at final written decision over the last two fiscal years has actually increased by 15 percent, from 12 percent to 27 percent. So the initial gap, which was essentially 61 percent, is between the red line and the blue line in FY15, has now been
essentially converging in FY17 to around 21
percent. That's a fairly significant shift in
what the PTAB is finding at final written
decision.

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

So I do highlight this slide because I
think it points out how, indeed, the early
narratives about the high invalidation rate could
easily have taken route, but that I advise folks
to look at this slide and see how that's changed
year over year particularly if you go from a 61
percent unpatentable versus patentable delta two
years to essentially a 31 percent delta year over
year in FY17. Is that clear? I know it's a lot of data there, but I think it's a message that we try to get home, and sometimes it doesn't necessarily get out there because people are using cumulative data from the beginning of AIA, and that will give you very different results.

Whereas if you look at this year over year trend data, that actually is showing, I think, somewhat of a different story.

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

MR. RUSCHKE: It could be.

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

MR. RUSCHKE: Well, again, part of you'd have to look at it, Mike, since IPRs could be patents that issued many, many, many years
ago, you'd have to actually get into -- you have to parse it out as to which -- when they issued, if you will, and do that sort of overlay. But generally, you might say that, but I would just caution jumping to that necessarily without knowing exactly when the patents issued.

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

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

MR. LANG: But overall, I think your message is a very correct one, and I think that refocuses it on people that this is, in many ways, a balanced procedure that gives people, both
patent owners and petitioners, a fair shot. I mean, we can certainly all be upset in individual cases where we, as a petitioner or as a patent owner, weren't successful, and I've certainly had some of those to complain about myself. But I see this as a procedure that's very successful and important piece of our patent system, and should continue, and there may be changes, but hopefully they won't take away from that successful record.

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

And I have to say, those interactions with those stakeholders where they've actually
gone in and looked at their portfolio, their experience before the board, that's been very, very powerful to us. It actually does inform you that the experience that chose clients and those attorneys in those companies are actually dealing with on a day-to-day basis. So that's, I think, a very, very helpful piece.

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

What happens to your patent along that way? And again, it's all built off that waterfall data. And we provided this data based on a per petition basis, which is in green, and a per patent basis, which is in blue. And we've defined, essentially, a patent being unchanged from beginning to end, meaning you didn't get
instituted on. The case was settled, or claims were found patentable at the final written decision stage.

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

So we are going to try to carve that out of our data to make it very, very clear that the things that it -- were influenced by PTAB, we had control over, versus what you, as parties, settled out as. But I do think it's an interesting slide, going again, to the analogy of at what point of
the trial what do you advise your client. The
message that we're saying, when you get a petition
filed on day one, this is the dataset that you
might want to look at in analyzing the advice you
give to your client.

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

MR. GOODSON: Can you back up one slide?

MR. RUSCHKE: Sure.

MR. GOODSON: I find this fascinating,
your last set of points, that I would expect some
claims to be in-between all and no, and it doesn't
turn out that way. And to me that's -- it seems
out of kilter. On the other hand, I think it's
proof that the system is working. People are looking -- the judges are looking at these claims very seriously.

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

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

So I think you're going to find the mixed results to go up. That's my prediction right now, just as a result of the Supreme Court decision. And that goes along with what the
director has been very, very strong on, and I think it's the right way to go, of course, is to provide to the patent owners and the petitioner, at the decision to institute stage, as much information as we can with respect to both patentability and unpatentability at that preliminary stage. But make sure that both parties understand where we're going forward. So that when we do go forward you can understand, we have to find at least one claim, one ground to have a reasonable likelihood of unpatentability, but maybe not the rest of it, and the rest of it will come out in the statistics, Mark. And I think that's a really good point. Thank you for raising that.

CHAIR JENKINS: So before we go on to the next subject, on online comment/question jumping back to the interplay between the PTAB and the examiners. And questioning the fact that if the examiners have the expertise in the subject matter, and they've reviewed art, and then that same art goes to an AIA trial, and shouldn't there
be some difference given by the judges to the
examiner and the review. And to be fair, too, I
mean, the examiner is spending a significant
amount of time, probably doing some sort of
exchange, both by filings and possibly by
interviews in person. That they really have --
they have the record, so to speak, so.

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

In about the last six to eight months we
have put out seven, I believe informative
decisions on the factors that we will look at with
respect to reviewing an examiner's work product.
And those factors, of course, include the level of
analysis that the examiner did, was it in-depth,
was it cursory, was it just on an IDS, was it on a large IDS, was it on a small IDS, those sorts of things. Cited in a foreign search report, the similarity of the references that were being shown versus what was found with the examiner.

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

But the question that you raised, I think, is very important is this level of deference. You will see in our cases that there is some ability to try -- that we're trying to find and hone in on the standard of looking at the examinations -- examiner's work product, and what level of deference that deserves. And it does
deserve deference, of course. Now what we're
encouraging patent owners and petitioners is to
help us in that process.

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

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

Big caveat, once again, April 24th SAS.
We have used 325(d) frequently in order to limit the range of issues and only go forward on those -- I think that's me. If somebody could turn off their livestream I think that's -- there's a delay and that's what we're hearing. Thank you.

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

MR. KNIGHT: David, I think it's a -- I don't expect you to answer this right now but I think an interesting legal issue arises on that deference question because I understand how under 325(d) you don't have to look at our -- already looked at by the office. But to give deference to what the examiner did kind of I wonder how that would work under our preponderance of evidence standard in the statute that the board must
determine patentability by a preponderance of
evidence, and whether that's consistent with
giving deference to the examiner's opinion.

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

And again, it's -- I think it'll fit
fine with the preponderance standard which is
post-institution. What we're trying to find out
is what level of, you know, what factors, and what
level of analysis, frankly. The example, again,
that we have seen is if the examiner had an IDS with only three references on it, and those are the 3 references before us, that's a different situation, perhaps, than when there's 1,000 reference IDS and those 3 references are somehow in here, but the examiner never applied it.

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

CHAIR JENKINS: Want to move on, yeah?

MR. RUSCHKE: Sure.

CHAIR JENKINS: So motions to amend.

MR. RUSCHKE: Hot topic.

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

MR. RUSCHKE: As the director said, we have been looking at PTAB up and down, every which way, and this topic is indeed a hot topic. And at
our judicial conferences that we've taken through all of our regional offices as well as here, we spent an entire hot topic session in the afternoon trying to get feedback from the stakeholders as to what they were looking for in a revised motion to amend practice.

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

And as a result of that, you can see in this slide that the reason we haven't been granting those motions to amend are these statutory and regulatory reasons. And that, again, it's not complying with the basic statutory provisions, or underneath 316 where there was not a reasonable number of substitute claims, the
claims weren't narrow, or there wasn't written description support. There was new matter for the proposed substitute claims.

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

And again, the highlights that he mentioned this morning, I would like to reiterate. There is the requirement of trying to get all the work done with the one-year period, that's for sure. But again, is it a way that we can provide multiple opportunities for the patent owner to amend, provide guidance earlier on in the process, so that the patent owner doesn't get a decision on
all claims, including their substitute claims, at
the final written decision stage.

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

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

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

This is actually to replace some of the
precedential and informative decisions that we had
out there where the burden was placed on the
patent owner. So those have been de-designated,
and this one has been designated in its place. I
highly recommend that you go through this as both
patent owner and petitioner. We're trying to
include this informative order in the vast
majority of our cases to provide guidance to you. And again, it just helps provide where we are at this point after Aqua Products.

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

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

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

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

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

MR. KNIGHT:  David?

MR. RUSCHKE:  Yes, sure.

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

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

MR. KNIGHT:  Okay.

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

This next slide, though, goes to the gang tackling of it. And again, this is a
situation where codefendants, as Bernie just
raised potentially, somehow working together in
order to gang tackle a single patent owner. And
what we are seeing is 85 percent of patents are
challenged on a single -- by a single petitioner.
So it's one petitioner, one patent owner. The
largest gang, if you will, according to this is
eight. And seven and eight, well, actually, it
looks like from five, six, seven, and eight those
sorts of gangs are fairly small numbers. Again,
85 up to 95 percent are either challenged by one
or two petitioners.

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

MR. RUSCHKE: You know, that's -- I
would love to have this broken down by technology.
We don't. What we do have broken down, I'm not
sure if I have my data in this slide, like I don't
think I do -- oh, I do actually, are orange
book-listed patents. Now those get at the
technology piece and it's fairly easy for us to do
that because we -- if they're listed in the orange book we know what they are. The rest we have to actually manually hand count and figure out what technology they go to and divide out the data.

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

CHAIR JENKINS: Want to go to the next question?

MR. RUSCHKE: Please.

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

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

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

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

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

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

CHAIR JENKINS: Changing topic -- oh,

Jennifer, you have a question? No? Okay.
Changing topics, yeah? Expanded panel study,
question, does the PTAB expand panels to reach a
particular result in a case?

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

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

So this slide here is just saying essentially, if you look at the numbers, you know, we've done of 6,000 decisions on institution, 23 have been expanded. Results, underlying results haven't changed. Interlocutory orders, again, thousands of interlocutory orders, we can't even count them. It's happened about 31 times and
we've never expanded in over -- in about 2,000 final written decisions. So it is, indeed, rare and even rarer to change the underlying result. But all of this is under review so stay tuned. Hopefully, you'll be seeing something very shortly that will help clarify this and help clarify the precedential process as well.

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

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

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

I do have this slide here which, in the interest of time, I don't think we necessarily need to go through, but as again, this is talking about when you have an orange book-listed patent, and you're originally challenged at that very first petition stage, we're seeing 83 percent of those patents being unchanged by PTAB all the way through the process. And in 14 percent, that's
the dark blue wedge, where we're seeing all orange book -- all instituted claims being held unpatentable. So again, looking at the entire timeframe of whether they're changed and unchanged by the PTAB.

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

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

A couple of studies that we do have ongoing is a parallel proceedings study where the goals to exploring the interaction between the
parallel proceedings, that's the AIA reexamine, reissue, and this is a joint effort between PTAB and CRU. And also we do have one here underneath the section 325(d) study which is, again, coordinating with patents to look at when the examination corps looks at something, and underneath our statute 325(d) how much should we be reevaluating and redoing the examiner's work product. So those are the two big studies that we have ongoing both with intersecting with patents.

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

MR. RUSCHKE: Well, we would have had them completed but for the Supreme Court, unfortunately. Our workload increased, and maybe just to give you a head's up, again, I know in the interest of time merely I was just going to say, you know, on SAS the simple -- I know this is a hot topic. We did put out guidance, but just so that we're all on the same page, when we looked at our existing workload in April when it came down, 18 percent of all of the petitions where we had
already instituted on, we hadn't instituted on all claims. In 18 percent of all those petitions we hadn't instituted on all grounds.

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

It is a moving target, and it is evolving over time as we've seen and heard from the stakeholders when we've been out at our judicial conferences. Strategies are changing so
we shall remain to be seen. And so this will need to be updated. We're hoping to do another one hopefully in August. So stay tuned and we'll give you more information on that.

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

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

In fact, you know, they did make a decision fairly quickly sort of affirming our initial guidance that not only claims, but also all grounds needed to be included. So I have to check to be honest with you, Mike. I mean, we did use the six-month extension period in about a couple dozen cases where we were just not able to
get the final written decision out in the year
deadline because of all of the extra work that
needed to be done because of SAS. And I would bet
in about a third of all of our hearings we
actually postponed those hearings in order to make
sure that we were able to have, essentially, a
single hearing on all the grounds and all the
claims. So we would have, essentially, one record
going forward.

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

CHAIR JENKINS: Actually, Julie has been
listening. Julie, you want to ask your question
now? You hear me? You want to introduce yourself
if you're able to? No? Okay. I know she's
there. She's been emailing me. Okay. Why don't we keep going?

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

And last but not least, just to wrap this up again, this is our revamped webpage. If you're missing what PTAB is doing and want to know what PTAB is doing, I highly recommend you make this your favorites. You can see upcoming PTAB events there. This is an old slide shot where we had the chat with the chiefs. As I mentioned, we're probably going to have another one here in August.
If you're worried about missing these, I highly recommend that you subscribe to the PTAB email blast. If you're unfamiliar with that, I think you just Google on the website email --

MR. BOALICK: It's the subscription --

MR. RUSCHKE: Subscription --

MR. BOALICK: -- the USPTO subscription center.

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

CHAIR JENKINS: I just want to commend the PTAB and all of its efforts, and David going out and really trying to engage with stakeholders,
getting the message out. Often very difficult
with rule changes and new decisions coming down,
but in trying to keep the user community informed,
I think highly commendable. I do believe you
should take a couple of days of vacation, so but
for the user community it's all on the website.
It's all accessible. And it's just something that
we all should be appreciating for the level of
commitment from your group and you.

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

CHAIR JENKINS: Thank you. We're now
going to go to finance so, Tony?

MR. SCARDINO: Let me try that again.

Good morning. All right. Always hard to follow such a great act in David Ruschke but I'm going to try anyway, at least talk about a different subject matter.

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

Spending is also pretty much according to plan. So you'll see here we are going to end the year, we think, as of today, with an operating reserve of roughly $280 million. Our goal was to
end with a $300 million operating reserve, so we would like to see that a little higher, and I'll be talking about that later in my slides as to how we're going to address that.

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

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

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

Strategic plan, the director last week had a town hall where he basically went over the specifics of the strategic plan to all staff. We had about 4,000 people, our staff, that were actually either in the room or on -- doing via the web. So it was very successful and Drew and Mary
also presented on the specifics of our strategic plan. That will be also provided for public comment later this summer, and then we believe we will be releasing it in final draft -- in final form this fall. So you'll see that soon.

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

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

MR. WALKER: Just be on your website?

So people will go there, look, and then there'll be some time line to provide time --

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

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

So the increased revenue would enable us
to continue improving a lot of information
technology that I know David Chiles will speak to
later today including using things like artificial
intelligence for search in a patent examination field. So before you ask questions, some people would ask, well, you just set new fees in January. Why are you starting this process over again? We are starting this process over again because it's about a 30-month process. It takes a long time and it's for good reason, because we get a lot of public comment throughout the process, and we try to incorporate that so that any fee proposal that does go final has input from all interested parties.

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

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

Testimony at the public hearing, written comments will be the first, but not the last, opportunity for public comment. So as I mentioned, that's why it takes 30 months. We will have a couple of different bites of this apple. A notice of proposed rulemaking, or NPRM, is anticipated to be published in late summer of 2019, so roughly a year from now. A 60-day public
comment period will follow the publication of the
NRPM, so the public will have another opportunity.
And then we'll take that input into consideration
for when we draft our final rule.

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

CHAIR JENKINS: Tony, obviously, maybe
we can just step back a minute. The PPAC is an
advisory committee to the U.S. Patent and
Trademark Office. It's roughly been in existence
for almost 19 years. We exist by charter which is
accessible on the PPAC webpage, for further
reading, but one of the parameters for being an
advisory committee is that we are subject to
working with the office with respect to any
proposed fees. And putting together -- having a
hearing, and it's all based on timeline, and also
putting a report that we then submit to the office
based upon what happened and the comments that we
get.
So obviously, this, for the user community who's listening, this is an important aspect of our committee, and we take this role very seriously. So one thing I want to share, too, is I actually -- Esther Kepplinger was chair at the time, but I ended up having to do the hearing that day. And one of the things that I was disappointed in was the response from the user community to comment on the past fees. So I encourage those who have an interest about commenting about the new fees, to be aware that they can provide testimony during our hearing on September 6th, and we encourage folks to please do that.

Because I think it not only is helpful for us in drafting a report to the office that we think will be meaningful, but also it's helpful for the office to hear what the user community is either indirectly or directly saying to us as a committee. So I think that's important to transcribe.
MR. SCARDINO: We completely agree. I think the whole process is better with the more input that we get. Just want to remind folks that at the hearing we're there to introduce and explain any fee proposals but not to have an actual dialogue of answering questions there.

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

MR. SCARDINO: Yep.

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

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

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

MR. SCARDINO: So there are many reasons why it's important to have fee setting authority. Before we had fee setting authority, we had the ability to raise fees across the board, it was called a CPI adjustment, right, and that's not targeted. So in other words, if a fee was
misaligned, oh, they'll just continue that or make it worse every year by possibly us increasing it by roughly inflation. With fee setting authority, we have the ability to adjust fees, which is we can introduce new fees, we can eliminate fees, we can adjust them up or down, right?

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

So sometimes we do introduce a new fee, and we would like to get closer to full cost recovery. And we're trying to get a balanced process. What we always want to keep in mind, the whole philosophy is low barrier to entry. So patent applications, filing, search, and exam are less than full cost, and then we make that up on
the back end with maintenance fees and kind of along the way. It's a good system. Most countries do this, but it's certainly not perfect. So the ability to adjust that at times is helpful especially as we may see the business model change a little bit.

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

MR. WALKER: All right, Tony, just to underline something you said earlier. I mean, I'm reading the federal register notice and it says that the proposal for fees will be published by
August 29th. I think some people may have read
that on August 29th.

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

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

MR. SCARDINO: Yeah, absolutely.

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

MR. SCARDINO: Yep, yep.

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

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

CHAIR JENKINS: And just to be clear,
too, the hearing that we have on the 6th is open
to the public. You may attend.

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

CHAIR JENKINS: It'll also be webcast.

You cannot give testimony. As we try to do during
these meetings, generally, Mike and I are fielding
emails and trying to include them in the
discussion as well as other committee members as
well. We will not be able to do that during the
hearing.

MR. SCARDINO: Correct.

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

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

CHAIR JENKINS: Exactly.

MR. SCARDINO: Yes.

CHAIR JENKINS: Exactly.

MR. SCARDINO: This is our third
go-round of public hearings on setting fees. So
we're still mastering this, but that is how the
process works, correct.

CHAIR JENKINS: Exactly. Okay.

Anything else from the committee on this very
important topic? No? Mark?

MR. GOODSON: Oh, just a quick question.

There is the meeting the 5th through 6th of
September?

CHAIR JENKINS: The 6th.

MR. SCARDINO: 6th.

CHAIR JENKINS: Thursday.

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

CHAIR JENKINS: Ah, it's for everyone.

It's for the entire PPAC. It's from 9 to 11 on
Thursday morning, and, yes, it's for the entire
commitee to participate so, and the public, so,

Jennifer.

MS. CAMACHO: Just one point of
clarification. They can't -- folks who are
watching on the webcast can't send you emails, but
can they speak or --
CHAIR JENKINS: No.

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

CHAIR JENKINS: Yes.

MS. CAMACHO: Very good, thanks.

CHAIR JENKINS: Anything else? Okay, Mike?

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

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

CHAIR JENKINS: Tony, anything else?

MR. SCARDINO: No, I just want to thank the committee in advance. I know there's a lot of work ahead between that hearing, your report, your
annual report, so we appreciate all of your assistance and help there. And we are here to provide any assistance you may need.

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

(Recess)

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

CHAIR JENKINS: Hey, oh.

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

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

MS. MAR-SPINOLA: Okay, great. Shall we start? I don't think the web -- let me refresh that, too. But good afternoon, everyone. This is
Julie Mar-Spinola, Chief Intellectual Property Officer and Vice President of Legal Operations for Finjan Holdings. That was long. Our offices are here in Palo Alto, California. I apologize for missing today's meeting. I had intended to be there, but we just had some flight complications midway. So, thank you very much.

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

CHAIR JENKINS: Julie, thanks. Noted and yeah. We're trying -- over the past year, I don't know if folks have noticed, but we really have tried to change the way the PPAC operates. Our meetings have been different in the sense that our topics have had more attention, so we've had a little longer to talk about issues. We've really
been listening to stakeholders and addressing questions. In fact, two of the questions from the afternoon session in particular were based on committee member input as well as stakeholder input. So, continue to reach out. We're trying to read your emails during the meeting as best we can and if we can fit in some questions during the meeting on your topic, we will try.

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

"If you do want to present oral testimony at the hearing, a request in writing must be submitted no later than August 29th. Requests to testify should include the following: The name of the person wishing to testify; the person's contact information, telephone, and email
address; the organization the person represents, if any; an indication of the amount of time needed for the testimony. Requests to testify must be submitted by email to Jennifer Lo at jennifer.lo, L-O, at uspto.gov. Speakers providing testimony at the hearing should submit a written copy of their testimony for inclusion in the record of the proceedings no longer -- no later than September 13th."

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

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

MS. PERLMUTTER: Well, good afternoon, everyone. I'm going to touch on three topics. One is to talk a little bit about the Standing
Committee on Patents at the World Intellectual Property Organization. Second is to shed some light on what's happening with patent filings relating to China internationally. And then just a couple of miscellaneous points to make you aware of.

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

And in the beginning, it was, in fact, discussing quite substantive topics, including harmonization of national law as well as
procedures. But that's broken down a bit. So, let's -- just to give you an idea of what happened, in the beginning, the SCP was, in fact, talking about harmonization and the Committee produced the text of what became the Patent Law Treaty and began to discuss a Substantive Patent Law Treaty.

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

So, what we've been doing to get past this impasse is to move to what everyone calls a balanced workplan and, of course, the word balance is always key. No one can be against balance. And the idea behind this workplan is just to have items on it that all countries at different stages
of development are interested in. So, at the moment there is five topics: Exceptions and limitations to rights, patent quality including opposition systems and work-sharing, patents and health, confidentiality of communications between clients and patent advisors, and technology transfer. Now, before this makes you very nervous, just to stress on all of these topics the work that's being done is studies or experience-sharing rather than, again, a norm-setting kind of exercise.

Oops. So, there are a few challenges -- I won't go into this -- where people have proposed various things that we don't find acceptable, including doing further work and adopting the recommendations of the UN High-Level Panel on Access to Medicines. And at the moment, what is happening, we just had a meeting a few weeks ago and the Secretariat presented two updated documents of past studies. One is on the Regulatory Review Exception or Bolar and the other is an updated Study on Inventive Step. And then
members describe their experiences with cooperation in search and examination, with making patent information publicly accessible, and with ensuring the confidentiality of communications between clients and patent advisors.

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

So, just finally, as you can tell a bit from this description, the status quo at the SCP at this point is a bit of a truce between opposing
factions and we're trying to do two things. At the moment, what we're trying to do is to focus on non-sensitive technical matters so that we can make some progress on a number of things and then to see if we can foster an overall positive environment for resuming normative work, for example, things having to do with substantive patent law harmonization.

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

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

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

So, first of all, if you look at these
numbers, in 2016, worldwide patent filings
exceeded 3 million, so they're going up 8 percent
-- more than 8 percent higher than 2015. And as
you can see, the growth was driven overwhelmingly by China and about 40 -- almost 43 percent of the total worldwide patent filings were filed in China. So, that's quite a number. If you look at the filing trends for the IP 5 Offices, it's quite dramatic. That red line, of course, is China and you can see it going dramatically up and overtaking the other countries. And one point I wanted to make, as dramatic as that looks, the 1.3 million applications from China reflected on that graph include only invention patent applications. And if you added utility model and design applications, the total would be three-and-a-half million, so almost three times as high. So, quite dramatic numbers.

And then if you look at the patent applications at SIPO in China itself, there has been a substantial increase over the past decade. So, what's interesting -- well, it's all interesting, but (laughs) one of the interesting statistics is that while the filings from non-residents have increased, they are by far
dwarfed by the filings from China itself and
that's over 90 percent of the filings are from
Chinese applicants. So, we -- while we're trying
to figure out exactly what that means, we suspect
that it's because of government subsidies that are
provided at the national, provincial, and
municipal levels and that's a major driving force
in these high numbers.

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

And then we've looked at the fields of
technology and much of the growth is in the areas
of computer technology and medical technology. So, for computer technology, it increased between 2015 and 2016 by 62 percent. And medical technology increased in that same period by 20 percent. So, again, all of these numbers are really quite remarkable.

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

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

MR. POWELL: Yeah, I can.

MS. PERLMUTTER: I'll finish and then we'll go to your slides.
MR. POWELL: Oh, okay. Either way.

MS. PERLMUTTER: Yes.

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

MS. PERLMUTTER: Yeah.

MR. KNIGHT: -- by all these filings?

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

MR. TOOLE: Right.

MR. POWELL: Andy, I would just add that when you see what's going on here in the U.S., which is a very granular look at national filings here in the U.S., it'll show what of that big red streak is actually winding up here as a cross-filing. So, noting that we've presented. I'm sure Andy has some economic insights, as well. So, Andy.
MR. TOOLE: Sure. I -- and I think that the biggest concern is about patent quality and there's some evidence that all of the spike in China is not driven by high-quality patents. The jury is still out; there's no final conclusion. But some initial evidence from some academics has shown that there are fewer claims per patent that are being filed in China.

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

MS. PERLMUTTER: Yeah. But clearly there is a question of what will be the impact
competitively of the relative amounts of
innovation going on in both countries. And,
Larry, I didn't know if you all know Larry Lian
from our China team.

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

MR. WALKER: Now, on the issue of
burdens and freedom to operate, one thing I've
heard anecdotally from people in the IP community
is that a number of these patent filings in China
are copies of older granted U.S. patents from U.S.
Patentees that are being filed in China, granted
in China, and then being waived at companies
outside China. And so now these U.S. companies
are faced with having to deal with invalidity
trials in China for inventions they made on
patents they had and it's a huge burden. Is there
some way the office is helping to address that
issue or have you seen it, I should say that, I
CHAIR JENKINS: It is -- so, I can -- personal experience. Even more than that, they file here on issued patents here which they have copied and then you have to challenge those patents before they go any further in the prosecution system and then they don't want to give up the U.S. patent application they filed because there's a timing issue over money that they obtain supposedly based on Chinese subsidies. So, it's a really complicated, expensive, "I see this coming onto the horizon" issue. And even if you look at the small microcosm of the trade mark issue that they're presenting, I mean, this is what -- this is even more cumbersome, more time-consuming, more expensive. So, sorry.

MR. HIRSHFELD: Can I --

CHAIR JENKINS: Yeah.

MR. HIRSHFELD: -- chime in?

CHAIR JENKINS: Sorry. Oh.

MR. HIRSHFELD: One point is, I believe what Chair is talking about, most of the numbers
are international numbers or numbers in China and at WIPO; Mark does have numbers on U.S. filings. So, before we draw too many conclusions about Chinese filing in the U.S., let's listen to those numbers because I think the change right now is a lot less in the U.S. in terms of Chinese filings and what we're seeing worldwide. Just my perception, but Mark will have those numbers.

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

SPEAKER: Right, right.

MR. WALKER: Okay, yeah.

SPEAKER: Right, so --

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

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

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

4. MS. PERLMUTTER: Yeah. And point taken and we will look into it and report more back to
you. So, we're aware that this happens. We need
to think about what more can be done.

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

SPEAKER: As a national stage entry?
MR. PEARSON: I mean, they all designate
the U.S.

MR. POWELL: Yeah. Charlie points out
--

SPEAKER: Yeah.
MR. POWELL: -- that they all designate
the U.S. --

SPEAKER: That's right.
MR. POWELL: -- in the current system,
so.

MR. PEARSON: The numbers of entries,
that's the other issue and I think we do have that
information; I don't have it with me.
MR. POWELL: Yeah.
SPEAKER: Okay.
MR. POWELL: We can --
SPEAKER: I prefer the chart.
MR. POWELL: -- get that information.
SPEAKER: Yeah.
MR. POWELL: If you don't have it, it's all right.
SPEAKER: You know what we're trying to say.
MR. POWELL: Yeah.
SPEAKER: Thanks.
SPEAKER: Yeah.
SPEAKER: -- and then I'll make my two other --
MR. POWELL: Perfect. Okay. Let me --
SPEAKER: You can skip by -- yeah.
MR. POWELL: Okay. While we're on the topic of Chinese data, I just wanted to share with you a few things here. There we go. And I know this looks like an EKG of a heart patient, (laughter) but if you just kind of follow the
general slope going on here -- if you look at, for example, design filings of the USPTO, over the last several years they've been generally quite up and we've had to increase our staff of design examiners and so forth accordingly.

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

This -- because of a broader question about just filing generally, this shows serialize filings, okay, (inaudible) at the USPTO. Just a reminder, serialize means having a new serial number, which means that we're not talking about RCEs. RCEs, particularly when they were lots of them, really skew the numbers, but think of this
as new inventions. Looking on the left, filed domestically, okay? No foreign priority, usually, 62 percent. And that's actually up, which kind of sways the other way on the arguments that American innovators are giving up on the patent system. This -- that's actually up. So, that's on the right-hand slide. It's 38 percent of our new inventions are received from foreign offices or from foreign applicants.

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

Now, you see, China is up, okay? And of all our foreign filings, they constitute 12 percent. Okay? And again, going back to this slide, that's 4 percent of our filings overall of new inventions, say. So, they are going up, but at least currently today it's not overtaking us.

What I don't have here and we will try to get -- we will get you for the next is where the rate of grants here because I think that begs to the quality, as Andy pointed out and others and Bernie and others. They're just filing stuff here and letting it go abandoned and not getting grants and what's the point? This just burdens our system and our fees. If they are, then we'll have to see.

And you actually have to look at this stuff because certain countries -- so, for example, Denmark, okay? Their grant rates are what you call surprisingly low and the reason is, is because they're heavy into medical devices,
okay, which is a very high-litigated, competitive, got to keep the broad claim field, and the rate -- rates aren't high there. So, you actually have to look at the subject matter as well as the country of origin tried to have any good (inaudible)

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

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

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

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

MR. HIRSHFELD: Okay.

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

MR. HIRSHFELD: Right.

MR. POWELL: And this will put that into
context --

MR. HIRSHFELD: Okay.

MR. POWELL: -- and --

MR. HIRSHFELD: Yeah.

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

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

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

MR. LANG: Priority, okay.

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

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

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

MR. HIRSHFELD: Mark --

MR. POWELL: So --

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

MR. POWELL: Yeah. Go ahead.

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

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

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

MR. POWELL: Right.

MR. HIRSHFELD: So, again, that's a -- it's a slight increase, but somewhere around 2 or
MR. POWELL: -- more than 10 years ago, but it's still only 4 percent.

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

MR. POWELL: Right.

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

MR. LANG: Last time, we talked a little bit about a problem of bad machine translations from, well, out of the non-U.S. Filings. Is that
something that has a geographic footprint?

MR. POWELL: Did you say machine translations --

MR. LANG: Yes, yeah.

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

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

MR. HIRSHFELD: So, I --

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

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

MR. POWELL: Sure.

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

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

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

MS. CAMACHO: Mark, I --

SPEAKER: Okay. I'm going to --

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

MR. POWELL: Yes.

MS. CAMACHO: -- that right? So, have
we seen any increase in request or petitions under that program?

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

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

MR. POWELL: I'm sorry?

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

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

MS. CAMACHO: They do?

MR. POWELL: I believe just about every --

MS. CAMACHO: So, it's --

MR. POWELL: -- country does.
MS. CAMACHO: -- mostly likely --
MR. POWELL: Yes, yes.
MS. CAMACHO: -- that be filed in --
MR. POWELL: Yes.
MS. CAMACHO: -- China?
MR. POWELL: Yes.
MS. CAMACHO: First filed in China.
Yeah, got it. Thank you.
MR. POWELL: Okay. I'm going to turn this back over to Shira.
MS. PERLMUTTER: We're keeping this exciting by going back and forth. (Laughter) I don't need the slide.
MR. POWELL: Oh, okay.
MS. PERLMUTTER: It's okay, so --
MR. POWELL: Okay. I thought that's --
MS. PERLMUTTER: Just --
MR. POWELL: -- where you were, but (inaudible)
MS. PERLMUTTER: Yeah. No, it is. So, I just wanted to alert you to two other things.
One is that we are very closely following a
proposed waiver from the supplementary protection certificates in the EU. I don't know how many of you are following that and interested in it, but it's the mechanism through which the EU extends the term of protection for regulated products that are undergoing a marketing approval process.

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

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

And then last but not least, as you know, we're doing a lot of work in different parts
of the agency on the patentable subject matter
issues and one of the things we're doing is
planning a workshop with our colleagues from other
IP Offices on that subject in October to talk
about experiences, laws, and practices in each of
our countries and determining subject matter
eligibility in areas such as life sciences and
computer-related inventions. So, this will be an
opportunity to really talk to each other
informally and openly and exchange experiences and
information. We really are interested in making
sure we understand the rationale and the policies
behind each country's practices in this area and
we think it'll be very helpful for all of us.

MR. WALKER: Shira --

SPEAKER: Go ahead.

MR. WALKER: -- just a quick question
before Mark has started. So, this relates to the
IP attachés and their diplomatic status. So, it
was mentioned in Tony's slides -- I don't think
you were here, but Tony had it in his slides, he
mentioned it. I don't know if it was more
appropriate for you or Dana, but we talked before
about elevating the rank of IP attachés so they
could deal with the higher-level counterparts in
these foreign governments. Any updates on the
status for that, the question from our audience?

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

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

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

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

MS. PERLMUTTER: That's great. I
remember that. Maybe again this year.
(Laughter) Thank you.

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

As you may remember, we've had collaborative search pilots going on with the Korean and Japanese offices. We've been exploring that possibility with other offices including Germany and the UK. Those are in the Paris route, okay? Over the last several years, we've also been working in the PCT system to try to see what we can do in-so-far as collaborative search and exam in that environment. In the past, we've had two pilots limited to -- actually, to Korea and the EPO (inaudible) for which we have results. It was suggested, I'm not certain by which office, but it was agreed to that we should try something in IP 5 to see to what extent anything new could be learned or the system improved. So, beginning
at the 1st of this month, we're undertaking a -- what we call a PCT Collaborative Search and Exam or CS&E Pilot to assess what can be done in the PCT among multiple searching offices.

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

Okay. So, the number of applications will be 100 per initial ISA, main ISA. Okay? So, that in the end, each office will handle 500 cases total. We actually have already gotten 18 applications, which surprised me because it's very difficult to get the word out. Although, this is a free program. In the end, what will the results
be? Will it be that there is some measurable improvement over a collaboration with only one or with only two other offices? What will have cost offices to do, right, for whatever benefits that might accrue? What have or could be the savings and prosecution cost that were -- I'm not sure what happened to the slides.

(Laughs) I'll just keep talking.

The slides disappeared. (Laughter)

To what degree would applicants actually save money by not having an enormity of subsequent prosecution costs in multiple national phase offices? And I'll keep talking. Oh, there we go.

Look at the -- at least with the background back. Let me just take my slides up here real quick.

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

MR. POWELL: Okay.

CHAIR JENKINS: So, one thing that I've
struggled trying to understand why the user community is not more responsive to these collaborative programs. It's -- you get to fast track, for the most part. You -- there's a free element involved; you don't have to pay for it.

MR. POWELL: Right.

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

MR. POWELL: Right.

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

MR. POWELL: Yep. And Drew has talked about it and Andrei doesn't agree. It's just the general conservative nature of the IP community, right? It was the same with PPH and it's kind of before my time, but I hear it was the same with the PCT, that Former Commissioner Mossinghoff, who was around when that started, was -- after 40 years, I could count them -- count the numbers of
ones we had on both hands and that was it. And --
but then now, PCT of course is more -- most of the
(inaudible) around the world.

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

CHAIR JENKINS: Mike just nominated me.

MR. POWELL: Right.

MR. VIDOVICH: I nominate --

MR. POWELL: So --

MR. VIDOVICH: -- the PPAC.

MR. POWELL: No, but you're right. It's
just a matter of getting the word out and getting
some success stories and then getting people to
talk about them, right? And while the improvements in quality ought to seem obvious, you have to study this stuff because you need to know to what degree and why. Is it truly our lack of access to this body of foreign prior art, a detriment to doing thorough searching here?

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

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

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

There is a tie into the development of our search, our new patents and then search namely in the loading of documents. We do have access to citations, for example, in the Global Dossier.
But what we -- what is needed is the actual documents themselves to the extent that we can get them. And hopefully, we will be able to in subsequent phases make those machines searchable.

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

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

MR. POWELL: Okay. So, Rule 56 and the Doctrine of the Duty Disclosure is a judicially created doctrine and we cannot change that. Okay?
We can help applicants reduce their burden in complying with it. Right? That's really the simple answer there. Now, it may be that as we go along changes to rules with 98, 99, they could be tweaked to account for any process mechanisms that need to occur. What we're trying to figure out now is the applicant office examiner interaction in terms of timing, notification, and that sort of thing. Those are not -- they're not simple issues to iron out, so -- but no, we can't change the duty of disclosure itself, but we can hopefully help reduce the costs in complying with it.

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

MR. HIRSHFELD: So, happy to opine on that, absolutely. Once we have it in the file, we do not need applicants to submit it. Our plan for
the prior art project, and this is in the Federal Register Notice, is to -- as Mark said, it's not going to be all applications. We will notify the applicant that this information has been automatically pulled in and therefore they do not need to do that, also.

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

MR. POWELL: Yes.

CHAIR JENKINS: -- off the box --

MR. HIRSHFELD: Correct.

CHAIR JENKINS: -- right?

MR. HIRSHFELD: Correct.

MR. POWELL: Yes.

CHAIR JENKINS: So, we'll get --

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

MR. POWELL: Right. It essentially
becomes an office citations of record, as an
examiner would do in the old Form 892 when he
cited prior art (inaudible), you know.

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

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

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

MR. POWELL: Correct.

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

MR. POWELL: It actually depends on what
you're using the translation for, okay? So, if
you're trying to translate patent documents, the 
best solution has been dictionary-based 
approaches. And now the more sophisticated ones 
are using AI to improve their dictionaries, 
whereas before dictionaries would be manually 
improved. So, over a long period of time, a 
machine would translate, say, a Japanese document 
into English, right? And as you may know, and 
with Japanese, there are certain terms which there 
is no Japanese word for and so you'll see a 
document that goes -- you see the Japanese 
characters, then you'll see "oscillator" in 
English, right? And those are things that had to 
be learned over time by a machine.

Now, if you look at machine translations 
for searching, WIPO has a really interesting 
approach to this which I think is a really good 
one. Rather than trying to machine translate 
databases of information, what they do is they 
translate the search strings into the native 
languages of the databases of information. Right?
So, you type a search string in, it translates
that search string into Russian, French, whatever, and then gets those databases in their native languages. So, you need only improve the translation of the search developing tool rather than trying to have to re-translate all of the documents you have as machine translation improves over time. So, it's an old (laughs) problem, but it's actually doing quite well.

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

CHAIR JENKINS: Okay. Bernie, one more question, then we got to move on. Yeah.
MR. KNIGHT: Okay, Mark. A little bit off topic, but maybe related to the last question is, the work-sharing initiatives are great. I was wondering, are there any initiatives with our foreign partners to look at their IT systems to see if they're -- because I've always heard that our foreign counterparts, their IT systems for search examination and issuance are in some ways superior to ours and I don't know if that's true or not. But is there -- do you have any discussions with our international partners about sort of sharing software and that sort of thing that might help our systems?

MR. POWELL: Well, we do share a lot of information about features more than anything, right? So, and Rick can probably speak to this. Every office is on its own IT road map, right? And it's supported by its own budget and by the ambitions of the office and investments they want to make in IT. Our office is on a bunch of legacy systems that we're trying to get off of. Conversely, the EPO has embraced its legacy system
and they have no intention to get off of it, okay?

Now, they may not be able to provide some of the features we'll be able to provide down the road and so on.

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

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

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

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

MR. TOOLE: Yes. Well --

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

MR. TOOLE: So --

CHAIR JENKINS: Andy Toole.

MR. TOOLE: Yes.

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

MR. TOOLE: Thank you.

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

MR. TOOLE: Okay.

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

MR. TOOLE: Right, exactly. And thank you very much. I really appreciate the opportunity, actually, to talk about the critical work that the Office of Chief Economist does for
So, today -- let's see if I can advance these slides. Oh, there we go. So, today I would like to touch on four areas. First, I would like to set the stage by providing a little bit of background about the Office of Chief Economist also referred to as OCE. You'll hear me saying that. Second, I would like to highlight some of the important ways that we contribute to the priorities of the USPTO. Then, touch on some research work and just a couple of the IP findings that we have. And finally, highlight some of the ways we support and engage the stakeholders, which I think is pretty fascinating.

So, the Office of Chief Economist was established in 2010 under the Former Director of David Kappos. At that time and even today, we're seeing significant worldwide growth in the use of intellectual property. And the innovation ecosystem in the United States, and actually globally, is becoming more complex. It's quite clear that there's an ongoing need to understand
the role and contribution of intellectual
property, not just patents but intellectual
property more broadly, to innovation and economic
growth.

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

From an organizational standpoint, the
Office of Chief Economist sits within the Office
of Policy and International Affairs, alongside and
working symbiotically with the policy teams, the
Office of Governmental Affairs, the Global Intellectual Property Academy, and the attachés. When our office is fully staffed, we have four Economists, one Deputy Chief Economist, and one Chief Economist.

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

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

When I thought about priorities for our office, I broke them into two groups: those that originate within the USPTO and those that originate outside the walls of our organization.
So, with respect to priorities within USPTO, the Office of Chief Economist continues to work on a variety of different initiatives. Since the passage of AIA, we've worked collaboratively with the CIO -- the CFO, excuse me, to support the fee setting process. In particular, we're estimating elasticities to try to understand better how applicants are responding to fee increases and decreases.

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

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

We also respond in our office to a number of other requests. We often provide talking points to the Director and other senior management, and we provide guidance to the Office of Chief Communications Officer on a wide variety
of issues such as gender and diversity and
patenting, government interest patents, local and
regional trends in patents and trademarks.

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

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

Further, we work with teams in OPIA to
review and respond to policy positions and reports
for forums such as the G20. We respond to
international organizations such as the Organization for Economic Cooperation and Development and the World Intellectual Property Office, so OECD and WIPO.

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

The first study was released in 2012 and was very impactful. Other jurisdictions did simulate the study, but I meant to say -- it's stimulated studies there. So, for instance,
Europe and China, they also followed on and copied our studies. So, in some sense it was both a stimulation and a simulation. (Laughter) And we released an update in September 2016 of the IP-intensive industry's report and that study showed that IP-intensive industries show growth in direct employment, total employment, wages and value added, and share of GDP. There was some decrease in the value of service exports, however. The 2016 update was and is being used to frame policy and trade discussions by the White House, members of Congress, and the U.S. Trade Representative.

We have a lot of other research at our office. For instance, we have a new product called Data Highlights in which is designed to be informative about IP data trends and is intended to use graphics to illustrate those trends so it's not a highly complex and overly sophisticated statistical approach. One example is our recent Data Highlights report, Collaboration and Ownership on Patents Issued to Chinese Inventors.
And in that, we trace Chinese inventor teams over time and find out who they collaborate with and we also look at the owner at grant of patents with Chinese inventors to see if they're owned by U.S. Or other national entities.

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

One of the things that we found is that many of the studies that are being done and are critical of the USPTO, reflected a misunderstanding of what actually is happening with respect to patent prosecution and examiner appraisal systems. So, we're trying to help build out that knowledge and provide people with a
better chance of getting it right.

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

We engage in a number of collaborative projects with the U.S. government and with foreign entities. With the White House, we are currently leading an interagency taskforce for the Intellectual Property Enforcement Coordinator, the IPEC. That interagency taskforce is charged with building out research capacity and research
findings in four critical areas of intellectual property. One of them is counterfeit goods; another, trade secrets; a third is patent litigation; and finally, commercial scale piracy. We were also involved with the White House Lab to Market Initiative, which is intended to facilitate the commercialization of federally funded research and development and discoveries that come out of that funding. We are engaged with the U.S. Trade Representative in a Trade and Investment Working Group. And we are collaborating with the small business administration to look at the Small Business Innovation Research Program and Small Business Technology Transfer Program and try to shed some light on the interaction of these subsidies for innovation and patenting.

In terms of international collaborations, we're working with the UK IPO on a joint economic study. We are contributing a chapter to a WIPO book that's looks at global innovation in mineral mining. We're looking at
the U.S. Mineral mining innovations using patent
data, of course. And we're also contributing to
the World Trade Organization effort on trying to
characterize trade and knowledge across national
borders.

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

We also engage in various policy
discussions at the Brookings Institution and other
places around, D.C. and other spots. We are part
of the OECD Statistics Task Force and the WIPO Chief Economist Network. Those organizations bring together economists and statisticians from 18 different IP Offices around the world on a semi-annual basis for the OECD. And it's a way of staying in touch with what other offices are doing and actually coordinating on data efforts, which is one of their main priorities.

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

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

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

So, if you were to click on the relationships tab -- that first one to the right of PatentsView name -- you would actually see this graphic. This is a network visualization of the 100 top cited patents. The orange circles are for assignees. They're sized by the number of patents the assignee has. For instance, Apple, it has 11,213 patents at the time that this screenshot was taken, which is late in September of 2017.

The blue circles are patents sized by the number of forward citations and the yellow circles are inventors sized by the number of patents that inventor has participated in.

And one of the other features of this, I should mention, is, we go through a disambiguation process where we link inventors by creating a unique ID across different patents. And so you can know that Andy Toole, Andrew Toole, Andy A. Toole were the same inventor and not three different inventors, counted three times, but the same inventor that was on all three patents. So,
that's called disambiguation. It's actually a highly regarded value-add on the data.

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

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

And to further push that point,
PatentsView was featured in November 2016 article in Scientific American in which these network graphs of the inventor relationships within three companies were juxtaposed. So, for instance, this is the network image for Facebook, but there was also one for Tesla and Intrexon and the inventor networks and the kind of invention process at these private companies were compared visually in that article. Moreover, PatentsView was selected by the Association of Public Data Users as the best visualization in the federal government category for 2017.

I would just like to leave you with a quantitative feel now for how stakeholders are responding to PatentsView. This is for the Application Programming Interface, API, which is used by developers to access data, so that's another more sophisticated way which information is distributed. And you can see here that we've had -- in 2017 up through this date, again in September, a 74 percent year to date growth in API usage, 104,000 queries per day, on average, and
27.9 million queries between January and September of 2017. So, it's very busy.

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

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

MR. LANG: Yeah, yeah, yeah.

CHAIR JENKINS: Very noted.

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

CHAIR JENKINS: Yeah.

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

MR. TOOLE: Thank you.

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

MR. TOOLE: Absolutely. So, most of the conversation on AI is going to be with Tom Beach.
He's going to show us all sorts of really interesting and cool things. But what I would like to tell you about quickly is an event that we're planning. OPIA is going to be hold a conference on artificial intelligence in IP policy.

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

Our audience is broad. I don't
anticipate the general public will be a large
fraction of the audience, but I think we will get
a lot of policy makers, law practitioners, and
those others who are quite interested in what's
happening in this AI space. It will be here in
the Madison Auditorium again on Wednesday,
December 5th. And so that's the planned event,
and all of the great details of AI, Tom is going
to provide. (Laughs) Here. Yeah. Go ahead.

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

So, we are -- where we are headed.
We're an agency that has been, previously, as
indicated, in a world of very descriptive
terminology, ad hoc reporting, and being able to
just assess sort of transactionally what we're
doing. And we need to move into a more advanced
and modeling and cognitive assistance space
because of the ever-rising oceans of prior art,
the distribution of data sources and information
that's out there in the world.

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

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

And the other one is, AI is not an
inscrutable magic. It's not impossible. It's
math and data and computer programming by regular
people, okay? This is the other definition.

People who make AI are not unicorns. They are people who like math and data and computer programming. So, this is why we're going to see this technology disperse and grow and be prolific, right? So, with that said, I'm going to move forward in terms of what the agency is looking at in terms of opportunities for AI.

Because this is scoped to PPAC, there is obviously other areas about opportunity throughout the organization in our other 12 business units, but I'm going to talk mostly today about what we're looking at in terms of the patent world. And we're looking at people -- so, this sort of creates a unique opportunity for us. We have a highly structured workforce, we are well trained, it's a rapidly changing environment, complexity of examination exists, and existing infrastructure in next gen, as part of the IT updates that we'll talk about next, are there to be put in place so we can have (audio gap)

So, I'm trying to move forward. So,
keeping that in mind, I really want to focus on
the fact that while we are represented here by
OCIO, this is a complete and utter partnership
with patents. We are organization, right? We
need to solve the patent's business problems,
right? OCIO is here to really provide the
technology, meet the needs, but along the way we
can sort of do proofs of concepts to validate, do
rapid prototyping in order for our agency to be
able to, as we want to do, leap-frog other
agencies around the world and really get ourselves
to a state that really improves effectiveness and
creates predictability in terms of the outcomes of
our patents.

And so these are some of the efforts
that have been ongoing and I'll draw your
attention at the bottom, which, I think, came up
earlier, continuing to engage with IP Offices
regarding -- regarding API activities and whatnot.
So, we do have a working group, too, as part of IP
5. It's the IT group, right? And so in that --
those sessions that I have attended, we have
discussed from XML sort of data sharing all the way to AI. Every time I have gone and done a presentation there and participated in that, the feedback we get is we're doing far and above away anything that anyone else is doing.

Similar concepts. Today, we're going to talk about two of them, classification prediction and search. But other offices are doing trademark image searching. There's a couple things that everybody's doing, but they're looking at different approaches. But we haven't given away, of course, our secret sauce, but the conversations have been very fruitful and very much sort of, "What are you doing next," and that's -- in fact, we had one office ask if they could license what we were developing. So, that should tell you where we are.

All right. So, the areas of where we're trying to do AI efforts. As I mentioned, it's based on sort of the not-so-exciting world of ingestion; that's -- goes to data quality. If garbage in, garbage out, right? But then if you
get gold in, you get gold out. And so when we have a strategy around AI, we really need to double down on the fact that we can't build AI on something that's not really strong. It's not a strong foundation.

So, we're now taking an approach of doing a due diligence strategy on what it is and where it's going to play a role and where is it valuable, right? And that goes back to theme of proof of concepts, partnering, solving business problems, and some of them are right here, which are classification, automation, and patent searching, a work product consistency and quality. We've really on that initial scale I showed you moved to -- our world into big data environments. We have these now. We have the analytic capabilities that we've never had before. We're able to sort of consume them and expose them in ways to examiners that we just have never been able to unlock. And so knowledge management's another one and continued effort around looking at, what is the standard outside of the USPTO?
In fact, on our market research engagements with companies, the feedback has been, "Wow, you're one of the -- you're way ahead of other agencies." So, we take that as a compliment in terms of where our strategy is, what are we trying to solve, and what -- where are we going to go.

So, now we're going to kind of go deep real quick, so -- and fast. Continue, right? Fast and deep. I -- I'm getting the cues.

So, pre-classification. So, this is an example of how can we leverage AI for consistency purposes, right? If we could all get around a thing that gives us a predictable result -- and we all know the complication around CPC; different than USPC, right? It's the whole invention, it's a series of symbols versus U.S. Classification, which was the most comprehensive claim, right? We've shifted. Paradigm shift, big problem, how do we solve?

Machine comes along and says, "I'm going to take all these data sources," which you can
see, "And then I'm going to create over 300,000 CPC models for every single CPC classification. So, any new document that comes in, I'm ready for you. I know where to put you and I also know how to rank you accordingly to give you most comprehensive of the inventive feature overall. And if you wanted one that was based on claims, we could also do that." So, we're able to have this sort of predictive model that we can use as a feedback loop when it's exposed to the user community, right?

But also, really, what's kind of cool is, we're testing it out in ways that say, "Hey, maybe we can save us time and money or give us recommendations," or really allow for what I like to call the 50-yard line. Let's start the examination process with some pre-curated information about the case. And the most interesting thing here is that the success level of classification, assuming that humans do it correctly -- so, back to the original point. If the humans do it right, the computer's only going
to be as good as that, right?

So, what we found is, where we are today, by leveraging these sort of technologies, unsupervised ensemble algorithms -- I mean, I know that sounds like gobbledy-gook to a lot of people, but ensemble's an important word. It's sort of like allowing you to choose the best of result set in any sort of real time, where AI is able to sort of fight itself to find out the best answer and compute over and over and over again. That's kind of the big mystery. They're just computing power really, really, really fast and then says, "Your answer's this." I mean, it would have taken somebody else hours.

So, where we're at was, the subclass level looking at roughly 94 percent predictive rate of finding the matching CPC code on the document. Not bad, right? So, this is some technology we built at the group level, 87 percent, and it drops, right? And we get to the lower subgroup, that's -- that gets to be, "I put it here, you might put it there." But at the end
of the day, if this is able to do this and we can
dimensionally provide this information in
examination, we're now helping navigate the
examiner along the path of most consistent
prosecution, right? Where you should be looking,
where are similar places that you should also be
looking.

And this will get into the concept of
patent searching. So, you can read all this;
you've probably seen it before. In short, what
we're really looking at is getting away from a
Boolean sort of text search and we do harness that
expertise, but what we want to augment in that is
an important point here, right? We're looking at
augmentation and copiloting, right? We're not
looking at complete black box automation.

So, it's sort of, here is a system that
instead of just forcing you to come up with the
right words, it is introducing all these
suggestions of concepts and synonyms and I don't
mean just one word that matches another. Like,
conceptually, how is it used in that technology?
So, I use the example -- I worked in offshore oil and gas. We had this thing called the Christmas Tree. Sits at the bottom of the ocean, they made a movie about it when it blew up. But if I say "Christmas" and no "tree," I don't get the result sets I want. But I am on a system that not only helps me do that. It already knows that that's the technology I work in. So, what it's giving is an extrapolation of the traits of the document.

Maybe a good analogy would be like it's a library. Some of us may remember Dewey Decimal. Right? It's the way you found that -- you either had to know an author or sort of know a genre. This, instead of that, would just say, "I like books that -- investigations that happen in Chicago," kind of a thing. And that way, it's finding out a curated dataset based on concepts, right, and relevancy of those concepts, because that's the mathy part. Right? You can take words and make mathematical signatures.

And so it's able to allow these traits that an examiner would say, "Hey, I think this is
relevant or not. Give me some prepackage relevant
documents, give me a pre-search," right? Because
the traits of this given application is matching
up with all the traits of these other documents
without having started a search at all. So, you
start at a 50-yard line. But unique to that is,
we want to tell you why it's relevant. We can't
just give you a list of documents and say, "Here
it is. Go." What it needs to be is something
that says why was this relevant so the examiner
could ultimately and always possess the power of
relevancy to the documents to each other and the
value of them. So, again, a 50-yard line
approach.

Oops. And so some -- and additional
efforts that are on the way. So, enrich citation
data is an effort to basically use emerging
technologies to meet harmonization needs. So, we
create and do 102, 103s, everybody else does XYAs,
and so instead of spending -- we're trying to look
at spending the right amount of funding to the
right IT versus looking at how do we extract
information out of what we have to meet these needs without creating newer and larger cost by using these kind of tools. This was able to allow us to meet those kind of harmonization agreements between offices by leveraging something called emerging technology.

So, browser-based cognitive assistance.

That was a mouthful. So, basically, what that means is we transition in IT updates. The reason it really matters that we have migrated off of our legacy systems and into a browser-based system as it unlocks a huge platform for us to be able to leverage all kinds of resources. So, we can do federated source researches based on web -- publicly available information everywhere. So, these kind of -- while they don't sound super-exciting when I say it's web-base, what it does change is that it allows us to create and build machine learning AI capabilities. Parts of the workflow process unlock them through a browser-base because PE2E tools, as the examination tools are completed with our search
rollout, will all be browser-based, right?

And so what's really exciting is that we're now able to get here and then we can do, as Director Iancu likes to say, leap-frog ourselves into the next evolution. And we have already shown progress in that. In our big data efforts, we have been tremendously successful exposing all kinds of information and we'd like to follow-up with how that potential area goes.

The AI side of the House is really -- we want to take a steadfast approach on a strategy that makes sense, right? It just doesn't -- like I said, we want something that is a copilot that doesn't diminish the efforts that the examiner does. So, an examiner always has to remain an expert. We're very, very cognizant of the unintended consequences, right, of making it so it's codependent, right? We want copiloting.

Just -- I want to hit on some themes, right? So, and less of the tech talk, but it's all in there if you want to read it. And looking at also the term generator, that's just another
way of synonyms. We're looking at image searching in unique ways. You can look at images by pixel, but you can also, interestingly enough, look at patents as a closed domain because we have figures, right? And figures with descriptions and description terms. So, it's an interesting way of also looking at image searching. So, now we can find out other like figures based on this -- the meta-tagging of the terms that were on in there.

So, there's a lot of interesting work to be done there. And we're looking at deep machine learning chat bots. Basically, those are -- we work in a closed domain. Again, what that means is the world of the MPEP is a given document and if you kind of look at the sort of concept of maybe a chat bot that you could just say, "What's a 102," it tells you all the answers from the MPEP versus always having to go back to that, that unless you type in a query correctly, you're going to get the wrong result.

What these machine learning capabilities allow us to do is measure and harness what
questions are being asked, right, so we know what
the concerns are. Maybe need new training, right?
In this particular area, folks are asking a lot
about it. So, these are just sort of explorative
areas for which the partnership, like I said at
the beginning, is really critical.

With that said, I'll close this portion
out. Do I do it? Okay. So, go to the next one?
Okay. We're going to go straight to the next one.
All right. IT updates. Going to pull this out
real quick. We have the same cast. Andy, you're
welcome to stay. It's fun that you're here.

(Laughter) So, this is our PE2
Examination Products, as many of
you already probably looked at this
information. I'm going to hit on
some of the highlights. I heard
earlier that there was talk about
RPA or the relevant prior art.
This is another example of this
notion of getting information
quickly to -- and accessible to the
examiner to not only just have it there, but to meaningfully measure it so that we can create a baseline, right? What's a good search, what's a 50-yard line for a jump-off point if we're going to get into an evidence-based decision around predictability of patents. So, RPA's a good example of leveraging that technology and exposing that information as far as it goes with Docket Application Viewer, item number one.

And then official correspondence -- I'm going to actually just sort of jump into these slides because we want to go quickly. These are some of the recent milestones. What is up here, in short, is that by the end of the calendar year, the second of the third migration from a legacy system to a NextGen will be OC. All examiners will be fully off of that, of the Examining Corps, come December, which is huge. Right? That's a
big Herculean lift in things to the patent's
organization, in particular OPIM, for this
coordinated effort, right?

This was -- we had some learning lessons
here. We had to pause for a minute and restart.
And we were highly successful at that and I think
that demonstrates the fact that more than one
business unit wants to see the success of the
agency, right? We want to get it right. It's
been a theme that Drew has allowed as OCIO to have
the opportunity to do and what's been really
effective, I think, for our leadership is that now
we have the opportunity to get it right before we
put it out there and before we get that sort of
first impression, right? So, that's been really
exciting for official correspondence.

We only have three TCs left, I think.
It's the 3,900 CIU, 2,800, and 3,700. Did I get
that, Debbie?

MS. STEPHENS: (Nodding)

MR. BEACH: Correct, good. All right.

Search. This is coming along. It's -- we want to
get it right, again. We've been doing a series of stress tests. We actually took to the approach of, "Please break it. We want you to break it. That's what a stress test is." We allow up to 400 users on at the same time to kind of come in there and either break the system and figure out what the problem is before we try to scale and rollout. And that's just -- it's been a coordinated effort that has less stigma and more opportunity because we're getting a lot of positive feedback from this process.

And, in fact, one thing I would like to add is, what was done differently with search than we've ever done before is we looked at Parity Plus enhancement and have actually deployed them. There's a highlight on text, on image, which was one of the top priorities for the Examination Corps when they did deployment last week. So, we're not going to sit here and measure ourselves that -- did we build the model A for it today just like they did in 19—oh, whatever. We decided to go with more of a -- an exciting round to go.
Twofold, adoption is part the equation, but also, it's a long-felt need that we look at the PE2E investment not just about the middle section. I think that's kind of how it was explained, sort of the examination, but the future enhancements and then the other piece is, a lot of the POM and infrastructure pieces that are sort of long and overdue. So, while we concentrate mostly on these efforts, there's a lot of other spend that goes on to ensure that these systems will continue to succeed.

Patent Center is another one that we're proudly moving along and we have some communication efforts, which I'm going to have Debbie take a talk on. And just so you know, for those that are using Patent Center, we're -- we went to DOCX. That's a big switch for us. That's very important that we're able to get the text starting at the beginning of the process and continue to have images necessary as the authoritative source of data. It is an
opportunity for the agency to have different wins within our processing within the organization. And so that's a slow rollout and we're very excited about that. We can go to the next slide and allow Debbie to chime in.

MS. STEPHENS: Sure. Thanks, Tom. So, I think here it's kind of a little bit of an infomercial for us. Our current PKI technology is using certificates, authentication, and we're moving towards the end of the lifecycle for that, so this slide speaks to that infomercial that we would like to mention to PPAC and help socialize that we really need your help in messaging to our user community that the time is now to create your MyUSPTO accounts and start using those accounts. As we mature not only the Patent Center tool as a replacement for EFS Web, but the PKI certificate technology, we hope to have a full migration by December 2018.

And so this slide speaks to our ask of PPAC to go ahead and start creating your MyUSPTO accounts, start using them. In October, we would
hope that you would have the account and start
migrating your certificates to that particular
technology and then in November have the
sponsorship be ready for you to use. So, as a
user you would sponsor someone within your firm or
company to act on your behalf. So, this is the
timeline that we’re proposing. Again, the key
dates are now to establish your MyUSPTO account
and start using them. And then in October,
migrating them from the PKI certificate to the
accounts, as well as November, the establishment
of sponsorship, that's a part of the tool that
would be essential for our complete migration by
the end of December 2018.

So, I just feel like it would be an
opportunity here to reach out to PPAC. We're
certainly, as a community, internally sharing that
message across all business units such that we
have a whole communication team touching all the
different business units and reaching out across
the USPTO engagement and outreach efforts to
socialize and stress the importance of the
engagement, as well as the migration and sponsorship. So, I --

MR. BEACH: Okay, thanks.

MS. STEPHENS: -- appreciate that. Tom.

MR. BEACH: Yeah. Yeah, sure. Thank you. And last but not least, she's covered some of the benefits that you guys can read.

Next, I'll talk about CPC collaboration tools. There's continued work there, both on the management and the collaboration tools. This allows us to get into this world of corrective CPC classification because if a document's not in the right place, it's hard to find. So, in short, basically what's going on here. So, when you work internationally on these kind of topics, you really have to have sort of tools and databases and a -- the ability to sort of have a common cause and then sort of have a -- what I would call a quality review, sort of. Do we both agree, as in the other offices, in ours that it's located correctly in the same place?

One thing that's important to know is
that when we look at these analytical tools when
-- with CPC, you get a kind of comprehensive
symbol set and if a specification's just all about
semiconductors and how you make them and kind of
how it's made and then the first claim is that
just this -- a chemical formula. Right? We just
-- that's one of the things that we really want to
focus on, is that the subcombination combination
or the ability for the applicant to file basically
what looks like a chemical compound, even though
if you use the body of the specification as your
classification mechanism, it may or not have
pointed you in the right direction. So, I think
that's important to talk about.

Global Dossier, we did not have any
projects in FY 18, but we like to talk about it
because it's, I guess, the coolest thing that's
been done lately. So, there are projects in FY
19, so that's the good news for this one. So,
starting next PPAC we can report on Global
Dossier. I think we're looking at some alert
systems to make it a little more real-time,
knowing what's going on with other offices in terms of their prosecution efforts.

Legacy system retirements, this goes back to sort of the original point, which is, it's been a bit of a road here, but we are starting to knock off some systems in the next year or two, and I think that goes to the persistent effort of the organization at large and working the business unit to properly identify, migrate, do no harm, and bring the best to bear, right? Because these are complicated processes and we can't just turn them on, turn them off, and they're very integrated, which has been a challenge for us to really say, "We're going to turn this off, but oh, by the way, it services other things." And it's just -- it's a -- we were 3,000 people long -- not too long ago and systems were built and they were built on top of that and built on top of that. And so it's hard to do a heart transplant while you don't have the other machine, hook it up.

So, with that said, I will leave maybe time for questions. Did I do it? (Applause)
Thank you. I know I talk really fast, so hopefully that made sense.

CHAIR JENKINS: He brought us right on time. So, I've already negotiated with Dana while we were sitting here that I promise Jennifer legislative initiatives reporting will go first for November, okay? So, not last; Dana will go first. And if IT would like to follow Dana because you always get the short stick. I promise you that, as well, for November meeting.

MR. BEACH: Sure.

CHAIR JENKINS: So, with that.

MR. WALKER: Yeah. Just before David, Debbie, and Tom leave, just to say thanks for all the work you're doing. And congratulations on the OC retirement and maintaining the deadline in December 2018 because we've been looking at that deadline, that deadline hasn't moved. And also, for the user community, just a quick comment that under Mark's leadership, our Subcommittee, we give a lot of, I'd say in diplomatic terms, frank feedback to the IT Committee or the -- then the IT
Subcommittee and David and the team are very, very responsive. We have got a great process for keeping up-to-date with your projects. So, thanks for that dialogue because we do hear a lot of feedback about IT systems and we pass them along and the team has been very responsive to what we say. So, thank you for that. Really --

MR. BEACH: Sure.

MR. WALKER: -- been good working with you.

MR. BEACH: Good team.

CHAIR JENKINS: Thank you.

MR. BEACH: Okay.

CHAIR JENKINS: Dana.

MR. COLARULLI: So, the first thing I'll say is I probably could speak as fast as Tom does.

SPEAKER: Now you don't have to.

MR. COLARULLI: I guess now I don't have to. Second I'll say is, I hope there will be sufficient activity, Marylee, between now and November. Although, I have low hopes, (laughter) given --
CHAIR JENKINS: No worries.

MR. COLARULLI: Given that --

CHAIR JENKINS: You'll still go first.

MR. COLARULLI: Given selection here. I --

-- but I --

CHAIR JENKINS: (Inaudible) go first.

MR. COLARULLI: -- appreciate I got that voucher, so.

SPEAKER: (Inaudible) before the election, right?

MR. COLARULLI: When is the next PPAC meeting? Is it --

SPEAKER: Before, before.

(Inaudible)

MR. COLARULLI: It's before the election. Even more exciting. (Inaudible) I'll still try to be brief and I had the opportunity to meet with the Executive Committee yesterday and brought in some of these updates already. I'll go through legislative activity on some of our operational priorities. The PPAC asked that I highlight some of the patent-related activity,
legislative activity, and then there's been quite
a interest in some small business issues, both on
hearings and in legislation that's generally
supportive of the work we do here at PTO. So,
with that overview, we'll go through a couple
slides.

Tony had already touched a little bit on
our funding. We are funded at slightly below our
request due to a CBO score, both bills were
reported out of their respective Committees in
May. Tony also highlighted that the report also
had some very positive words about our IP attachés
program. I know Shira mentioned that, as well.
We always like to see that. Unclear how they'll
all move forward together when Congress comes
back. The House right now is out of town for its
annual August recess. They come back right after
Labor Day. The Senate is in pro forma session.
They'll continue to be in pro forma session right
now until about August 13th, where they come back.

At least for the Senate, particularly
the Judiciary Committee, which we spend a lot of
time with, they have a very active September coming up. Supreme Court nominee hearings among other issues will be taking a lot of the Senate Judiciary Committee's bandwidth. But expect the Senate to be around pro forma session for much of August, but then they'll be back before the House returns right after Labor Day.

They'll take up the appropriations bills, hopefully take some action before the end of the fiscal year, the end of September. If not, enter into a CR. Unclear what will happen, at this point. Likely, I think, as has happened in past years, we expect Congress to pass the CR and pass it onto the President. The length of which is unclear. But at least for PTO, commitment that we access all of our fees continues in the appropriations bills and we're happy to see that.

I'll mention two things. The first thing, fee setting authority, as I'm sure Tony also mentioned, expires September 16, 2018. We've been in many conversations with the Congress with hopes that they will move forward to extend our
authority and we've gotten a very positive feedback from the Judiciary Chairman in both the House and the Senate that they will do so. It is just a matter of time. And as I mentioned, lots of other competing issues in both Houses. There -- but likely, the Chairman will certainly move forward. We've also seen some other legislation, the Senator side from Senator Coons and Hatch, on the House side a companion bill with Chairman Chabot and Ranking Member Johnson. So, we're positive that this will move forward.

I'll also mention, there has been other legislation we've seen that reintroduces this idea of transitioning the PTO funding to a revolving fund and essentially takes PTO out of the appropriations process. This was a proposal that we saw in the leadup to the AIA. Compromise permission was adopted in the AIA, which generally has worked, generally has allowed PTO to access all the fees it collects. If we collect above what were appropriated, those fees go into the Patent and Trademark Fee Reserve Fund, which we
can access in the subsequent fiscal year. But interesting to see those provisions resurface in legislation.

On this slide, I'll also mention, the agency had been looking for a three-year extension of its TEAP authority. This is the Telework Act of 2010 to allow us to run a pilot program, to allow employees to waive their right to reimbursement for federal travel when we ask them to come back. And in turn, they allow -- they -- we allow them to change their duty station to wherever they'd like in the country. It's been extremely successful for the USPTO, as we've said, loved by the employees. Yesterday, the Senate passed the National Defense Authorization Act, which included a provision to extend that authority to December 31, 2020. We're very happy to see that move forward. It's on its way to the President and we expect him to sign it shortly. But that's good news for the agency.

So, recent patent bills that have been introduced, they have been a small flurry of
activity. The -- in addition to the STRONGER Act, which was introduced earlier, at the end of last year. Two new bills, one by Representative Massie, another by Representative Rohrabacher just last week, and those two bills add to the discussion of what reforms may be needed to the patent system. It adds to discussion in terms of adding to what the STRONGER Act had already talked about. Now, as we've discussed at this meeting, many of the things in the STRONGER I think we could move forward with, with authority under -- the USPTO already has and, in fact, the agency is looking at doing that and has moved forward in some of those things.

These two bills introduce a series of other suggested provisions, notably, two things that the American Invents Act had done. One, transition the U.S. from a first-to-invent to a first-inventor-to-file system. Both of these bills would revert the U.S. back to a first-to-invent system. Both bills also would repeal the provisions that established the Patent
Trial and Appeal Board and abolish those proceedings IPR and PGR. So, those are two very dominant provisions in these bills. I already mentioned the resurfacing of the revolving fund, proposal of that in both of these bills, as well.

Now, significantly, the bills differ slightly in a couple aspects. The Massie bill would overturn eBay. That was a Supreme Court case identifying when an injunction is proper. The Massie bill also addresses other Supreme Court cases, including the Lexmark case on patent exhaustion, and has a number of other features, many of which I've listed here, so I won't go into detail there.

The Inventor Protection Act, which was the Rohrabacher bill, again, has some provisions that are different. It would create a category of applicant and owner inventor-owned patents and subject them to special venue rules and judicial procedures in the courts and subject them to the special rules in front of the PTO, as well. So, we're still looking at those provisions to see
what the impact would be, but that's the focus there, creating a special category of patent applicant or patent owner and subjecting them to special rules.

In addition, that bill addresses issues of willfulness and introduces a loser pays provision, again, targeted at trying to -- from some of the statements made about the bills leveled the playing field between smaller entities in the system and larger entities. So, a series of two bills adding to the public discussion about potential reforms in the system.

I did want to highlight one bill of general significance for both patents and trademarks and the PTO generally and that's the Small Business Innovation Protection Act. This bill has moved forward both in the House and in the Senate. Each body has sent to the other House for action an identical bill. It's unclear which one will move forward. Regardless, the identical language is supportive of much of the work that PTO does and particularly focuses on ensuring that
we're working with the Small Business Administration to provide clear and high-quality training particularly to small businesses.

So, if you take my comments on the previous two bills on patents as targeting this community, trying to level a playing field, I think this is also a helpful bill that ensures that SPA and PTO are working together to also provide assistance, guidance to this community to make sure that they can navigate effectively the patent system. Again, unclear when it might move forward. I think perhaps later this year, I think we'll see some legislative activity probably after the election.

Three hearings I wanted to highlight.

One, oversight hearing of the PTO and Director Iancu had his second opportunity to engage members of the Congress. First time it was on the Senate side, now on the House side. Many of the same topics were discussed at this hearing. I would mention that the Director was asked about IP attachés, as well as much of our international
work that you've heard about today.

There was a focus on increasing filings from China on the trademark side and other enforcement issues in China and as well as many things that the Director has made his priorities certainly clarifying a lot around 101 and potential changes to PTAB. So, a very comprehensive hearing addressing a lot of the issues that their Director's had the opportunity to talk about publicly, also came in front of the House Judiciary Committee.

And then very quickly, two other hearings, both in front of the Small Business -- the House Small Business Committee. The -- interestingly enough, the Chairman of the House Small Business Committee has publicly said he would very much like to be Chairman of the (inaudible) at the next Congress. As a result, I think he's showed an increasing interest in many of our issues. I think that's a good thing.

The two -- series of two hearings that they've held did focus on issues that small
businesses have in navigating the patent system,
both this hearing back in May and then more
recently in July, featuring many of the
stakeholders that we work with. Each of these --
well, I'll say many of the witnesses highlighted
that there is lots of resources at the PTO to help
navigate the system and did focus on some of the
unique challenges that they have. So, again, I
think good -- a good focus.

We've subsequently gone up on the staff
level and briefed the Staff of the House Small
Business Committee on the work of the Office of
Innovation Development, the Office of the Global
Intellectual Property Academy, highlighted in
particular some of the China road shows that we've
done around the country. We've done a number this
year already, have a couple more coming up in New
York and other -- and Chicago in the balance of
this year. Very interested in all of those
activities, again, reflecting well on PTO.

With that, Marylee, I'm going to end and
find some new things to report on first on the
agenda the next PPAC meeting. (Laughter) Thanks.

CHAIR JENKINS: Going to hold you to that. (Laughter) Any questions?

MR. WALKER: Well, let me correct the record that our next meeting is after the elections.

CHAIR JENKINS: After the election. Ah, noted. Noted for the record. Any questions for Dana? No?

MR. GOODSON: Yeah, I had one. And I know it doesn't make any difference to if one of these bills pass, but they're all forward-looking bills; they're not retroactive, are they? Like, first-to-file versus invent -- first-to-invent.

MR. COLARULLI: The provision there, yes, I think it's forward-looking. It wouldn't have retroactive -- it'd be very difficult to unravel that, if that was the case.

MR. GOODSON: Okay.

MR. COLARULLI: But yeah, that's right.

CHAIR JENKINS: Great. On behalf of the Committee, I just want to say what a great
meeting. I also was very reflective on the time this afternoon and we have so many great topics that the PTO is addressing and working on. And I will make sure these folks come back and give us some more details and maybe give us some examples of what specifically they're working on, because I know people like to see examples.

The Director has joined us again and which I -- (laughter) welcome back again. And I just, again, want to support and share and applaud your leadership today. You actually haven't been here that long, so -- but you have them all moving in all sorts of directions. So, I think as a stakeholder, I think that's a very good thing for the office and for the user community and for the IP system, so.

UNDERSECRETARY IANCU: Well, thank you and thank you for your leadership of this Committee and this meeting and the various meetings that you hold. I very much appreciate everything that you do, Marylee, and also Mike, same for -- goes for you and to all the members of
the PPAC. And I think our Commissioner for
Patents, Drew Hirshfeld, had something to say.

MR. HIRSHFELD: Well, I was only going
to say thank you to everybody. A lot of work goes
into this day, both on the USPTO side and the PPAC
side and so thank you to all the USPTO people and
the PPAC folks for all of their great work. We
started a day that -- where I believe Andrei said
in the beginning that we measure our time by the
number of PPACs.

This is the first time that we actually
-- Marylee, I have to give you lots of credit that
you ended early or at least close to -- close.
We're always struggling. For those of you that
couldn't see Marylee on camera, when she was --
when we were behind, she was giving the (laughter)
hustle signal. So, she does a great job to keep
us on line.

Another theme that I'd just like to
point out is, somebody said earlier -- and I
apologize for not remembering who -- that PTO is
listening. Certainly, we are listening. The
gentleman to my left who has been great to work
with over the last six months, I know he's humble
and wants to add, but I know he's been meeting
with many stakeholders. I'm in a number of those
meetings. I believe those have reached probably
about 60 or so different stakeholder meetings.
So, we are listening. We're listening that way
and in a variety of other ways. And I'd also like
to add that PPAC is listening. As you notice
today, there were a number of emails that were
being read out from either members of PPAC who are
not here or members of the public who are sending
their comments in, and that is not something that
has always been done in the past and I think
that's good. So, if we can continue this
dialogue, the better.

The last thing I will say is, I
recognize the same faces through all the PPACs
that have been to -- and I'm not talking about the
PTO or PPAC staff. I'm talking about others who
engage. And I believe that's because people who
do engage in this meeting recognize its true
value. So, let me ask everyone who's involved to do one favor for all of us and that's spread the word about these meetings because I do think there's a lot of great discussion that takes place and the more people that engage, the better we all are. So, thank you to everybody and I don't know if -- Marylee, if you'd like to just officially close us.

CHAIR JENKINS: All right. I'm going to officially close and I thank both of you. And I think I was the one that said we do -- that you are listening and we listen, too. So, on that note, remind everyone that our next meeting for PPAC is September 6, Thursday; that's going to be the fee setting hearing. Mark your calendars. And you all know I usually ask, I like to move to close the meeting and do I have a second?

MR. GOODSON: Second.

CHAIR JENKINS: Second. Thanks, Mike.

So, meeting closed. Thank you.

MR. GOODSON: Thank you.

(Whereupon, at 2:59 p.m., the
PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

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

Carleton J. Anderson, III

(Signature and Seal on File)

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Expires: November 30, 2020