

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING
QUARTERLY MEETING

Alexandria, Virginia

Thursday, November 14, 2019

PARTICIPANTS:

PPAC Members:

MARYLEE JENKINS, Chair

JULIE MAR-SPINOLA, Vice Chair

JENNIFER CAMACHO

MARK GOODSON

BERNIE KNIGHT

DAN LANG

BERNARD J. CASSIDY

STEVEN CALTRIDER

JEFFREY SEARS

KATHLEEN DUDA/USPTO

USPTO:

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

KIMBERLEY ALTON, Deputy Director, Office
of
Governmental Affairs

MICHELLE ANKENBRAND, Vice Chief Judge,
Patent Trial and Appeal Board

PATRICIA BIANCO, Senior Advisor to Deputy
Commissioner for Patent Quality

SCOTT BOALICK, Chief Judge, Patent and
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PARTICIPANTS (CONT'D):

STEVEN CALTRIDER, AFP/Pendency
Subcommittee
Chair, PPAC

ANDREW FAILE, Deputy Commissioner for
Patent
Operations

JANET GONGOLA, Vice Chief Judge, Patent
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Officer

SHIRA PERLMUTTER, Chief Policy Officer and
Director for International Affairs

MICHELLE PICARD, Acting Deputy Chief
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RAMAN SARNA, Portfolio Manager, PE2E

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VALENCIA MARTIN WALLACE, Deputy
Commissioner
for Patent Quality

Other Participants:

CHUCK ELOSHWAY

HUONG ESPOSO

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P R O C E E D I N G S

(9:08 a.m.)

CHAIR JENKINS: I have been given
the okay to start. Are we good? Yeah, yeah.
I know, we weren't breaking until lunch aren't
we? I know Mark. I know. I know. Guilty,
guilty.

Welcome, I am Mary Lee Jenkins, I am
Chair of PPAC and welcome to our November
meeting. It is my pleasure to introduce -- I'm
going to introduce the committee first because

I forgot to do that last time. I think that is the first time in my three years of being Chair that I did not do that. So, let's go through the table and introduce everyone and then we'll go to the comments from Andre. So, Cathy.

MS. FAINT: Good morning. I'm Catherine Faint, Vice President and TU 245, and PPAC member.

MS. JUDAH: Good morning, Cathy Judah, President of POPA and PPAC member.

MR. CASSIDY: Hi, Barney Cassidy, PPAC member.

MR. SEARS: Jeff Sears, PPAC.

MR. GOODSON: Mark Goodson, PPAC.

MR. KNIGHT: Bernie Knight, PPAC.

MS. CAMACHO: Jennifer Camacho, PPAC.

MR. LANG: Dan Lang, PPAC.

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

CHAIR JENKINS: Marylee Jenkins, PPAC.

MR. CALTRIDER: Steven Caltrider,

PPAC on the phone.

CHAIR JENKINS: Hi, Steve, thank you for joining.

MR. HIRSCHFIELD: Drew Hirschfeld
Commissioner for Patents.

MR. FAILE: Andy Faile, USPTO.

MS. MARTIN WALLACE: Valencia Martin
Wallace, USPTO.

MR. POWELL: And Mark Powell, USPTO.

CHAIR JENKINS: Great and thank you. So, a normal course of events for our meeting is, and we have a very busy meeting today, and we need to make sure that the committee gets to eat, as we know that's the priority. And that has already been noted.

But I would like, in all seriousness, to pass the comments to the Director. And as usual, Andre will provide recent updates and insight to what is going on at the PTO. Thank you, Andre.

MR. IANCU: Good morning everybody. And thank you Marylee, and great to see all of you here for the last PPAC meeting of the calendar year and the first PPAC meeting of

the next, or the current fiscal year. Always great to be here with all of you.

So, let me just start by first acknowledging the important role that this committee has played, and continues to play in ensuring the strength of our patent system. Each quarter we come together in meetings like this to discuss vital issues like patent pendency user, fees, patent quality performance, the USPTO budgets, and so much more. Together we have made great strides in each of these areas and you, as well as our broader stakeholder community, has been invaluable stewards of our patent system.

So, I do want to really begin, and I will eventually also end, with thanking all of you for your service, your leadership and your commitment to ensuring the efficiency and integrity of our patent operations.

Today two members complete their three year terms and one completes her second three year term. So, first, let me start by recognizing Jeff Sears and Bernie Knight whose three year terms of PPAC members are

concluding next month. Thank you for your dedication to the office and service to the country. So, let me present both of you with some certificates. Please come up.

(Applause)

Thank you, once again, Bernie and Jeff, and I look forward to your continued involvement with the IP community going forward.

And now, let me thank PPAC's fearless leader Marylee Jenkins, who has served as the Chair since January 2017. And will be concluding her second year -- second, three-year term. So, Marylee, of course, has been Chair, as I said, since January 2017. Actually, the way this goes I think it's December 1, 2016, right? And before then she was Vice Chair from December of 2014 through December of 2016. It seems like you became a leader as soon as you came on to PPAC which says a lot.

Your dedicated service, Marylee, and commitment in serving the committee for the past six years has been phenomenal. Let me

tell you a little bit about Marylee. In addition to her work on the committee, Marylee is a partner at Aaron Fox. She has prosecuted numerous domestic and foreign patent applications in a variety of areas of technology, among many other things that she has done serving clients in the IP community.

But beyond that, Marylee's many other contributions to the IP community are absolutely stellar and should be exemplary for folks in the community. Marylee is a member of the John Marshall Law School's IP Law Advisory Board. Was a member of Columbia Engineering School of -- Columbia School of Engineering Council. She was a member of the committee on internet searching and the domain name system of the National Academy of Sciences Computer Science and Telecommunications Board that published the signposts in cyberspace. The Domain Name System and the Internet Navigation Report. I guess if we have trouble with the internet, we know who to blame.

Among her accomplishments and

community involvement or lectures on various IP topics and participation as a member of committees, on so many organizations and associations and institutions. In addition, to the ones I've mentioned at Columbia and the like, she's also been on the International Licensing Industry Merchandisers Association. Somehow she managed to be on the International Trademark Association, ITA. Also a significant contributor to the New York IP Law Association, including serving as a president of that important organization.

She is also a past chair of the American Bar Association's IP Law Section, along with many other leadership posts on that organization. Including as a council member and director, this is my favorite, of the ABA Young Lawyers Association. And the reason is that that entry is one of my favorites, Marylee, is that through that and through your many other activities, you show how important it is to be a role model to the next generation of lawyers and contributors to the IP community.

When I think of professionalism, when I think of dedication to the community, I cannot think of somebody that serves those qualities in a more consummate and with the most -- in a most exemplary fashion than Marylee. So, thank you once again for your service Marylee to the USPTO, to the IP community and to the United States.

And with let me stop there for a second and have everybody here give you a round of applause for your long years of service. (Applause) And with that, we would like to present you with a flag that, it's a United States Patent and Trademark Office flag, that flew over the USPTO and it flew at the USPTO on November 1, 2019, here at headquarters in Alexandria. So, congratulations.

CHAIR JENKINS: Thank you.

MR. IANCU: Did you get the certificate?

CHAIR JENKINS: I'm past that. Thank you. (Applause)

MR. IANCU: Thank you. I guess your

speech, Marylee, will have to wait for later. Your acceptance speech, you want to give it now?

CHAIR JENKINS: Yeah just --

MR. IANCU: Okay.

CHAIR JENKINS: Just -- Sorry, because everyone's going to leave. And I just want to -- some of the people I just want to say thank you to. And of course, thank you to Andre. His leadership and just immediate support and direction has been invaluable to myself as Chair. He makes it easy. And I truly appreciate that.

And I think on behalf of the committee, we have gotten such great direction from you and energy and dedication and the importance of the patent system. And we hold that dearly. So, you know, first and foremost, I thank you.

And I just want to thank everyone from PTO. I appreciate your support, your dedication, your service to this country, your service to the patent system. You make it look easy. I know one of the analogies they

did for Andre recently was the duck and the little feet paddling underneath. I have to share that with all of you. It is not only just something that Andre does effortlessly when you walk him -- watch him speak to the public.

But you all do that as well. And people outside don't have the opportunity that we have as a committee to see all the efforts that you do, your dedication, and how you make this all look smooth, and just keep the system going for us. And as Chair and as a stakeholder, I truly appreciate all that you do for the patent system.

I also want to thank Drew, Andy Valencia, Mark, Shira, Rick, I know I'm missing people, Chris, all sorts of people that have been so impactful to me while I've been here and letting me see behind the curtain.

I encourage everyone when they go out to talk about what a great opportunity is to be on this Advisory Committee, and I thank the committee and all that they have done

individually.

And my Vice Chair who keeps me on track, and my prior Vice Chair, Mike Walker, who is here as well. Dan, Jennifer, Bernie, Mark, Jeff, Barney, Kathy, Cathies -- the Cathies. For all of your support and your dedication and commitment to this agency. The outside does not know how much your heart is in everything that you do.

So, I also want to say very impact fully both to Jennifer Low and to Patrick, you keep us running, you keep us -- our systems up, you keep me on time, you keep me on schedule. I cannot say how much I appreciate all the work that you've done to make us and the committee look good. So, thank you.

And then my husband. Thank you honey. I appreciate being here. Andre made fun of somebody recently who was crying, and I was like I'm not going to cry. So, sorry, but thank you all.

MR. INACU: Well thank you. All I can say, Marylee, is that you cried when you mentioned your husband. You did not cry when

you spoke about me, but that's okay. But thank you, Paul, as well. And thank you. Thank you everybody.

All right now to the important work of the office. Let me start, there, so many things have taken place in fiscal year 2019. There's a full day of updates coming up, packed the agenda, so I won't be able to cover everything but just a few highlights.

So, first, as you all know, the USPTO continuously works to reduce pendency times. Since 2018, in fact, the patents operations has had a specific goal of having under 15 months for first office actions and under 24 months for total pendency on average for both of those.

As we announced just last month, we have now achieved those goals. Indeed, as of September 30th, the end of our 2019 fiscal year, the averages were 14.7 months for first action, pendency and 23.8 months for total pendency.

This achievement marks the USPTOs lowest first action pendency since January of

2002. Despite that total applications filings nearly doubled in that time for 353,000 in fiscal year 2002 to 667,000 in fiscal year 2019. And despite that huge spike in volume, we have not only maintained but actually improved the quality of our examination as well.

Great thanks goes to the patents operation, to the thousands of examiners that work tirelessly day in and day out, the management system through the deputy directors as well as -- the deputy commissioners, as well as our Commissioner, Drew Hirshfield, a job very well done.

And in addition to success in meeting these goals, is also a direct result of this committee's efforts throughout the years. So, all around at all the levels we have drastically improved the analyses streamlined processes and clarified approaches that benefit all applicants.

At the patent examining level, supervisors and examiners undertook and implemented complex data analyses to better

prioritize applications and balance workloads without sacrificing quality. And at the application processing level, the team focused on increased efficiencies to accelerate the overall patent examination process. These actions lead, for example, to a decrease in the average processing time for an amendment filed in a patent application from 26.2 days to 6.8 days.

But our work does not stop here. In fact, we are redoubling our efforts to optimize pendency using considered the analytics that make sense. Among other changes, we are improving how cases are routed to right examiner and how time is allocated to each examiner based on a number of factors, which I'll talk about in a minute. Plus going forward, we will strive to meet in as many cases as possible, the timeframes outlined by the Patent Term Adjustment Statute 35 USC 154(b).

This means, as just one example, issuing a First Office Action in as many applications as possible in no more than 14

months. A primary tenet of our 2018 to 2022 strategic plan, the processing and examining of patent applications in a timely high quality manner, advances economic prosperity, and supports a business environment that protects, cultivates and promotes innovation and entrepreneurship. In turn, this helps grow the economy, create jobs, and ultimately improves the way we all live.

Now, another accomplishment this year that I'm particularly proud of is the USPTO's continuous efforts to improve our guidance on section 101, in other words, patent subject matter eligibility. As you know, in January 2019, we issued guidance with a new examination framework. We obviously did not change the law. But we synthesized the law in a way that makes sense and can be applied in a consistent manner by the thousands of our employees that have to make these types of decisions day in and day out, every day that they work at the office.

And just last month, we further clarified these eligibility procedures that

were unveiled in January. To be clear, these most recent updates do not change the policies started in January, but rather response to the public comments we received to date and provides more details about how to do the analyses at the USPTO. The update of also provides information regarding our examiners' responsibility to provide adequate notice to applicants about eligibility rejections.

More specifically, the update provides additional details about how examiners should explain their rejections to applicants and what falls into the three categories of abstract ideas. We also provided additional examples, some in the life sciences area.

As I mentioned at the PPAC meeting, the January guidance was welcomed by our examiners and has been working extremely well. Indeed, according to our semiannual patent quality survey that goes out to frequent application filers, the January 2019 patent eligibility guidance yielded the largest improvement in customer perceptions of quality

since the survey's inception in 2006. Rising ten percentage points in a six month period.

Another USPTO program that works extremely well is Track One, which expedites the examination process of non-provisional utility or plant applications for an additional fee. Established by the 2011 American Invents Act, and used by a wide variety of applicants, including small and micro entities, major corporations, research institutions, as well as first time filers and serial inventors alike. The program gives applicants more options for moving their ideas through the USPTO quickly.

To that end, the average pendency from filing a Track One request to a first office action was three months in fiscal year to 2019. Customers who took advantage of the program during the same period received on average final disposition within 7.8 months.

Demand has naturally been going up for this program, and so we recently issued via the Federal Register on September 3rd, a regulation that increases the number of Track

One requests that we can grant from about -- from 10,000 to 12,000 each fiscal year. Clearly applicants have embraced the Track One program due to the speed with which the applications are handled, and the high quality of examinations they receive.

We anticipate that this higher limit will enable more of our stakeholders to participate in and benefit from prioritized examination in the cases that they themselves deem appropriate. The USPTO remains committed to meeting the needs of our applicants through innovative programs, such as Track One.

Now, turning to our patent quality efforts, the USPTO last month began implementing new updates that will improve the examination process and better align it with our strategic goal of providing timely, predictable and reliable IP rights. Taking into account the priorities, challenges and experiences of both our employees and external stakeholders, the two phase implementation of these changes will revise the method used to a lot of time for examining patent applications,

the process for assigning applications to examiners for examination, and the evaluation of an examiner's performance.

The new time allotment method will base time on an applications classification picture, which represents the full scope of technology covered in an application and accounts for multi-disciplinary inventions as well.

Starting last month, all examiners began receiving additional examination time, tailored to specific attributes of an application, including the overall number of claims the length of the specification, and the number of pages in any filed information disclosure statement.

Also, starting last month, examiners with the least amount of examination time in our production system began receiving additional time to align their time allotments with the requirements of current patent examination.

Beginning next fiscal year, we will utilize an update the process for assigning

patent applications to examiners. This process will automatically match each application to the examiner best suited to examine the application taking into account factors such as the complete technological profile of the application, the work experience of each patent examiner, and the workload balancing needs of the agency.

This update effectively completes the USPTOs transition from the United States Patent Classification system, or USPC, to the new Cooperative Patent Classification system, or CPC, used by over 45 IP offices around the world. The new system will both improve accuracy and efficiency of our patent application marketing process.

Also, beginning next fiscal year, there will be a new performance evaluation that will serve as a roadmap to improve patent quality by providing examiners with an enhanced list of exemplary practices for searching, improving clarity of written prosecution records, and adhering to principles of compact patent prosecution.

This roadmap provides a greater emphasis on the examiners priorities search by highlighting the importance of searching the inventive concept, as disclosed in an application so as to identify the best priority in the case at the earliest possible time in prosecution.

These changes make fundamental updates to the methods and processes that support continued high quality patent examination and will position the USPTO to better serve the public.

Another critical component for improved quality and timely examination of patent applications is through our extensive training practices. That's why the Office of Patent Training, or OPT, we like acronyms here, so OPT has been working to marry best practices from academia, with the principles of adult education to make our training even more engaging and effective.

In fiscal year 2019 OPT trained over 400 newly hired patent examiners providing a total of 178,000 hours of training to

employees. In particular OPT increased its focus on search training, and to that end, trained about 3,200 examiners in NPL, non-patent literature, search techniques in fiscal year 2019.

Additionally, in partnership with OPT's external stakeholders, the patent examiner technical training program has continued to increase technical training opportunities for our employees. And to make technical training more accessible, OPT and patent operations collaborated in fiscal year 2019 to have hundreds of new virtual courses that cover technologies handled by most technology centers in many art units.

Also in fiscal year 2019, 307 examiners participated in sites experience education trips to ten states, including Illinois, Maine, Washington, Texas and others.

In an effort to increase quality of interactions with our applicants, the patent's group expanded its stakeholder training. For example, in mid-October OPT ran a stakeholder training on examination policy procedure in

New York, which provided -- which proved to be extremely popular. Over 100 attorneys and agents applied for the 55 available slots and overall, it had a 97 percent satisfaction rating.

Registration is now open for the next such program, which will take place in Miami, Florida. Meanwhile, most virtual instructor-led trainings continue to be filled beyond capacity. Registration is next open for the next such virtual training, which will take place on December 10th, 11th and 12th, and will be geared towards those interested in learning more about recent examination practice and procedure guidance related to unity of invention.

Incidentally, continuing legal education is offered for much of the training we deliver, both in the classroom and virtually, so that I think is an added benefit as well.

Finally, let me make brief mention of two additional points on which you will hear much more during the day. As you all

know, we are in the midst of a review of our fees. PPAC has been intimately involved and continues to play a critically important role. By the time our review is done, our fees will not have changed in about two and a half years. So, our proposed fee adjustments are necessary to maintain the level and quality of operations that we need, and the public has come to expect.

And on the operations front, we have deployed an extensive effort to stabilize and modernize our IT systems. This will be a lengthy process, and we are just at the beginning stages. But we have already accomplished important improvements, including the transition of our -- including the transition to new servers for our palm system.

The new servers, which have been long overdue, are 1,000 times faster, 20 times more efficient and far more stable. And more is to come, including increased security measures. As I said, and bears repeating, this will be a long process, and there will be ups and downs. So, I ask for your cooperation

and patience. But these efforts are critically important and absolutely necessary for improved operations at the USPTO.

So, these are just a few of the many things that we have been working on here that USPTO for the past 12 months. And clearly fiscal year 2019 was extremely productive and eventful for the agency. As I reflect on what this agency and its dedicated and hardworking employees have achieved over the last 12 months, I cannot help but feel a great sense of pride. But also a great sense of optimism as we embark on fiscal year 2020.

Collectively, we are all making a real difference through the work of this agency and the power of our patent system. So, I want to thank all of you for what you do, and for making such a positive impact through your work on this very important committee. As you're brought up to date on all of our activities throughout today we welcome your comments and questions. So, I want to thank you very much and Marylee will tell me if we -- if I welcome questions as

well. Thank you.

CHAIR JENKINS: Thank you. Thank you. Questions from the committee? I know I have a couple, so anyone else have questions? Jeff, yeah thank you.

MR. SEARS: Not a question just to comment. I wanted to thank you for the success of the Track One program. And also thank you for the expansion of the program. At a university with early stage technologies, often an early issued patent is critical to commercialization. This program is really beneficial for universities. Thank you very much for your support.

MR. IANCU: Thank you.

CHAIR JENKINS: So, one of the things that I think everyone knows that I started as Chair, and I encourage Julie as the incoming Chair to do this as well, is to solicit comment from folks as I call in the ether, that they have questions during the meeting. It's something that we never did before. And it's something that I think adds value to the committee and to the process.

The only thing that does encounter, as Chair and Vice Chair, is trying to incorporate those questions into the proceeding and also not to make them specific. So, I have to generalize them.

But one of the things that is a recurring voice that I have noted, as my tenure on the committee, and that I have always voiced as a member and as Vice Chair and as Chair, is the concerns of how the patent system can work for everyone. And until you sit honestly, in this seat, you really don't appreciate about how complicated it is to explain patent law 101 to someone who comes into you with something that they think is vital and important, and they've spent a lot of time and effort in developing.

And so we've always taken the concerns of the small inventor to heart. It may not be something that you readily see during the committee, during these general sessions, but it is something that the committee strives to address. And we hear and we read everything that you send to us. So, I

think that's first and foremost for everyone in the ether to hear.

Particularly in this day and age patents, and enforcing patents, and getting patents, is an expensive process. And most people don't have, honestly when you sit down with them, the patience to hear what this all entails and all the parameters and variables that can occur during the patenting process. It's expensive. You have to be dedicated, and you have to have a lot of patience. And sometimes it goes well, and sometimes it doesn't.

So, but I know one of the things that I have learned from Andre, since he has been Director, is his patience and his dedication, and his listening to concerns of many. And so I guess a general question, Andre, that I asked you is for those folks who are small inventors, small businesses that are trying to go out there and do what the American system promotes, is innovation. And to do what they think is the right course of action is to get a patent, to try to promote

and protect the things that they worked long and hard on. What do you see the office's role is in helping them to better understand it and force and how are you personally trying to recognize small inventor issues and questions?

MR. INACU: Thanks Marylee, thanks for those comments, and it's a great question. The small inventor, the individual inventor has long been at the core of innovation in the United States from the founding of the Republic and the beginning of patent system. Individual inventors have played such a critically important role. And we must ensure that that continues. Because what's really important for the United States is that we get as many people to contribute to the innovation ecosystem as possible.

As I often say in my public remarks, we need all hands on deck. So, there are many programs here at the USPTO that we try to deploy and to and to help in that regard. So, in terms of questions of the complexity of the system, as I've mentioned in my regular

comments, opening comments, there are lots of trainings that go on. We have lots of information on our website.

We have recently updated our website also in fiscal year 2019 to add, for example, resources available in your particular region. So, right on the front page of the website you can go to, there's a box that says, it asks if you're new to IP, you can click on that, then it takes you to a map of the United States, you can click on your state, and then a variety of resources available to help demystify the process or wade through the process are listed there.

Some examples, we have pro bono programs to help folks who don't have sufficient funds to prosecute a patent application. We have a program here at the PTO for pro se applicants, folks who apply to us without a lawyer. They can go to a specified dedicated unit within the patent organization that stands ready to help.

We have PTO resource centers at various libraries, public libraries,

university libraries and the like around the nation. So, if you click on your state on our website, it will tell you where those resource libraries are, and you can get additional resources there. Various law schools have clinics that can -- that have law students with interest in patents and trademarks, help applicants that come to them. And that's a program through the USPTO as well, as we work with those law schools.

And there's so much more. We recently submitted to Congress our report on the Success Act. It details what we see as the state of the information and the state of the system when it comes to underrepresented communities, when it comes to innovation in the United States. I commend you to that report. Again, you can find it on the front page of our website at [USPTO.gov](https://www.uspto.gov).

And the report concludes with a host of recommendations, both for the USPTO that we will be undertaking, but also for Congress to consider, so that we can expand the innovation ecosystem across the United States

geographically, demographically, and economically. So, this is an area of high priority for the USPTO. And I very much appreciate that question and the opportunity to explain. Because not only is it important to us here and to the innovation system in the United States, but to the United States as a whole.

CHAIR JENKINS: Thank you, Andre. That might not answer all your questions, but I think it's important to hear that Andre and the folks here at PTO take your questions, they actually read them, and they take them very seriously. So, I can -- I support the idea that you continue to reach out to us, particularly the committee, and let us know your comments. We also started creating, when I became Chair, your comments are on our webpage, and they stay there. So, it's of record. And so it's important that you know your voice is heard.

So, I just want to touch, it's not I don't think necessarily the best segue, but recently there was a Federal Circuit decision.

Do you want to just briefly say no comment or?

MR. IANCU: Gee, which decision do you have in mind?

CHAIR JENKINS: We're referring to it as the anthrax decision.

MR. INACU: So, you're referring to the decision from the Federal Circuit on the appointment's clause, vis-a- vie our administrative patent judges at the PTAB. Thank you for the question. I can't comment on it.

CHAIR JENKINS: I think it was important. I knew the answer, as any good lawyer sometimes. But I thought it was important for you all hear that, but I think it's something you're reviewing. And --

MR. IANCU: Yeah. Let me say I can't comment because obviously the issue is still pending and quite active. There are a number of decisions actually or act or orders from the court surrounding this issue, it's not just that one that that you mentioned. But suffice it to say, we are attending to the issue very carefully at the USPTO. We're

working with the Department of Justice, as well. So, this is an issue that the U.S. government is attending to.

CHAIR JENKINS: Thank you, Andre. Any other questions? I know we're running late, but I think this is important that we have this discussion. So, anything else from the committee? Andre anything else?

MR. IANCU: No thank you. Thanks once again to the committee for all of your work. I hope that you have a great rest of the day. And once again, thank you, Marylee, for all of your service. Congratulations on a very successful six years. Good luck in your next adventures. I'm sure we will see a lot of you in the IP community. So, please stay in touch.

CHAIR JENKINS: Thank you. Thank you, Andre. Thank you, everyone. We're moving along because I know we're behind. So, I think Valencia, you're going to start, oh wait actually, Jennifer, you're going to start, right? Have you straighten that out? Yeah. You're going to start?

MS. CAMACHO: I'm going to start.

CHAIR JENKINS: Okay great.

MS. CAMACHO: I'm going to start and actually. So, I wanted to highlight some of the annual report, but I wanted to start first by thanking Valencia and the whole OPQA team. I mean this is an amazing group, the commitment, the talent that's in your group, ensuring that the quality of the examination process and issued patents is no small task. It is critical. But it is not an easy task. And yet you do it every day and you guys do it very, very well. So, I did want to thank you.

And although I may not cry, Marylee, it is a very heartfelt and sincere thank you. I really appreciate all of the work you guys do and it's been a pleasure working with you guys.

So, now about to 2019, there's been several themes and Director Iancu touched on almost all of them, so thank you. But the critical parts that we looked at, prior art, searching and sourcing. The subject matter eligibility, and the analytics, those are all

very critical pieces.

One word that you'll hear as I'm highlighting several of these is collaboration, partnership, working together with. This is something that's been evolving I think over the last few years of the quality team. Really working not only cross-functionally across the entire office, but you're encouraging peer to peer collaboration, you're encouraging collaboration and partnering with outside groups, and particularly outreach and engagement of the stakeholders and the community at large. It's really fantastic to see how this is really coming together. Obviously, quality is something that touches on all of the functions that affects all of us. And it's an important piece.

I also wanted to thank Director Iancu for bringing into the discussion the concept of reliability. So, we all love a broad and deep patent, but it's really the reliable patent, the patent you can trust will protect your product, your technology, your

company. The one that you can take the court and have reasonable understanding of the fact that that actually may stand up, will stand up in court and really something that you can use to protect your technology. So, thank you for bringing that concept into the to the discussion, it really is important piece.

And of course, what's most important when you talk about reliability is prior art, the search and sourcing. It's very important that the examiner have the best prior art early on in the process.

And what I wanted to touch on were several of the initiatives that we've carried through in 2019, of course, IP5 and working with international group, post grant outcomes with the PTAB group, working with IT on the search tools and improving the search tools from the patent end to end on searching.

But I wanted to highlight two additional search initiatives which were, I thought very, very interesting and the outcome is going to be very interesting, we'll hear about it later in this morning's meeting. But

the OPQA search feedback pilot in which we had review, quality assurance specialists, who took several applications at random. Did their own searches, evaluated the examiner searches, provided feedback on the searches, and provided an opportunity for the examiner to sit down and talk with those specialists, to get best practices, to get feedback on their capabilities and ways that they can build that out. That's I think, a very interesting new initiative. And we'll talk about that again later today.

And then also the peer search collaboration, a pilot with the Operations Group. And that's the one where you were encouraging peer to peer collaboration. So, examiners were paired up, they each did independent searches, they got together, and they compared notes, and that actually was quite successful. It's an interesting outcome there and I'm looking forward to talking about it later.

Also wanted to highlight that in 2019 we carried through on the diagnostic

interview of pilot. Did additional about data analyses. Some of the things that came out of it, no surprise on the pre-search interview, the two topics that were most critical on the discussion from the examiners were claimed terminology and definitions.

And there was also a fairly interesting readability scale that the applications were ranked on what the difficulty of the readability. And it's no surprise then that the examiners found that the applications that were most difficult to read were the ones that were more likely to elicit a request by the examiner to meet with the -- or to have an interview with the applicant on pre-search. And again, the pre-search diagnostic interview is intended to help the examiner focus their search. So, again, it's all about the prior art.

The other thing, of course, 101 and you did a great job summarizing 101 exists, so I won't go through that again. But that's been a critical aspect of what the quality group has been looking at. I think it's made

tremendous strides in that sense. I understand the office has recognized -- or had has identified a decrease in the number of subject matter eligibility reductions that have been made.

I do still think that it's important to continue to track the SME reductions that have actually been made for compliance. And I know that you guys continue to do that. But it's nice to see that there's been a decrease in the numbers that are made.

I do know from the outside that it's the guidance has been very well received. And it provides a good framework for having the discussion with the examiner. So, I do appreciate that from the outside. So, thank you.

Again, on the stakeholder education, partnering with PTAB, doing training with the examiners, that's something new. It was very well received, at maximum capacity at both sessions that were this year. One was on 103. The other one was on claim interpretation and other considerations.

And again, this is something that is intended to train examiners on aspects of the examination that that may be relevant to potential future PTAB proceedings, I can see where that would be extremely interesting by the examiners and that's a great new aspect or module that you've added to the training. So, I appreciate that.

Now, on the quality data we had the quality team parses it by both statute and by office action type, and it's very different data. On the 101, for example, we got 98 percent compliance. Compliance means that every rejection that was made was made properly based on the statutory requirements and clearly described by the -- explained by the examiner. And those -- there were no omitted proper rejection. So, everything that was made was proper and no proper rejections were omitted there.

So, on 101, we had a 98 percent overall compliance. 101, and 103, the prior art rejections we had a 94 percent compliance on the 102. The 103 overall was a net 90

percent compliance. We did note a trend downward over the last few years, and I know that, I appreciate the efforts that the patent office is making on identifying the root cause of that trend so that we can move that back forward, up.

And 112 we had 91 percent compliance. And again, appreciate the efforts that you're doing on trying to identify those root causes and moving that up upward.

Some of the recommendations we made, I just mentioned some, continuing to track the compliance of the 101. Sharing the data on the website, you guys are have been very creative on looking at different formats, different ways to share meaningful data. It's really important and we all are in agreement on that, on sharing the data with the public and providing easy access.

And providing the narrative, providing explanation, giving the assumptions, the interpretation of the data. So, that it's not only numbers, but there's something behind that so the folks can understand that.

And I also want to commend you and keep up the great work. It's really terrific the creativity that you're putting into improving the examiner's ability to search and source the best prior art very early on. It's terrific. I really love the peer to peer collaboration search tool pilot. Thank you.

CHAIR JENKINS: Let's see. Let me just jump in. So, what we're doing, if you remember, is the annual report which I have this lovely copy and look at this nice cover. So, at least go and read some of it since we spent a lot of time on it. Each subcommittee chair is going to give the highlights of their report from this so, and I believe the report is coming out Tuesday, November 26th our report is coming out. Will be published in the Federal Register. So, please, please take a read.

So, that is what we're doing today. So, and I also forgot to talk about this, because you should never look at your husband after you've had nice things said about you because you will then burst into tears. So,

with that Valencia.

MS. MARTIN WALLACE: My husband isn't around so I think I can get through this. So, first I'd like to say thank you so much for such gracious kind words, Jennifer, about the team. And it's all patents and across the agency that we really work together. And thank you for recognizing this is not a single effort, it's an effort by many people to move something as important as quality.

And we're doing a wonderful job with the subcommittee as well. I can't thank the quality subcommittee enough for always jumping in with your ideas, with your suggestions, giving us frank comments on our suggestions and proposals of how to move forward. And one of those -- one of those examples of that is the subcommittee meeting we had yesterday. As we were going through a quality metrics for '19 how we landed. We -- I'd like to say we had a wonderful conversation and it was just the beginning of that conversation on.

So, we have these numbers, and while

some may look better than others really it's a very high indicator and not necessarily getting to the root cause of just a number. So, we're really not doing our job well if we're not going in, doing a better analysis, crossing of our data to get to the information that our stakeholders need in order to move forward.

So, one of the things we're exploring with the subcommittee is how do we give the appropriate data that tells the right story that our stakeholder needs in the technology areas that they're working through. So, we're working very diligently right now across patents, as well as with the subcommittee, on telling the right story, the right way, for our internal and external stakeholders to improve on quality. Quality of the application coming in, as well as the entire process. So, thank you so much for working with us on that. And there will be more to come on that throughout the year.

But first up, we have the Chief Statistician, Marty Rater, who's going to give

a little bit more data information on our 'FY 19 quality metrics.

MR. RATER: All right. Thank you. Good morning, everybody. First of all, I think we're going to kind of zip through this so that we can get to the search stuff too, because I think we kicked that afterwards. And I apologize to Marylee, because if I'd have known it was your last one, I would have given you 100 slides of data, because I do know you do like data. So, I appreciate that.

But we don't have that. And I think what we have today is more of a, just kind of a little bit of a validation. Is it -- are we dialed in appropriately on what we're looking at in quality? And I think it goes back to what Director Iancu said, kind of with all the changes we've had going on over the years, what have we been looking at? And I think Jennifer had a great summary there of some of the data we've been talking about through the years and we'll just kind of show you how that's all kind of dialed in where we're sitting right now.

This is a chart that we've kind of shown in the past, and let's start with the customer this time, and what are our stakeholders, what are our frequent filers, what are our customers saying about quality?

In the top line there is we're seeing a good trend of those customers that are willing to say that quality is good or excellent. And at the same time, we've been observing a trend downward of those customers that say it is poor or very poor. And obviously we ask about some can rate it as fair. But this is something we've been monitoring over time because we think when we're kind of dialed in, and we're doing the right thing, and monitoring all of this during a time of significant change, right even if it's just expanding the Track One, giving more time, increasing volumes of filings, do we have a healthy ratio of people that are willing to at least say we're doing good, versus those that are saying we're not doing so great.

And as you can see right now, when

we ended FY '19 we basically have eight customers that are saying we are doing a good or excellent job with a relationship to quality for every single customer that says we're not. Now, would we love to have absolutely zero people say that we're doing a poor job? Absolutely. But if you look back as far back as, you know, ten years ago, where when we were talking about quality with our customers at that point it was only, we'd find only one customer happy for every one customer that was willing to say, quality was poor or very poor.

So, we've seen a good healthy trend, we want to continue to monitor that. And we also want to explore what is driving that. And I think this goes to where Jennifer's point was, it goes to some of the activities we did in FY '19. A lot of writing here. So, you all can read this at your leisure. But what we want to show is, when a customer is happy with a particular rejection type, what is their likelihood to be satisfied with quality overall?

And we observed this when the new 101 guidance came out in January. Our March survey kind of showed that wow, we are always knew that 103 was a driver of quality, because customers see a lot of 103 rejections, and I've got a slide to show you the volume of that.

But if you just look at that top, and there's a dark green bar of 103 correctness. And it's showing this number of 8.36 now and the light green bar below it was 4.47. What the light green bar was, historically we've seen if a customer is satisfied with 103 rejections, saying we do, we adhere to the practice procedures, we're consistent, and all of that good stuff about the 103's they see. If they were happy with that or satisfied with how well we do that practice, they were four times more likely to be satisfied overall than if they were dissatisfied with our 103.

We've seen a significant rise now where 103's have an impact of eight fold. So, now if a customer is satisfied with 103

rejections, they are eight times more likely to be satisfied overall. Now, this obviously is because of the emphasis on prior art. But really where we saw a lot of this is we corrected a lot of the pain point for 101. So, it shifted that priority now. It's like, okay, we do have a good portion of customers in this survey now that are saying, okay, you fixed that issue, now let's attack this issue.

And now, I think that is one of the things we've dialed in on and why you'll hear a lot about search for this coming year in some of the focus that we've had. And this is somewhat driving that, is because we are hearing you, you're showing it in our data, we're seeing it with some of our data as well.

And again, I think this is the duh moment for most people when I share this, is there is of course, Marty, we have 77 percent of our finals and non-finals have a 103 rejection in them, versus only 12 percent of our finals and non-finals have a 101 rejection. So, I think when we showed this in the past, it was about 12 percent, ten to 12

percent for 101. So, this reflects the core as a whole. Obviously we've still got some areas that have a significant amount of 101's. And that goes to back where Jennifer was talking about what about when rejection is made. So, we are monitoring that as well.

But this just shows you that, again, customers are following exactly what we're seeing in our data. We're making a lot of these rejections. And the biggest bang for the buck, if you will, will be in those 103 and 103 arenas.

This is just another little bit of an internal how are we dialed in when we're doing our internal quality reviews. We're capturing multiple data points, we're looking at actually review of applications. This is simply saying, when we look at our reviews it's kind of a frequency distribution as well, the 103's are up there because we see a lot more of those. The size of the bubble is kind of just how many errors we're finding.

We use this to kind of dial in and see where we should go with our next

initiatives. So, again, no ah ha moment, 102's, 103's. But if we were just following kind of the frequency of rejections and where we're seeing things, we might be more inclined to go the 112 route might be our next focus after we -- if we fixed all 102, 103 issues.

But we also know this is where we balance it with what we're hearing from the customers. And 101 where it might not rise to our review standards, what we're seeing in our internal reviews, or the frequency of reviews. But this is where we always have to take into account well, do we have a particular pain point that we might need to explore something else? So, this is just kind of how we look at things going down the road.

I mentioned incoming applications. We did do a lot of work on incoming applications this year, looking at readability, looking at impacts down the road for prosecution where I think we'll have a web chat or a quality chat dialed in here in the next month or two, where we'll talk about what we've done on that front.

This is an interesting, just like we ask customers how satisfied are you with the examiners in the examinations prosecution, we also ask our examiners, we do a random sample twice a year of our examiners and ask them about not only what about the tools and the training that we're providing, but what are you seeing in terms of what's coming in in incoming applications.

And you know, our customers are -- they always want to help they, you know, agents, attorneys are always asking us how can we help you improve quality. And these are some of the data points. We mentioned clarity and completeness of specs just to get you how this is read, 24 percent of the examiners surveyed say that clarity and completeness of specs is only followed a small extent of the time.

So, you can see that we've got some art cited in IDS. We had a talk with the subcommittee yesterday and how we're exploring what's in the IDS, how we're getting that art and how we're making use it for that art. But

art cited in IDS material to patentability, 55 percent of the time our examiners are saying that's only adhered to a small extent.

So, use this as a good kind of dial in of what are we seeing come in the door. We will say on that diagnostic interview, when we see stuff come in the door and then an out coming, what's the outputs of all those, we do see that the examiners are taking it upon themselves a lot of time to correct for some of these. So, we cannot necessarily dial in what is that lever that's impacting quality right now, because examiners have taken it upon themselves to put in the effort to get to that first action and have high quality in that first action. But I think this is where we'll start exploring what are these time impacts that we've given for some of these characteristics coming in the door.

And then finally, I think Andre hit on with this fantastically in his opening remarks, 178,000 hours is that was the number of training provided this year, 190 some of these examiner technical training events that

we're putting on. So, we continue to do a lot of preventive and corrective actions through training through sharing it with the applicants, sharing that data back.

So, we do significant, I'm not going to recite all those numbers that we've had there and that's going to wrap it up where I'm at today. I know not enough numbers for some but time wise we're good.

CHAIR JENKINS: Thanks, Marty. Near and dear data. Any questions from the committee? Yeah Jennifer.

MS. CAMACHO: Just a quick comment. I really appreciate the fact that the quality team doesn't leave anybody out of the quality review. You guys are constantly looking at the quality of your quality data, and how to do things better. The quality of the training modules. And I appreciate the fact that no one is exempt. You guys are really focused in quality all around, including the quality data. So, appreciate that. Thank you.

CHAIR JENKINS: I just want to say to Marty, because you said ten years ago. And

one of the things that I did recently, I was on the plane, we were traveling, and I was -- my husband looks over at me and he's like, what are you reading? I said I'm reading past PPAC reports. And he's like, just rolls his eyes.

But I read 2007, 2008. And 2009 really caught my attention because that's when Dave Kappos was Director and it was a very bleak, everyone has -- wants to do some interesting reading go read the 2009 PPAC report, because it was a very, very different office than it is today.

And one of the things that I really touch on is all this data and how the attention has shifted. And the discussion is with the customer and the stakeholder and how this data is changing the way that we look at how we prosecute. And how the office prosecutes. So, I definitely say a 2009 read is worth it because it is a different patent office ten years later so -- Okay, so who's next?

MS. WALLACE: Next we have Tricia

Bianco, who -- she's Senior Advisor to myself and to Bob Barr, who is going to report out on the quality assurance search feedback pilot that Jennifer mentioned earlier.

MS. BIANCO: Yes. Hi. Good morning. So, as Jennifer briefly mentioned, the Office of Quality Assurance, as we -- I'll probably call it OPQA through the rest of this. We had a search feedback pilot where our objectives were to determine whether a feedback form with more information on the search in an application provided to an examiner would give the examiner any benefits. And also from the collaboration front to allow the examiner and their review quality assurance specialist, or RQAS classes, to have a meeting about that search feedback form to discuss any best practices on search for a specific case. And also to look at some more detailed search questions for our search reviews in general.

So, again, the general premise was that we had a random selection of cases that were reviewed by our review quality assurance

specialists, RQAS classes. In this review, the RQAS classes did their own search first of the case and then compared their search strategy, their search findings, and their search recordation with the same of the examiner in a specific case.

These cases were selected randomly apart from our random reviews but followed the same random statistical pattern we use for random reviews, so we had a good representation across the entire core.

After the review form was completed, it was emailed directly to the examiner, which is very different from our normal random reviews which are not shared with examiners. The examiner had the opportunity to review the findings in that feedback form. And then if they chose to do so they were -- they would contact the RQAS classes to schedule a meeting where best practices could be discussed specifically on that case.

I will just note that this search one was shared only with our examiners not with the supervisors unless the examiner chose

to do so.

The pilot ran for about six months and we had 590 total cases that went through the process of having a review and the search feedback form sent to the examiner. Of those cases, 199 examiners chose to have a meeting with RQAS classes. That was a 34 percent participation rate which we thought was pretty good for a first time.

So, first, I just want to know, a lot of these slides coming up are all survey questions. So, there's texts on some of them are a little small. There are some copies in the back if anyone in the room would like to read them more closely.

So, this survey question was to ask the examiners, and if an examiner was a junior examiner, they could also invite the signing primary or their (inaudible). So, they would have been surveyed as well if they've participated in a meeting. So, of those participants, we asked would they be interested in receiving feedback such as this form in the future. And as you can see, 74

percent of the participants really would like to see this in the future. We did take a look at the breakout between a primary examiner and a junior examiner and they were virtually the same. Which was interesting.

So, this question -- these survey questions focused on the review form questions themselves and what the examiners learned from them. Again, it's a little difficult to see. But the green and yellow portions of the graphs show that the response was to a limited extent or not at all. And I think the big takeaway from this slide is that that was a very, very small portion, well below 15 percent. So, overall, everyone found that there was something to learn from the feedback form regarding their search strategy, their search recordation, and different aspects with respect to best practices on search.

This graph dug a little bit more into what the benefits of the meeting provided with respect to search strategy and best practices aside from what was already in the form. And again, it was pretty well received

by our examiners, especially with respect to the search recordation, which was 70 percent. The focus of course, part of this focus was on collaboration and these questions favorably reflect the fact that the collaboration was well received.

Another question for both the examiners who participated in meetings as well as our RAQS classes whether this was something they'd be interested in the future. Our RAQS classes were generally a little bit higher with respect to favorableness in the future. They've had a very big interest in meeting with examiners on a more regular basis. So, this seems to reflect that is still there. But also the examiners, 66 percent of them said they would like to have more meetings in the future on search, and actually any other topics, which we'll talk about a little bit.

This question reflected additional things with respect to the meeting itself. It was again fairly positive, the limited extent or not at all was well below 30 percent for the speeds and examiners who participated in

the meeting. And it was also very positive, again, with respect to the search recordation aspect of the meeting, and the building on search strategies.

I also have the same questions posed to the reviewers who participated in the meeting. While they were a little bit less, we do note that we have fewer reviewers than examiner who participated. So, a lot of them do this multiple times. So, we think that there may have been differences between meetings, but again overall the positive outweighed the negative or the limited positivity for the reviewers as well. So, both of this slide and the previous slide clearly show that more collaboration is wanted by both groups.

This slide shows the questions that were asked of the examiners about what they learned with respect to the impact of search through this pilot. One of the things that we specifically asked was how they felt their time was spent during the meeting, as well as reviewing the feedback form. And the

examiners were fairly positive on four of six of the categories where you can see they're over 50 percent. One of the examples of that is learning other search strategies, which was about a 54 percent positive response.

These are the same questions posted the RAQS classes about whether his or her time they felt was well spent during the meeting and actually filling out the form after review of a case. And again, very positive results. Two of the six categories were over 45 percent positive, and they were with respect to search strategies and enhancing search knowledge.

One of the important parts of this pilot we thought for the RAQS classes was that it would help them expand on specific search strategies for different technologies. Our RAQS classes are generalists, so they work across an entire technology center, so they don't have the general specificity level of every aspect of an art unit level search strategy. So, they all were able to learn different tips, techniques, different search strategies, and also different MPL type

searches from examiners in these meetings.

This slide shows the demographics of the cases in the pilot. So, I mentioned earlier that we followed the statistically significant random review sampling for the core as a whole. So, the green lines show the total pilot cases, the blue lines were the number of meetings that were held in each TC, and then the numbers above are the participation rates. We've had some fairly high TCs, 2,600, 2,400 and 1,700 were all over 37 percent with respect to participation for meetings held overall.

After we finished the pilot, we held focus sessions with each of the groups. Each focus session was individually held for those who participated in the meeting. Examiners who received a feedback form but chose not to participate in the meeting. And then also with RQAS classes. In each of these focus sessions, there was overwhelming -- there was an overwhelming interest in continuing the collaboration efforts with search and also they indicated they would love to have

collaboration on other aspects of patent examination as well.

So, our next steps, we are -- I'm working with some of the other search initiative groups that Jennifer mentioned earlier including the peer search collaboration pilot, which Director Matt Such will be talking about shortly, as well as the collaboration search and examination pilot, which is in OITC. So, we're working together to discuss the best practices we've each learned, lessons learned in each pilot, and steps that we can move forward in considering collaboration efforts in the future.

And then lastly, we're looking at the questions we use to determine whether the mastery form search section should be updated with some more robust questions in the future. And that's all I have.

CHAIR JENKINS: Questions? Dan.

MR. LANG: I just a comment that this is a great initiative. And I think it gets at the crux of what external perceptions are of the patent office both among patent

owners and among those who challenge patents or are concerned about whether they infringe patents.

I think many of the concerns, in fact, that have been voiced by patent owners, including small inventors, individual inventors, about, you know, for example, the chance of losing their patent in the PTAB, I think at the core there was a -- there's a problem with, you know, what is the search quality in the initial examination. Such as the patent didn't stand up, when it was subject to challenge either in the PTAB or in district court litigation.

By collecting this type of information and by assessing search quality and finally, setting up a feedback loop to improve it, you know, we're getting at I think a very central issue in the in the patent system.

CHAIR JENKINS: Julie.

MS. MAR-SPINOLA: So, thank you.

And as a member of the Quality Subcommittee, I also want to commend all of you on your

efforts here. And I think statistics and the data is very important. And I encourage you to continue.

In our discussions, there was an interesting discussion of a prior art study of AIA trials. And I think this might be what Dan was referring to as well, you know, we have to be able to build or close, well to have a bridge between Patents and PTAB is what is fundamental to the patent owners, whatever size right. Because it's the quality during the examination that has to travel to when it's examined again in an IPR proceeding.

So, to the extent that the patent office requires more resources, bodies to continue that study, I think that that is worth investing in and having reports on a regular basis. So, thank you.

CHAIR JENKINS: Other comments, questions? Okay. I think it's also challenging when you, you know, you're trying to look at the workforce that we know is dispersed throughout the country. A lot of people probably don't know, that if they're

new to the system. And trying to make sure that you get the best quality product with people who are working remotely. And you just can't -- as we were talking yesterday, you can't just walk down the hallway and say to your colleague, hey what do you think about this. You know, you really have to be very proactive to continue that collaboration. So, we commend the office for doing this and encourage you to do more. So --

MR. HIRSHFIELD: If I can just jump in real quick and go to the really big picture, because Julie I appreciated your comments. And what I'd like to highlight is that what you're getting today is a smattering of a whole variety of search initiatives that we have. The two in particular that you're hearing about our cross feedback and then the one you'll hear about from that such in minutes the collaboration.

They represent, at least from my perspective, ways for us to look at how do you foster education right, to and from the examiner to the art class or peer to peer

examiner to examiner. We have people who are experts, you know, all over the office and to take best practices from all of them and be able to share them, I think will make us a lot better in searching. So, that's what we're exploring with these pilots.

But in the bigger picture, we have a whole number of initiatives going on. And I couldn't agree any more with Julie's comments that it is necessary for us to continue to look at the PTAB proceedings, and we are diving into that. And we will continue to look into that to make sure we understand that, what, you know, what is if a case was -- if a patent was not upheld, what are the reasons for that, right? Was there are in the case and different interpretations? Was it a claim interpretation issue? Is it one of surfacing new art?

And I think we need to get to the bottom of that, so we know what to address in the system. But we have a commitment to search. And again you're hearing two or three of programs where there's a whole variety of

others, including the initial steps of artificial intelligence to see how that can be helpful in the search as well.

CHAIR JENKINS: Drew you remind me when I was first on the committee, the PTAB judge, chief judge at that time, that that idea of collaborating and getting information to be between patents and PTAB was just not there yet. So, it hasn't, you know, it's great that it is. And so and that's definitely stakeholder input and its being reflective over all the value of this information. So, Drew, yeah, thank you. Okay.

MR. KNIGHT: Drew, you know, there's one other aspect that you might want to look at. Which is when we met with the -- when the special project subcommittee met yesterday, one of the things we looked at was Section 325(d) of the board statute. Which basically says, if the same art or arguments were presented to the patent organization during examination, those arguments do not have to be reconsidered again at the PTAB.

But one of the ambiguities is that, is when is something considered during the examination process? And the board told us that if you submit an IDS and the examiner does not cross out references, meaning under the MPEP, that reference was considered by the examiner because it wasn't crossed out. That doesn't necessarily mean that the board is going to consider that prior art, considered by the office, because the examiner didn't actually write it up, in the office action, the rationale regarding that particular reference.

So, when you look at independent inventors, and you know, the small inventor community, one of the things -- one of their, you know, concerns is that, you know, it costs a lot of money to get a patent, and then it goes to the PTAB in the patent is blown up.

Well, if we could give the small inventor community, and in fact everyone who applies for a patent, more certainty on when those prior art or arguments will preclude another challenge on the same prior art, or

arguments, are cumulative prior art before the board, I think that would be really helpful. So, I don't know if there's anything you could do in the patents organization to try to, you know, define that, help work with the board to define that with more specificity.

MR. HIRSCHFELD: Yeah, so, great comments, Bernie. We are actually looking into this 325(d) issue with the PTAB and doing a study so we understand, you know, where, you know, what the issues are that can be addressed. So, something we're looking into. I don't have the details. I'm happy in a future PPAC, because I think we're on the front end of the study, but it is something we've already begun.

CHAIR JENKINS: Okay great. Any other comments, questions? Okay. Thank you. Thank you both. So, we have operations update. So, even though Steve, you heard him, he's listening. And we're going to have, though Jeff is going to jump in for us and Steve's annual report summary. So, Jeff --

MR. SEARS: Thanks very much

Marylee. I will give some high level comments on the PPAC Annual Report on pendency and operations. I will then turn it over to Steve to amplify those and then we'll hand it to the office.

So, first, I'd like to start out by congratulating the office on meeting the Department of Commerce's Agency Priority Goal. As we've discussed, the APG, Agency Priority Goal, or APG, was less than 15 months for first action pendency and less than 24 months for total pendency across the office on average.

As the Director stated in his opening remarks, the office achieved 14.7 months and 24.8 months, respectfully. So, congratulations to the office. Our thanks to Drew, to Andy, the entire patent operations team for achieving the APG, thank you very much.

Also, we would like to commend the office for its continued attention into meeting the pendency goals of the American Inventors Protection Act, AIPA. As we've

discussed in past meetings, the APG's are average goals across the office, the AIPA goals are absolute goals per application. And they include 14 months to the issuance of a first action, and 36 months to issuance.

While average goals like the APG are helpful, applicants do need the certainty of knowing when their applications will be examined. And this certainty is provided by the AIPA goals. So, in this regard, we continue to appreciate the office's continued support to meeting the AIPA goals. Steve, I'll turn it over to you for any comments you'd like to make.

MR. CALTRIDER: Thank you Jeff can you hear me?

MR. SEARS: Yes.

CHAIR JENKINS: Yes.

MR. CALTRIDER: Great, between Jeff and the director, the accolades for the job well done will mean the APG (inaudible) won't repeat and certainly on the AIPA, but I want to introduce a little bit any discussion because the issue is the Office of Safety and

the director also touched upon a number of aids that have really been remarkable and the staff has done a terrific job and the examining corps has done a terrific job in allowing us to meet, not only the APG, but to really position us quite well in making significant progress in meeting the AIPA goals. And again, TD said that becoming forward. The AIPA goals for 2020 have not yet been set. The office is working on those, but they will be coming shortly and then you'll come in further on that as well. So, I'll turn it over to Andy.

MR. FAILE: Okay, thank you both Steve and Jeff. First of all thanks again to PPAC for all your continued support in our pendency journey, not just for last year but for all of the years. You guys have always given us great ideas and great, when it's needed, critical input on where we are and where we should be going. So, really appreciate that. And I look forward to continuing yours to the same level of input from you. So, appreciate that very much.

So, Steve wanted me to talk a little bit about how we addressed this goal last year and how we made it. So, a few things come to mind. I believe the first thing is, we have been building some capacity within the operation part of patents for some time now, in terms of data analytics.

So, if you think of pendency at a large level, one way to think of it is a giant math problem. How do you take an inventory that ages every day and moves to the right in a graph, and how do you work that off in a certain way to hit the goals that you need to hit?

You do that with a few constraints. One is a pretty large workforce working on that, we have about 8,200 examiners working on these cases. It's hundreds of thousands of cases that are moved throughout a given fiscal year. And although 8,200 examiner's cranking on a workload of that size sounds like an awesome amount of what we would call firepower, capacity to bring to bear on those particular applications, one of the real

constraints we face is we have very real technical barriers as to what examiners can work on.

We can't have 8,200 examiner's working independently across all those cases. Obviously, examiners are in a technical specialty in which they work. So, that particular firepower is not portable across that whole backlog of cases.

So, we have constraints, we are loosely basing that on our TC structure. We have eight TCs plus our design TC that have different components of technical specialties and examiners to populate those particular art units within those TCs.

So, one of the things we did last year was we really ramped up our data analytics capability within operations and also in partnership with Rick Seidel shop over in the Patent Administration part that puts together the larger patent model that governs a lot of the operation of the office and then the budgetary cycle.

One of the things that we've been

working on is a group within patents called PORT. That's Patent Operations Team, PORT. And we have just somewhat recently hired our Chief Data Analytics Officer, Dan Hunter sitting to my right over here, who has taken a deep dive into all thing's pendency over the last year. And tried to figure a way forward with a group of SPEs and directors in trying to meet the pendency goals that you see on the slide.

So, with PORT is kind of our central hub of data analytics looking at the backlog. We also work within each TC we have a number of different SPEs that work with PORT. Think of them as kind of the feeder network into the patent corps to help bring some of the ground truth of applications and examiner capacity that you don't really get at the aggregate level back into Dan's shop working with Rick's shop to kind of formulate a plan. How would we move these cases to meet this goal?

A couple of the larger kind of philosophical things that we have done is first we focused on first in first out. We

want to get the oldest cases done first, we did a lot of the old cases in the beginning of the year. If you look at the purple graph, in our first action pendency, you'll kind of see a rise in pendency as we worked off the older cases. And then a drop towards the last part of the fiscal year last year.

So, that's a key component to what we want to do. We think that's fair. Of course to applicants, those that file first should have their applications worked on. We also looked at that outline of cases and again with that, kind of asymptote firepower that we have we can't bring it all to bear. We started to have to make decisions about what parts would be portable, what cases could be moved within some reasonable delta. And then how do we align firepower to that to move that?

We also looked at increasing the current capacity that we had for last year by looking at things like, are there ways we can maximize the examining time that we have available? So, each TC took a look at that

and did some pruning on examination time. Are there things that could be put off maybe till next fiscal year that didn't need to be done. And that in last year's fiscal year in order to make the goal. So, we made some, what I would consider, smart decisions there.

After we got all the cases aligned up and kind of a strategy at the beginning of the year, it was basically, you know, kind of head down execution throughout the entire year to produce the graph that you see in front of you on the purple graph on first action pendency. And we were waiting literally for the last month to see if all of these forces would come aligned together and actually put us over the goal.

And thanks to all the hard work from the PORT team from the operations team, and you know, most importantly from the directors, SPEs and the patent examiners that actually moved all the work, that's where the real credit lies. We were able to do that.

We brought a similar type approach to the total pendency goal you see in orange.

Some of the constraints in a total pendency goal, which is basically allowances and abandonments, and you know, they go score into the 36 month goal. Some of the constraints there is a lot of that work matures in the fiscal year, but it started, you know, in prior fiscal years. You're looking at a 36 month or a three year span.

So, we didn't have quite the control in total pendency that we had in first action pendency in moving dockets around. Cases become allowances or abandonments throughout the year. As they will they become data points, however long they have been pending. So, that was a little bit more of a challenge to look at.

Some of the things we did there is we knew the issue builds that were being built throughout the fiscal year particularly at the end. We didn't have any influence on those bills, we were able to know what cases would be issuing and we could get a sense of what pendency, the allowance component was.

And looking at the abandonments it's

a little bit less of unknown we don't exactly know when cases would be abandoned by examiners throughout the year. One thing we did know and a big credit to Rick's shop, is we do have abandonments at the front end of the process in the Office of Patent Examining -- Patent Application Processing, PPAP. Rick's team did a fantastic job in finding those cases that were abandoned just sitting there and hadn't been processed yet.

So, we doubled up our efforts on processing abandonments at the front end of the pipe that were legitimate abandonments to bring to bear on the 23.8 total pendency. Our goal was 24, we landed at 23.8. That was a goal that we were, at the very end of the process, we were a little bit more nervous about because we didn't have the ability to really influence it at all, and it was based on setting the cases up for the prior years and looking at what we could do with abandonments that were there that hadn't been processed yet.

I think this underscores a couple

things. First of all, it really shows the importance of data analytics in a problem like this. Again, going back to the beginning of the discussion, I look at pendency's as almost as almost a giant math problem to which you can bring a lot of data analytics to bear.

And then the execution of that, the phase two part of this, once you have a plan set the execution of it, really the credit goes to the SPEs and examiners for actually working on these cases, getting those cases done and getting behind the goal.

So, that's just a little bit of the flavor of the approach that we took last year. One other thing I would really want to highlight and give a shout out to is we talked about our PTA goals, the 14.444.36 that Jeff had mentioned. One of the fours is processing amendments. We had a spike in processing amendments at the beginning of last year, which we also brought both IT and data analytics into that process to bring our actual processing amendments from a high of an average of 26 days down to just under eight

days.

So, that was done by a process of bringing data analytics into the, what we call the OPESS, Office of Patent Examination Support Services Group, and also looking at our new series of reports that help them to better target cases that had gone off track and we can bring them back into the fold.

So, we are doing is a high level priority scan on 14.444.36. We're doing very good in the fours. We have in excess of 90 percent compliance in the four month cases that we're working on. We have pretty good compliance in the 36 month case, about 83 percent last year. That is largely fed by the 14 month cases going into that calculation on the front end.

So, our mode of concentration or focus from here forward is on our 14 month cases, which at the end of last year we were about 43 percent compliant. So, that's our focus now to bring to bear.

To highlight a comment Jeff made. As we are focusing more and more on PTA, we're

moving kind of from an average pendency system into one that has pretty tight limitations, 14 months to do an action on a case by case basis. That's a really fundamental shift for us. So, as we are moving and threading the needle moving from an average pendency kind of construct that we have now into more of a strict timeframe for getting the pieces of work that we have done, we're bringing our data analytics into that process and starting that transition over impact knobs.

So, again, thanks very much to PPAC for championing this effort throughout the years, particularly last year. And we look forward to working with you guys as we move into patent term adjustment timeframe, again bringing that level of certainty and reliability into the movement, time movement of cases throughout the core.

MR. KNIGHT: Andy.

MR. FAILE: Yeah.

MR. KNIGHT: I'm just curious. When you look at using the patent term adjustments, the statutory, you know, deadlines for getting

the work done, how does that track with the amount of inventory that you need to -- in the queue to keep all the examiners busy all the time? Is there a point at which in some like technology centers, maybe that sort of a goal maybe is too efficient, for example?

MR. FAILE: That's a great question, Bernie. So, there are places now where our average is below the 14, so you have tails on both ends of that. We always are concerned about the balance between bringing in capacity in the areas of high pendency and also not burning too deeply in any one area of low pendency. That's going to be a concern regardless of an average pendency or a dependency according to 14.444.36.

So, one of the things we do there is I had mentioned Rick's group produces kind of an aggregate patent model that sets forth some of the parameters for operations throughout a fiscal year and also feeds into the budgetary cycle. We take that aggregate model through our port structure working with Dan and the team, and we figure out if we're going to hire

X number of examiners, which is our largest way to crease capacity obviously. Where do those examiners go and what areas of high pendency or low pendency?

And we really do -- we really do a good analysis and spend a lot of time trying to ensure that we have the right examiners in the right places. So, we're bringing down areas of high pendency in a measured way, and we're not burning too deep in those low pendency areas.

MR. PICARD: If I can chime in and --

SPEAKER: (off mic)

MR. PICARD: Sorry.

MR. FAILE: No, no you go ahead.

MR. PICARD: Andy, I like your follow-up on the point the director made and also have you expand upon it because it's such a notable accomplishment, but the work the focus has done on the processing to go from just over 26 days to eight days, when you're looking at 14 months, or when you're looking at our APG goal, days matters and that's a significant reduction. I don't know -- can you

comment a bit more on focuses work in that regard on the processing side?

MR. FAILE: Yeah, sure. So, the most impact the 26 to eight days movement had was on the four month goal of processing amendments within four months. OPESS does do a lot of work on the front end in prepping new cases for examination in conjunction with work that's done over in Rick's shop in OPESS as well.

So, for the 26 to eight, we started to balloon up in our four month on pendency number for the amendments. And we are normally in the 90 percentile plus compliance with that. We started to lose some of that at the beginning of the year last year. And that was mainly due to, we've had some structural issues in OPESS with respect to workloads and automation. And we've been working with that group for some time now in automating some of those processes and redirecting some of that work. So, we lost some capacity there in terms of having OPESS employees transitioning to other work throughout the agency. And we

started to build up a little bit of a backlog.

Point number one. Point number two, we did not have the reports that we needed in some of the IT supports generating those supports -- those reports, to understand at a very granular level where these cases were and how they were being assigned to OPESS employees to process, particularly in the amendment sphere.

Once we got those, we partnered up the OPESS leadership with our PORT team, Patent Operations Research Team, and really took a deep dive and figured out there's a couple key reports that if we had, we could better manage and better assign the work to OPESS employees for that throughput to bring the days down with the exact same staff we had before.

So, we did that. We got together with them. And through a combination of IT support to get these reports generated in management effectiveness in OPESS to bring that information to the employees and kind of restructure their work, they were able to work

much more efficiently and drive those numbers from an average of 26 down to about seven or eight days.

That brought the compliance and the four month up. So, that was a real, in my opinion, a really good example of how you bring data analytics into a shop, you figure out the reports or the information you need to act on. You turn that into actual action to the leadership in that group, and you get results such as moving from an average of 26 days to process down to eight.

MR. HIRSHFIELD: I wanted to jump in and just very quickly address Bernie's question also. I'm actually more concerned when we were focused on averages that there's areas where we would have not enough inventory. So, in other words, if you're at 14.8, which sounds like a great number, and believe me I'm thrilled we made it, and you can see the level of work that people had to put in, like Andy, and Dan behind him to make this happen.

You know, I think that it's a great

accomplishment. But when you have a 14.8, and you have some people that say eight, right, and you have others at 17 or 16. One, that's not as helpful for the public, and two those people who are at the lower end that's where I really worry we don't have enough inventory.

The ideal situation for me is to level that out at the 14 and provide for people who need the speed, and I think Jeff, you know, referred to some folks who really want to get the speed that they have it, you know, the availability to say to track one to go really fast. And then for the rest of everybody, we level out around that 14 so you're not having those pockets that, well you level out below 14. But, so you're not having those pockets where in order to keep your average at a certain number, you're really decreasing some areas. So, this way it's more certainty. It's more consistency throughout.

MR. IANCU: Okay, thank you. So, I think we'll shift on to searching, Marylee, is that good?

CHAIR JENKINS: Yeah. Yes please.

MR. IANCU: Yeah, yeah.

CHAIR JENKINS: I just, I'm just, you know, Bernie's question and your response, the status of application filings in general, you know, we want everyone to be busy, but then you want to adjust everything so people are working on the right areas and that they have work to do and all. I think it's just a hard dynamic when you don't have certainty over who's going to be filing applications.

However, I think if you continue to get the message out of quality and what we're trying to do with review of patents, I think you reinstitute support and commitment to the patent system and help folks say hey I want to file a patent. But I mean we're getting -- I'm getting lots and lots of emails, lots and lots of emails from, now -- from small companies and independent inventors.

And so I think people want, in this society, want instantaneous answers. And sometimes you have to be patient and hear the whole equation, not just the front end. So, and we appreciate all the work that you're

doing to try to achieve that. So --

MR. FAILE: Okay, so moving on into search. So, we've talked a little bit today about search, how valuable search is. Everybody believes in a good prior art search. Everybody believes getting the best prior art into the case and earliest point in the prosecution so we can make better patentability decisions as we move through.

In looking at search, it's also a big priority of Director Iancu's. One of the three priorities he came in with, one was looking at prior art searching and what are things we can do to enhance the current state of finding prior art.

So, in conjunction with Drew and the deputies, we've taken on a number of different initiatives in search. You're getting ready to hear about one now. Just to set a little context for this. When we look at search, there's a few different themes that pop up that we've been fashioning initiatives around. And one is tools. You heard about, a little bit about AI, we're looking at a new searching

tool coming out in patents.

We're also looking at leveraging AI capabilities in search too as a help to get more prior art into the system for examiners to consider. So, there's a lot of work going on there.

We're also looking at our search guidance. You heard Director Iancu mention the patent examiner appraisal plan our revamp for next year. Within that we have threaded in some indicia for aspirational, we want examiners to search for prior art and exhibit these type of characteristics. We think that, you know, puts a bright line path for examiners to look at search in a structured way.

We also do a lot of training on search. There was a number of different workshops done last year throughout the TCs trying to amplify search in how to get the best prior art in the case.

And one of the things that Matt's going to speak to today, another theme is we think we can do more in leveraging peer to

peer knowledge throughout the core. So, if you think about the office with 8,200 searching examiners that search hundreds of thousands of cases a year that literally make millions and millions of decisions on millions and millions of documents, whether they should be in the case or not. Finding a way to leverage the expertise across lines for examiners and sharing their search expertise, the art they find, we think there's a good capability to do some different things in search there.

Examiners do collaborate with each other. They all have their own cases, of course. They do collaborate on searches. But we think there's probably some more they could do in maybe a little bit more of a structured way to share both art that is found and also prior searching expertise and searching methodologies and searching approaches with the examiners.

So, one of the things we thought would be good would be to take a look at how could you leverage a peer to peer searching

type of pilot. What things could we learn from examiners searching the same case and sharing results, both in what they find and approaches to looking at that case. So, with that, I'll kick it over to Matt to walk through the pilot we did on our peer search collaboration.

MR. SUCH: Thank you, Andy. I'd also like to thank PPAC for the opportunity to share this information on the peer search collaboration pilot. I certainly look forward to hearing your questions and comments.

So, the background for this is that we designed a system by which it allowed for paired examiners to each independently search an application and then evaluate and share best practices performing searches. And that includes searches that are useful in specific technologies or across mixes of technologies, particularly for applications that are multidisciplinary in nature.

The pilot was also designed for examiners to be able to share search expertise, and we surveyed participants to

measure the effectiveness of the process as well as investigate the outcomes we're seeing in the prosecution history.

So, the basic processes, we have a lead examine a role and that is the examiner that owns the application. They select a case on their docket that they feel like they would get some assistance with. And they will place that application into a tool with a reasoning statement seeking assistance on a particular aspect related to search.

Secondary examiners are these are the other examiners that are in the pilot, fill the role of going through and self-selecting out of the cases that were posted into the tool applications that they feel that they could contribute to.

So, both examiners once matched would each independently search an application. And they would then get together and review the search findings from their peer and discuss the strategies and results that they found. At the end of that process, they would complete surveys and we had some focus

sessions throughout the time that the pilot was running to try to drill down on some issues that were being raised in some of the surveys as well as collect feedback from the participants.

The pie chart on the page shows an analysis of the reasoning statements that the lead examiners were reporting for why they were seeking assistance on a particular aspect on a search. In most of the applications, they were looking for some sort of assistance with the inventive concept that was core to the invention itself.

However, there was a significant portion of instances where examiners reporting seeking assistance on a particular limitation. Many of those, when we looked at those applications tended to be those multi-disciplinary type of applications where there was, you know, chemical type of technology mixed with mechanical and so forth. And then there was a small subset of examiners that reported they simply just wanted to get a second opinion on the application.

So, this is a lot of data about participant demographics. The most important things to take away from it was we used a random selection of invitations to allow examiners to participate in the pilot. There was a few things we were looking for. One, we wanted to make sure that we were getting a good cross section across all the different technologies. And so we were able to get participants from all the technology centers.

Additionally, we were looking to see if we were kind of recreating the core. So, we had 131 primaries and 29 non- primaries in here. This was from the GS-12 level and up, so we weren't taking our most junior examiners as part of the pilot, but folks that were still junior examiners.

Additionally, we wanted to provide examiners opportunities to fill out both of the roles. And so we had asked participants, through the course of the pilot, that if they were the lead examiner in one case that the next time they participated in the process that they would take on a secondary role.

And out of the cases that were collaborated, there's a few interesting things that we discovered. So, at the end of the pilot we had 130 total cases that were collaborated. Exactly half of those were within the same technology center, and the other half were across technology centers. Again, focusing on some of the multidisciplinary nature of the applications that examiners were selecting for this pilot.

The other thing that was interesting to note was that not every examiner that participated in the pilot chose to actually put forth applications for the pilot. And so we found that the examiners are being actually quite judicious about the types of applications that they were seeking for inclusion into this exercise.

So, I'm going to go through a couple of the key findings that we had based on the survey results that was collected from the participants. And we surveyed both the examiners that served in the lead role for each application as well as the examiners that

searched in a secondary role. And so you'll see some of the slides that the data is broken out from each of the two roles that the examiners placed -- played, excuse me.

So, this chart asked the question, did the paired examiner search results contain any references relevant that were not contained in your own search? And both the lead and the secondary examiners each reported, with the hide -- about three out of, or excuse me, about four out of five instances that there were new references that were being discovered by their peer during this process.

We followed that question up with a question in regards to whether or not each of the examiners felt that the reference would be useful in either a 102, a 103, neither 102, nor a 103, or some other type of rejection. And in 61 percent of the time the examiners, in looking at the total body of prior art that had been collected, agreed upon how those references could be used in the office section.

Again, the lead examiner was the one

that actually owned the application, and they were the ones that would be making the patentability determinations on these cases. So, ultimately, the results were being utilized by that lead examiner only. Ninety five percent of the time, at least one of the examiners found art for either a 102 and/or a 103, as was reported in the survey.

Now, we looked at this a little bit deeper in terms of the actual office actions that were generated as a result of cases that were in the pilot. And we compared a pre-pilot pool of cases from the same examiners as a control to the ones that were in the pilot. And actually found that there was no difference in the number of office actions that were receiving either 102 or 103 rejection.

From here, this let us to note a couple things. We did see a slight uptick in the prior art that was being cited in these applications. It was about a 15 to 20 percent uptick in the numbers depending on how you measure it. And since we didn't see

numerically differences in the rejections that were being made in the control group of applications versus the group of applications that were part of this pilot, we paired up and collaborated with the Office of Patent Quality Assurance to have reviews done on both of those sets of cases to try to drill down a little bit further and understand, was there a quality component going on and try to get an understanding about the outcomes of the search process itself on the quality of the prior art that was being applied in the applications.

We're still in process of working those numbers now. The reviews are kind of wrapping up as we speak. But when we get that information, we're going to be diving into that and looking to see if there's any indications that we can learn from that information as well.

We've been talking about collaboration among examiners and Andy mentioned, you know, we have got a nationwide workforce and I think there's been some conversation in this room this morning about

collaboration. And so, one of the important aspects of this pilot was to get an understanding from the examiners about the effectiveness of this collaboration.

So, the examiners did report through the focus sessions, as well as the surveys, that they did benefit from creating these connections with their peers. In particular, they felt that these connections aided in their ability to find peer resources for case assistance. And they've been reporting to us that this is something that they've formed relationships that they can continue beyond the end of the pilot itself.

And they did also report that this networking led to knowledge transfer among themselves. So, we're going to focus on that question a little bit in the final few slides.

So, we asked examiners if they learned any new search techniques or any new tips as a result of this process. And in 68 percent of the reports of paired examiners resulted in least one of the examiners reporting that they had learned new search

techniques. And in 26 percent of the cases, both the examiners, regardless of the role they were in, either the lead examiner role or the secondary examiner role recorded that they had learned new search techniques from their peers.

Of course, there were in some instances, differences in the search results that came up. And so we had asked the participants to give us some information about the reasons why they think that might be happening. And this data here shows that things like the types of search strategies that were employed, how the claims are being interpreted, the understanding of the invention, and the types of searches used as well as the skills and experiences that each examiner brought to bear on the search process, were significant factors in why we were seeing differences in the search results.

Another thing to note is there were a significant portion of applications as we saw in the early slide, where we were pointing out the reasoning statements, where the

primary or the lead examiner was asking for search assistance on a particular aspect of the invention. And so they weren't always asking for, hey I'd like to get a second opinion on a case, but rather many times they were also asking for, there's a small component here that I really feel like a deep dive from a peer would be useful. And in those instances, we certainly saw that there was different -- more pronounced differences in the search results that were being reported.

MR. KNIGHT: Matt, I'm just curious. I guess, you know, if I could understand why two examiners could interpret claim terms differently because people often, you know, interpret terms differently. But when it comes to search strategies, I thought that examiners were treat -- were, you know, educated or trained on the appropriate search strategies. And if they're all trained on the same search strategies, why is there such a divergence in the types of search strategies used in these cases?

MR. SUCH: So, we think that has to

do with a couple things. As I mentioned just a moment ago, many of the times we saw divergences in search strategies, it really had to do with the focus that the lead examiner was looking for, in terms of the assistance from the secondary examiner. The biggest portion of the cases that we saw these types of differences in that you speak of, were due to those instances. Where examiners were seeking out, hey I'm a mechanical examiner, I'll just use an example of, you know, I examine gears, but there's some significant chemical component because there's a coating on the gear for say thermal barrier or something like that. And I'd really like to have someone that works in those composition areas provide some input.

MR. POWELL: I might chime in to add that, you know, searching is very much an intuitive investigation, you know, and so in a lot of ways an examiner's, you know, this was part of the examining of the job that I really enjoyed was, you know, being the detective finding clues here and, you know, what you

find right away may steer your direction and so forth. So, I think that's a very gray area part of the job is the intuitive part of searching.

MR. SUCH: Yeah and I --

MR. POWELL: Would you agree with that Matt?

MR. SUCH: Yeah I can actually add one other thing. Of course the examiners are trained on the philosophy of how to search the same way, right. The MPP Chapter 900, and portions of 700, sets forth a lot of clear guidance on that. One of the things that we found in some of the discussions with the folks that were involved in the pilot was, it was the way that they were employing tools, right. We have a lot of very powerful tools at our disposal. And examiners learn very, very interesting and neat tricks for being able to drill down and use the tools in very, very efficient ways.

Those are the types of things that we were seeing was also a contributing factor to them exchanging -- doing that knowledge

exchange. Learning those types of tricks in the tools and understanding, you know, how are some ways that I could leverage the technology that's at my fingertips to bring forth prior art more efficiently, and understanding, you know, how are some ways that I can leverage the technology that's at my finger tips to bring forth prior art more efficiently.

CHAIR JENKINS: So, just touch -- I'm sorry, that's a really good point Bernie brought up. So, is this the only way, other than say, the examiner training that you do for everybody, is this the only way that they can do better searching? So, in other words, if I know I have an expert who's really good at searching public documents, I go to her because I know she's excellent in searching public documents, so, she's like my go to. So, it doesn't sound like the office -- I've never really thought about how examiner search per se, but is that -- the office doesn't seem to have like an elite, like if you had like, oh, I have a searching question -- you know -- is that -- I know that might be a strange

question, but it seems like it's kind of coming out based upon what you're saying, so --

MR. HIRSHFIELD: It's not a strange question. It's actually a really good question. But, you know, what we always report out and discuss are the bigger training, the pilot programs, but at the heart of the system, right, every examiner who comes in the USPTO goes to the Patent Training Academy. It's currently four months. They learn how to search there. They learn the statutes, how to apply the statutes, but when they're done with the academy and they still get some training after that four months from the academy, they are, you know, since they're junior examiners, every case has to be reviewed by somebody else.

CHAIR JENKINS: Mm-hmm.

MR. HIRSHFIELD: And that where a great deal of learning takes place on how to search. Some primary examiner, whether it's the supervisor or whether it's an assigned primary examiner will train and educate somebody on the search, as well as the other

parts of the job and I think what happens to us, is that's so routine for those of us at the PTO that we don't talk about it as much, but the amount of learning that takes place from that time period until somebody becomes a primary examiner and has the ability to sign off on their own, right, is immense. And that's probably where the most of the learning takes place, at least in my opinion. The classes are more reinforcing or teaching something new that occurred, but the foundational parts of the job are learned first from the academy, and then, in that hands on with your supervisor. When you asked a question about search experts, that something that we're exploring now and actually, Andy is in the process of putting search and classification examiners, it's a new role, and embedding them within the TC to be able advise people on a lot of the new classification issues that we're going to have as we're transitioning to CPC and also on search techniques in general. So, that is something that we have definitely explored.

And I just wanted to go back to the program to become a primary examiner for a second, I know I'm jumping back, but I realized I wanted to say something that I didn't. In order for an examiner to have their own signatory authority, they go through a program where over, is it a year and a half or so, they're going to get -- I think each time, 17 cases reviewed. So, you need to go through the first part. You're going to have different supervisors pulling cases, reviewing your cases, get feedback. If you pass that you go on a second part of the program and it literally takes a year and a half of work and review to be able to go through. It's a very rigorous program because it's very important once you tell somebody you now have the authority to sign your own work. And so, that is where we will get a check on their ability to search. Their ability to determine what should, you know, be rejected in prior art and what should not and what should issue as patents. So, it's a much more rigorous program then we're able to do justice when we

talk about just some individual training initiative and some pilots.

CHAIR JENKINS: Very helpful.

NOTES WHITED OUT: Just to add one thing in, I think it's a great question, and as Drew says, we don't -- it's actually interesting to sit back and think about how we train people and search and how people develop a searching expertise. It's not something that's kind of second nature to most of us. I would consider it part art and part science. And the science part is the knowledge of the tools. All examiners are pretty good at Boolean algebra and putting together synonyms to capture a concept. Putting proximity operators to look through a database to see how close these concepts should be to each other, etc. So, the mechanics of that, they're pretty good at. What varies is the examiner's actual technical knowledge when they first come in and then what they develop through experience searching through prior art over and over again. So, when you get to the level of a primary examiner, that is very

valuable resource, not only for searching their own cases but for other examiners to consult with and there's a fair amount of that consultation that goes on and a primary examiner in a certain art that's been working in there, let's say, for potentially decades, can tell you immediately, go to database X not Y. Search for this inventor, they did some work around this time, on this particular concept, etc. So, they're basically providing a lot of great input and knowledge and short circuiting searching through literally billions of documents that one can search through to kind of narrow in on the inventive concept. So, we think in a program like this, leveraging the knowledge of the primary examiners' and having them share as peers and share with juniors as a training and mentoring exercise, I think, has a lot of capacity. So, we're kind of just probing it the boundary points of, you know, leveraging peer-to-peer knowledge in this way.

CHAIR JENKINS: Great to hear.

MR. LANG: All the nice things they

said about the OPQA search feedback pilot this morning apply to this as well.

MR. SUCH: So, that's actually a good segue. We are -- these are the next steps we're taking so; we're obviously working very closely with the union to understand that the outcomes that we're seeing in here. We've got the survey results compiled and right now we're finishing up reviews in cooperation with the office of Patent Quality Assurance to understand the outcomes and how this pilot might be impacting the outcomes. We do intend to continue to monitor these cases through their completion of the examination process to see how the examination process and what the final disposition of the cases is. And, as was mentioned by the OPQA search feedback pilot, we've been working closely with that group as well to try to see if there's overlap in lessons in terms of what we've learning from this effort, as well as that effort that we can continue forward in the future. So, thank you very much.

UNIDENTIFIED SPEAKER: Another quick

note, to the peer searching pilot. So, actually this was an idea that was generated by Kathy Duda in prior POPA president, Pam Schwartz, so they came to me at one point in time and had the idea of let's try to do some leveraging of primary examiners and peer-to-peer learning, which I thought was a great idea and they basically sketched out the parameters largely that Matt went through, partnered up with us and put the pilot together, so, you know, kudos to them for pushing forward on search and coming up with the idea to start with.

CHAIR JENKINS: Second. And also, for the impact and input that they given to us for the committee. It's always been really insightful to hear the comments from both unions about what goes on here and hope you continue to be forthcoming for the next generation, so to speak, so. Any other questions? Yeah, no. So, are we jumping to international? Yes?

MR. POWELL: I'd like to jump in beforehand, if I may, and we've heard many,

many accolades about Marylee, I have yet another. So, my office was formed about five and a half years ago, so we're still relatively new as an organization and during the early phases of forming the organization we were able to have a two and a half day offsite for our managers and figure out our raison d'être and what are we going to do and so on and so forth. We were able to get Marylee to come on the second day and be our keynote speaker, and at that time she had just become, I believe, the head of the chair of the international subcommittee, at the time, and she offered us just wonderful thoughts on how difficult it is for people filing in the international community. Telling us about monetization and other concepts that we don't normally deal with in the office and among other things that spurred us on to, you know, actually go to law firms, go in-house to watch people file a case. See exactly what they're doing when they cross file in Japan, for example, and so, we've always retained that philosophy, so, we really want to be on the

community to see what you do, right. Because if you don't see the other half you're never probably come to the right answers, right. So, I wanted to acknowledge Marylee for helping us grow up and hopefully, we'll have you back sometime in the near future to give us an adolescence check or something. I'm not sure that we'll be there. But thank you very much, Marylee.

CHAIR JENKINS: Thanks Mark. It was a great opportunity and it really made me think about what my practice was like when I started many moons ago as a young associate and how my patent practice has changed since then. And just a lot of really thoughtful questions and just really enjoyed being part of the discussion and happy to see that you all are growing up, so to speak. So, with that, who's going to do -- oh, yeah, okay. Jeff is going to do intro. Thank you.

MR. SEARS: Thanks very much, Marylee. Happy to give an overview of the PPAC's annual report this year. First, I want to recognize and offer to the office PPAC's

appreciation for your assistance in generating this year's annual report. The report will be coming out in a few weeks and it includes an excellent description of the two international offices. The office of International Patent Cooperation and the Office of Policy and International Affairs. Two acronyms that are easy to confuse, but two offices who provide really functional and significant support to the user community and this year's annual report includes a great description of what their responsibilities are and how they operate together.

In the annual report this year, we focus upon two things: First, the collaborative search and examination pilot and second, the IP attaché program. With respect to the CS&E pilot, it's really an excellent example of an office program that is seeking to improve the quality of search, the scope of search and thereby, the reliability of the patent grant. Having myself taken part in one of these pilots and having gotten the first search report, I can say, the results are

truly illuminating for how different offices in the IP5 identify different prior art, and not just identify different prior art, but how they apply the same prior art. I would have expected the search authority, who's responsible for generating the report, to simply collate the results, and if another office says it's an X reference, then they would say it's an X reference also, but that's actually not what I've seen. There's really independent decision making and different standards for how prior art is identified and applied. With respect to the IP attaché program, we note there is widespread industry support for the functions and the achievement of the IP attaché's. It's quite impressive how widespread it is, so, we are very happy to support the elevation of rank for the IP attaché's. I will turn it over to Shira and Mark.

MR. POWELL: Hi. Shira will be doing the bulk of the presentation this morning, but I wanted to add just a comment that you heard Matt Such mention and Andy

mentioned, nationwide workforce. If you think about it, in a way we have sort of a worldwide workforce when it comes to many, many, many internationally filed application and to be able to bring all the professional patent examiners that we can find that are working on a single case around the world together through some collaboration program. It can only be a good thing.

MS. PERLMUTTER: Great. Thanks. Thanks, Jeff and thanks, Mark. On the attaché program, just to say, we are constantly looking to find really good candidates for that programs because there is always turnover. The attaché serve for a minimum of two years and a maximum of five years, so, we always have new positions. If any of you know anyone who might be interested, please tell them to get in touch with us because it really requires people who are truly subject matter experts and also able to be good diplomats and be out there on their own proselytizing for intellectual property and for U.S. Government positions and for our stakeholders. So, if

you have any recommendations, we'd love to hear them.

What I was going to do was to talk about the WIPO general assembly that took place the first week of October and I won't go into a lot of detail, but we wanted to just give you a sense of what we do when we all -- when a big group of us heads off to Geneva once a year. So, this is the annual meeting of all the WIPO member states. Close to 200 of them at this point. And it's the place where they make the decisions about WIPO's program and budget. About everything the organization is going to do and how it will spend its money. So, it's an important meeting, but in addition to the meeting itself, what happens is because it's such an important meeting, because all of the heads of IP offices from around the world come, it also is a place where a lot of outside meeting go on simultaneously. So, I usually call it a multi-ring circus. It's not to say that the work being done there isn't serious, but there is multiple things happening simultaneously,

in different places. So, we're all really there multitasking. We have different things going on in different rooms. We have separate teams who are handling all of the different things that are going on. And the teams are all led by our director, so, Andre was there with us this year. We had -- of course, Mark was there, Chuck and Dave, who are sitting just in back of me and I wanted to -- and Karen Ferriter and the attachés are also in the main room throughout, so, I wanted to give you a bit of the flavor of the meetings.

So, in the main room, we have the actual general assembly taking place and the topics this year included a lot of debate over the organizations budget, which of course includes and is financed by the fee-funded unions, primary the PCT in Madrid, Hague not yet making money, but it is fee-funded. The big debate was over a possible contribution of one percent from the fee-funded unions to the common expenses of the organization that -- for the activities that don't have fees associated with them. We supported that. It was a

proposal of the Secretariat and unfortunately, at the end of the day it was not accepted by the members. And a lot of what this was about under the surface was the Lisbon agreement. We want to make sure that the Lisbon agreement is not only -- and this is as you'll recall the latest agreement relating to geographical indications, which the United States was not able to vote in the negotiation of and have certainly are not able to join because it very much reflects the European approach to GIs. So, the concern is, we not only want the Lisbon union to be self-funding, but we also think it should contribute proportionately to the common expenses of the organization. We were not successful in getting that to happen yet, but we are still working on it.

There was also a lot of discussion about whether a diplomatic conference should be scheduled for the draft design law treaty, which has been in the works now for a number of years. This would simplify design formalities internationally. There's no opposition to the actual provisions that would

simplify design formalities, but there have been for various political reasons, a real push to put in really unrelated disclosure requirements and a requirement in the treaty for technical assistance to be provided to developing countries, which is something we had never agreed to in a treaty obligation. So, because of those two issues, again the diplomatic conference was put off. There were then preparation for a 2021 full evaluation of WIPO's external offices network. That's also become a political hot potato because many countries would like to have external offices and we're trying to make sure that there's a rational process for making decisions as to how many offices there should be and in what countries. And then last but not least, preparation for the election of the new director general. Francis Gurry's second term -- second, six year term is over at the end of -- at the general assembly's next year. So, the nomination period was opened officially at the general assembly's and people were beginning already to lobby a bit. We now

have, I believe, three official candidates who are from Singapore, Japan and Kazakhstan, the head of the Eurasian Patent Office, but there's a number of others that are rumored, including several from Latin America, so, we shall see. To move on to the bilateral meetings. So, during the course of, I think it was four days, we held 17 bilateral meetings with other IP offices. A process we sometimes refer to as speed dating. This year it was a little bit easier because we had our own room and were able to stay in one place the entire time instead of running from place to place. In those meetings we concluded a new PPH MOU with the Saudi Arabian IP office and a new cooperative MOU with the European Patent Office. In the other side meetings, a lot of discussions of many different topics. A lot of these meetings are just updating each other on what's happening in our respective offices but the topics had some common themes. They included the development and implementation of AI tools for patents, as well as for trademarks and designs. Various

policy and legal topics associated with AI inventions. AI is obviously the hot topic of the day and everyone is talking about it and these meeting were no exception.

MR. SEARS: Shira, can I ask you a question. The AI tools, what's -- at high level what's the purpose of the tools? Is it for search? Is it for classification? Is it something else?

MS. PERLMUTTER: Yeah, I'd say we're talking about all the ways that they may be able to be used. I don't know if Mark you want to --

MR. POWELL: You're right. A to Z. Right. Searching, classifications a big one. And the key is that, you know, and it's a good thing, that offices are really talking to each other about what they're doing and that hasn't really always been the case in a technical sense. So, it's a lot of information sharing about, you know, well, we're developing this. Where a lot of success has come in early, is in the trademark searching area and they're also looking at designs and what not. Each

office is taking a look at what are the available search tools or search enhancements that could be had with AI. Yeah, both are they commercially available versus trying to develop things inhouse. So, A to Z is the answer.

MS. PERLMUTTER: Here we go --

MR. POWELL: Oh and not to mention -- I'm sorry. Not mention, you know, patentability of AI and other policy considerations. The inventor as a machine and other items like that.

MS. PERLMUTTER: Yeah. The policy issues, the WIPO secretariat is also very interested in and wants to look at and they're following our request for comments on it as well. But you know, it's a great opportunity to find out what other offices are doing and how we can pick up ideas from each other.

We also looked at work sharing efforts, as we always do, including the expansion of PPH offices, collaborative search pilot partners and validation agreements, and then, as always, we talk a bit about

harmonization and about cooperation and initiatives that IP5, TM5 and ID5, particularly with the offices that are members of those three programs -- those three groups.

MR. SEARS: Question for you about harmonization.

MS. PERLMUTTER: Mm-hmm.

MR. SEARS: So, with the passage of AIA some years ago, we transitioned from first to invent, to first inventor to file, so, harmonizing with the rest of the world at a high level, what's the primary, like, if you had to identify it, one or two or three issues that are still out of harmonization?

MS. PERLMUTTER: Yeah. It's a good question. Let me talk about group B plus because that's where most of the substantive harmonization conversations are going on and then maybe invite Chuck up to talk a little bit about what the issues are that are currently under discussion.

So, the primary discussion of harmonization, as I said, is in group B plus. So, this is a group composed of the

industrialized countries, plus the European patent office. We hosted the meeting this year. The hosting is moved from country to country each year, and there's a subgroup that specifically address harmonization and then there's a plenary that looks at other issues. The subgroup looked at the current status of the substantive harmonization package that's under development now by IT3, the trilateral industry group, and then in the plenary we focused on developments in the cross-border aspects of attorney/client privilege, and then there was some discussion about future work. So, why don't I invite Chick to come up and he can talk a little bit about the status of the harmonization discussion and the topics being talked about.

MR. ELOSHWAY: Thanks, Shira. The open issues following the AIA are primarily grace period, conflicting applications and a few issues that some delegations have associated with the grace period. We -- this -- excuse me. The work that we're doing, Group B plus is an offshoot of work that was begun,

in the so called, Tegrenecy group around the time that the AIA was passed and the issues we were focusing on there, like I said, were grace period, prior user rights, conflicting applications, 18 month publication and there was one other issue, that has since fallen out. We've had -- we've been working on the issues relating to harmonization and the grace period for almost 40 years, going back to the mid- 80s at WIPO and have been unsuccessful. The most recent iteration is being undertaken by the industry groups rather than governments offices because one of the problems that we've had in the past is that as governments, we've come to sticking points in the negotiations on various issues that we have not been able to overcome for lack of political will. So, it was decided to give the reins over to the industry groups to try and come up with a proposal that would satisfy them and then we could figure out then what to do next with that proposal. Whether it would be some sort of a principals document or some sort of a soft kind of treaty or agreement or whether we

wanted to take it to a multi-lateral forum and try and negotiate a multi-lateral treaty out of it. Where things currently stand is the industry has been working on this for two, two and a half years, and they have essentially reached a couple of significant sticking points themselves and it's unclear at this point, if, or when they might be able to make progress beyond the point where they've now kind of stopped or paused. At the meeting in Geneva we got a progress update that just basically indicated what I mentioned and it was decided to allow them to continue working and group B plus is going to look into some other issues for possible further work in addition to the work that we've been doing on cross-border recognition of attorney/client privilege.

MS. PERLMUTTER: Yeah. So, the trilateral -- the IT, sorry, I keep forgetting what the acronym is-- IT3. Right, IT3. That sounds like information technology to me, but it's of course not. So, they are continuing to work however, so, we remain hopeful for

progress. The last set of meeting we had were of the trilateral. So, that's us, the EPO and the JPO. We hosted the meeting again this year, not again, but we again, hosted this, as we hosted B plus, and the topics included what future work should be and we talked about focusing on emerging global patent challenges, promoting innovation through the use of IP and again, harmonization issues, and you know, part of the goal with trilateral is to look at ways that trilateral can engage in work that is different than what IP5 is doing, which is of course the same three offices, but also adding China and Korea. So, that's the overview of what we accomplished in our week in Geneva. I'm happy to take any questions.

MS. MAR-SPINOLA: I apologize if the question is not perfectly fitted maybe directed to you all, but I'm going to try and see. So, as you know, we have our stakeholders sending us questions and as Marylee had said, we endeavored and generalized the question so it can apply more generally to all of our stakeholders. One of

the questions goes to -- or focused on the trend where more applicants are filing in China, in Europe, given what is perceived to be hurdles on enforcing their patent rights here in the U.S. Is that a trend that either of you have observed?

MS. PERLMUTTER: Are you talking about U.S. Applicants choosing to file elsewhere rather than at the U.S. PTO?

MS. MAR-SPINOLA: Yes. I think that's what the question represents. Yup.

MS. PERLMUTTER: Drew, did you want to --

MR. HIRSHFIELD: Yeah, I can -- I can take part of that. I don't think I can answer it completely. But for U.S. Filing, for new cases, our increase in fiscal year 2019 was 4.9 percent as compared to the previous year. We modeled that to be around 1.5 percent around the beginning of the year and that was consistent with the trend we've seen over the last five years. So, the 4.9 percent is a massive number compared to what we modeled for. So, all I know, I can't say about

international filings and people going directly internationally, but all I can say is, in the U.S. the number of new cases is increasing at a rate much faster than we expected, which of course leads into pendency issues and goals and hiring numbers, but that's a whole separate issue.

MR. POWELL: I may also add, if the question was concern about work load coming from foreign applicants, well, forever about half of our work here at the USPTO is from non-domestic filers, right. So, under treaty and under law they are treated -- everyone's treated equally so, everyone gets the best treatment that we can possible give them in any aspect of what we do here.

MR. KNIGHT: I guess, you know, it's no one's question here, but I guess, you know, the thing I don't understand about this question is, you're not going to get patent protection in the United States, so, if you choose to file in Europe you can do that, but if you're marketing your product in the United States, it's going to be unprotected. So, I

don't get that it's even a logical choice that you would get a patent in Europe, in Germany, but not get one in the United States if your selling your product in the United States. It doesn't seem like a rational question to me. I don't know. Maybe I'm just -- does anyone know what I'm missing here or --

MR. ELOSHWAY: I have a couple of points on this. First of all, there's been concern expressed, and I don't know if the patent filing trend is followed, that the U.S. market is becoming less attractive in part because of some of the complexities that we're now having to deal with regards to subject matter eligibility, and ironically, Europe, Japan, China are markets that are now easier to get into from a patent perspective with regards to some of these issues. Said another way, we're falling a bit behind in the technology spectrum when it comes to protectability of some of these technologies and that's driven in large part because of the confusion over subject matter eligibility. Now, on your point, yeah, it's true that it's

not necessarily the case that you wouldn't file for patent protection here. You might not get it. That's a separate question. But it also depends on what the patents are for. If they're for manufacturing processes, then having protection in the markets where you have the manufacturing facilities is probably what matters. Similarly, if it's somewhere up the chain -- patents that cover up the chain things rather than the actual downstream product, it would make more sense to get the protection where you have the facilities or other assets. On the products, yeah, you probably want to have them in the major markets, but like I said, the problem is not necessarily filing for the protection, it's obtaining the protection. Another point that was relevant to your initial question is that the WIPO report that just recently came out, has quite a bit of statistics in it about raw numbers of applications filed across the world and breakdowns by region and point of origin and things like that. I spoke at a conference in California the other day and there was a

bit of a discussion about the WIPO report and one of the person's had done a little bit of a deeper dive into and found that although there was a substantial increase in Chinese applications and there was a lot made about that in the report, according to this person, only about 4 percent of those applications were internationalized. So, I think that sometimes the numbers don't always accurately express the trends.

MR. POWELL: Wait, I was just going to toss into what Chuck just said. If I'm recalling correctly of the 300 something thousand grants, roughly that we have every year, the last year's report showed that only 13,000 were to Chinese companies.

MS. MAR-SPINOLA: Yeah, so just to respond to Bernie's question, I think the larger concern, again, is getting a U.S. patent that ultimately when you try to enforce it, it may be invalidated, and so, there's a concern by our stakeholders about predictability, durability of the patents that they get in the U.S. and whether in fact -- so,

like investors, BC's, their investments are at least perceived to be dwindling in the U.S. innovation and moving elsewhere and that's important not only to the individual inventors, but obviously to the U.S. as a whole and our economy. So, I think that question was more directed that way. Blame me for generalizing the question and maybe not making it clear, but your question allowed me to clarify it and I appreciate your comments on that too.

MR. ELOSHWAY: One just -- sorry.

MS. PERLMUTTER: I would just say, obviously predictability and reliability of patent rights is a top priority of the office and you're right that that makes a difference to people's decisions.

CHAIR JENKINS: Can I just -- one thing I know we've shown in the past is there will be a slide picking up on what Mark's comment is. It will be a slide and it'll show in the United States this many Chinese national applications -- that's not the right way to say it, but this many applications have

been filed based on an entity from China. It might be if the data is available to add to that slide to say, well, this is the data that we've gotten from China and it shows how many U.S. entities have filed in China and how many U.S. entities have filed in the E.U. because I find often at times there's a generalization made and when you actually go and look at the data you get another interpretation, so, you know.

MS. PERLMUTTER: We've actually done a lot of analysis of what the increase in numbers of Chinese filing particularly at WIPO means and there's a lot of wrinkles in addition to some of the ones that people already mentioned, including there's a difference between obtaining a patent and actually commercializing it. So, the question is, what's the actual value of these large numbers of filings.

MR. KNIGHT: Is there any studies that you're aware of, or have we conducted any studies picking up on Chuck's comment where we've looked at whether research and

development or manufacturing plants are moving overseas because of the U.S. patents? The hurdles to the U.S. patent system or is it just conjecture?

MR. POWELL: Well, I mean there's a lot of perception going on out there and you get a lot of hyperbole about all the sudden Alice comes out and everyone's abandoning the U.S. patent system, which of course is absolutely not true, on the contrary there are new cases. We're up 5 percent last year. So, I guess they used to call that offshoring, now you hearing about onshoring. I would think that would be a question more for an economist -- right, than a patent office.

MS. PERLMUTTER: Our chief economist has been looking at some of the numbers. I don't think we have anything at this point to report.

MR. LANG: From an industry perspective, I mean it doesn't make a lot of sense that people would move commercial activity based on patentability criteria. You know anybody can obtain a patent in the U.S.

based on inventions that are done else where and you wouldn't decide where to put something based on being able to get a patent in the country or not. The other thing is that this particular point is often raised in the context of technology, you know, like 5G and AI, where investment in the U.S. is actually quite strong.

MR. HIRSHFIELD: Just another point, and I don't want to sound too dramatic, right, but I think it's incumbent upon all of us to instill confidence in this system and I totally get it that there's challenges and for people listening who are in the middle of those challenges, such as 101 or a particular case that gets overturned, I'm not trying to belittle those, they are certainly serious issues that we need to address, but what I'm referring to is, hearing discussion, seeing blogs, etc., of people are not filing in the U.S., they're abandoning the U.S. system because it's so bad they're going overseas, and in the big picture when you look at our filing rates, which I mentioned earlier,

having significant increases, by the way in the last 20 plus years they've increased every year, except for 2009, albeit this year being a bigger increase. Maintain fee payments of people who are abandoning the system, that's certainly some place where we would see it. People would not be paying their maintenance fees. We are not seeing drop-offs in maintenance fee payments. We are seeing consistency with that. And I'm going to talk a little bit out of turn here because I don't know the exact numbers and that's something I just made a note of and will follow up on, but I think as far as the major offices go, I believe our invalidation rates are very in-line with invalidation rates in other areas and that's something I will follow up on to see if we can get more data. So, the point of that is that I don't believe that what you're seeing in the U.S. is out of line with other major offices, but again, that's something that I will follow up on. And again, I want to reiterate that I'm not trying to belittle the problems and challenges that we have. All

systems have challenges and we certainly need to address those and we're not trying to run from those, but in the big picture I'm seeing much more negative discussions in terms of people abandoning the U.S., which we are not seeing in the numbers.

CHAIR JENKINS: Drew, maybe you just want to clarify when you say, invalidation. What area are you focusing on for invalidation? Are you --

MR. HIRSHFIELD: I'm just talking about the patents. There's a percentage of patents that are issued and then later found to be --

CHAIR JENKINS: -- okay.

MR. HIRSHFIELD: -- improperly issues or invalid, right. Either their lot changes or a mistake or what other reason and my understanding is that we are in-line with other countries.

CHAIR JENKINS: All right.

MR. HIRSHFIELD: But again, that's something that I want to follow up on.

CHAIR JENKINS: Yeah, yeah, and we

appreciate that. And I think that is -- unless there's any other questions, I think that's a really good way to end the morning session, is saying, they follow up, you ask the questions and they get back to us, and so, we truly appreciate all of that. So, with that said, we're going to break for lunch and try to come back and start on time at -- what does it look like, 12:25? Yeah, 12:25. Thank you so much.

(Recess)

CHAIR JENKINS: So, welcome to the afternoon session. We are going to be doing a PTAB update and who's leading? Scott? Yeah. Why not, right? Well, we'll both do it.

MR. BOALICK: Sure. So, welcome.

CHAIR JENKINS: Oh, Julie's starting. Yeah, that's right. So, you're not starting. See, it was good I asked that question. Julie's going to start and give us the annual report highlight for the PTAB session.

MS. MAR-SPINOLA: That's right. Thank you and welcome everybody. Following lunch is always a hard thing to do, but let's

keep it going. I've had my coffee, so, I'm good. So, here's the overview of our annual report and we'll later tell you where folks can access the annual report, which is going to be published, I think, November 26th and we'll let you know where to find it on the website later on today. So, with respect to the PTAB, I have the honor of chairing the PTAB subcommittee and working with the great folks under the leadership of Chief Judge Scott Boalick and Deputy Chief Judge Jackie Bonilla, also we have Janet Gongola, who without her the annual report would be a mess and probably not as comprehensive as I think, the stakeholders would want, so, thank you. And we have Judge Michelle here. I'm going to call you Judge Michelle. And welcome to the panel today. What we have for the overview on the PTAB for this past year: the PTAB had a very active and constructive year to improve the consistency, predictability and transparency of its preceding and the PTAB has continued to handle a steady volume of ex-parte appeals and AIA trials, aka, IPR

proceedings. In doing so, the Board successfully continue to reduce appeal pendency and meet all of AIA trial deadlines without need for extension, which is applauded and much appreciated. The PTAB also, through the formation of the precedential opinion panel, also known as POP, established new processes for vetting and streamlining the designations of precedential and information -- sorry, informative decisions. There are stats, and I think Scott and his team will share the statistics, so, I won't do that here, on the precedential opinions. And the process for the POP is in the standard operating procedures that are also available on the website.

The PTAB also commenced a pilot program for motions to amend in AIA trials issued a notice about the use of reexamination and reissue proceedings as an alternative route to amended claims in an issued patent and release a second update to its trial practice guide to provide further written guidance as to how the Board handles various

aspects of the AIA trials. Moreover, and we talked about this quite a bit over the year, is that the PTAB's application of the broadest, reasonable interpretation, or BRI, for claim construction has transitioned to the *Phillips* standard, which is the standard the U.S. District Courts use. I think, as a stakeholder, having that consistent standard of review, something as important as claim construction, was a huge improvement, an improvement as to the system, but I also would say, an improvement to the reliability or the durability, I like to say, of our patents. The PTAB also issued a revised standard operating procedure regarding assignment of judges to cases, as well as a number of studies, including two concerning AIA trials related to pharmaceutical and biologics patents. All of this is addressed in more detail in the annual report and I would strongly urge folks to take the time to read it because it's very comprehensive in all things that the PPAC has worked with the patent office on. So, that is the overview of

the report, which I will have Scott and his team go over.

MR. BOALICK: All right. Well, thank you Julie and I appreciate the kind words. Deputy Chief Judge Bonilla is on travel today. Can you all hear me? Okay. That seems to be better. So, Deputy Chief Judge Bonilla is on travel today, so, presenting with me is Vice Chief Judge Gongola and our lead Judge Michelle Ankenbrand, they're going to help you with a -- present on different aspects of a lot of what Julie just talked about, plus some of our current initiatives. But before we get to that because I know somebody's going to ask, there was a little case decided on Halloween, around 4 p.m., called Arthrex, and it had to do with the status of administrative patent judges as to whether they were principal or inferior officers. So, the case held that the judges were acting as principal officers and fixed that constitutional defect and so, it's an active case. I'm unable to comment about what actions we may or may not be taking with

respect to that and, you know, so, really all I'll be able to say in response to questions about Arthrex is that we are issuing cases and that any other question is one that would have to wait because it's an active matter in litigation, in fact, we're within the period of rehearing at the Federal Circuit or other actions that may or not be taken. So, I just kind of wanted to get that off the table because I'm sure it will come up and it's been coming up quite frequently, but that's the status of that case right now.

So, what we're going to talk about is just to maybe talk a little bit more about the highlights of the annual report that Julie mentioned and the next two bullets have to do with what's in the report, what we accomplished and a little bit about where we ended up on the numbers. We'll take a very quick walk, I know that we don't like to spend too much time on statistics, I promise we won't do a heavy walk, but we'll sort of move briskly through statistics and then we'll get the recent developments at the PTAB. So, to

start out, our accomplishments, and this list follows the list that Julie just went over with you, so, I won't spend much time on it, but you can see there were quite a few things. We're going to touch on each of these just very briefly before getting to what we're currently working on. So, I will go ahead and hand the mic over to Michelle to walk you through our standard operating procedures.

MS. ANKENBRAND: Thank you, Scott. So, as Julie mentioned we had two standard operating procedures that issued right at the beginning of fiscal year 19 and one was SOP1, which addressed paneling judges to cases. It essentially explains the nuts and bolts of our paneling and repaneling procedures and we have paneled according to SOP1 and also issued panel change orders under this SOP when a panel has changed in a case.

SOP2 addresses precedential and informative decisions, and in particular, it provides two tracks for getting something designated a precedential. The first track is the new precedential opinion panel, known as

the POP, and that creates binding board precedent on rehearing, so that option is available only to parties in a specific case and what happens is a party can file a rehearing request and seek POP review of a particular issue or issues. If the POP grants review, it will provide notice to the parties that the review is taking place and also identify the POP members, typically permit amicus briefing, as well as additional briefs from the parties. The second track is the designation pathway, and in that track, unlike the POP procedure, that's open to anybody. So, any member of the public, any member of the board, any bar association or group can recommend an already issued decision for designation as either precedential or informative. And that's done through an email to the Board. The SOP has the email box in there linked, so you just have to click on the link and it pulls up the email box. One thing, also I would mention, about the precedential opinion panel is, when the decision issues from the POP it is already

precedential. So, there is no need to go through that second designation process.

This next slide provides an overview of the POP decisions and orders issued already or issued in fiscal year 2019. So, there have been two POP decisions issued. One in the Proppant case, addressing same party and issue joinder under 315C and a second, in the GoPro case, addressing the statutory time bar under 315B. In addition, the POP is currently considering two cases; there's one on the slide but there's been a recent development since the slides were submitted. The first case is a Hulu case and that is going to address the standard for showing something is a printed publication at the institution phase of a trial. The second decision or the second case, which is pending, the order granting POP review issued on November 7th and the questions involve motions to amend an AIA trials, specifically whether the board can raise its own ground of unpatentability when addressing substitute claims in a motion to amend, and if so, whether the board must

provide parties notice and an opportunity to respond before making its final decision as to the unpatentability ground it has raised. Briefing is currently underway in that case, which is called Hunting Titan. The opening and amicus briefs are due on December 20th and the responsive party briefs are due on January 6th. In addition to having the POP decisions and orders here in the slides, we recently established a POP webpage and that lists the details of all of the cases that POP has under review. There's links to the orders. There's links to the decision and there's information about when parties can submit amicus briefs. Currently, the only case where amicus briefing is still open is the Hunting Titan case.

This next slide details the precedential and informative decisions that were designated in FY 2019. It's basically just a summary of all of the issues addressed in precedential and informative decisions. As you can see from the summary, there were 16 decisions designated precedential and ten designated informative, and those were all

through that second pathway that I spoke about a little bit earlier. And they do not include the two POP decisions that we already discussed. So, with the POP decisions there's a total of 18 precedential decisions for fiscal year 2019, which is more precedential decisions than the board has designated in the previous nine years combined. For details about those decisions you can look to slides 11 through 14. I'm not going to go through them because it's just some case information. And just one note that everything that I've discussed so far is available on the PTAB website. In this slide you have the landing page of the PTAB website. On the righthand side it's a little bit hard to see, but there are all of the recent developments in the patent trial and appeal board. This slide was produced before the POP website, but if you visited the webpage today the first link on the upper righthand side would be to the new POP webpage, and then, everything else underneath are the recent developments. In addition, you can also find information about

statistics and other decisions at the PTAB. And I think Janet's going to briefly discuss the claim construction standard.

MS. GONGOLA: Well, good afternoon. I'll just speak loudly. Oh, I guess my mic is picking up. Very quickly, you think that cheering was for all of us if you really wanted to be a little bit egotistical about it. So, for the claim construction standard we issued one final rule in this past fiscal year changing, as Julie indicated, from the broadest reasonable interpretation standard over to the Philips standard. The reasons Julie indicated were exactly correct. We intended to enhance consistency between proceedings in front of the district courts and proceedings in front of the PTAB. We wanted to give greater certainty to patent owners as to how the terms in their claims would be construed. To that end, the parties are permitted to submit constructions that the district courts have made to the board and the board will consider them during the course of an AIA trial. The final rule announcing the

claim construction standard along with more detail is also available on the PTAB website. So, you can check it out if you need to know more. We began applying that rule to petitions filed on or after November 13th of 2018. So, we're just now starting to see final written decisions issued under the rule and our next step is to then assess whether there's been any impact in outcomes going from the BRI standard over to the Philips standard. Okay, back to Michelle.

MS. ANKENBRAND: Thank you, Janet. So, moving on to developments in motions to amend in AIA trials. We've had a couple of developments this year. The first was a motion to amend pilot program, which provides patent owners with two options that weren't previously available. So, the first option is that patent owners can file a motion to amend and ask the board for preliminary guidance on the motion to amend. So, the board will preliminarily assess whether patent owner shows that the motion to amend complies with statutory and regulatory requirements and also

will assess patentability on a preliminary basis. In response to that guidance, or if the patent owner chooses not to receive guidance, the patent owner can file a revised motion to amend. So, in the instance where there's guidance, the patent owner may choose to file its revised motion after receiving the guidance from the board. Where the patent owner hasn't requested preliminary guidance, the patent owner can also file a revised motion to amend after seeing the petitioner's opposition to its motion. So, hence the bullet point option one is not a predicate for option two. The pilot became effective on March 15, 2019 and it applies to all cases or trial instituted on or after that date. And the pilot will last at least one year. After a year we'll look at the data, the office will look at the data and evaluate any feedback received to determine whether to continue the pilot in its current form; whether to modify the pilot at all or whether to terminate the pilot all together. And we do have some statistics. So, far, we have about five

month's worth of data. The first time that anyone could file a motion to amend under the pilot program was June 7th. On June 25th we received the first motion to amend requesting preliminary guidance. We have total received 28 motions to amend under the pilot. Twenty-three of them have requested preliminary guidance and eight preliminary guidance orders have been issues by the board.

MR. KNIGHT: Excuse me.

MS. GONGOLA: Mm-hmm.

MR. KNIGHT: I'm just curious, why would someone not ask for preliminary guidance?

MS. GONGOLA: I am not sure about that.

MR. KNIGHT: Oh, okay.

MS. GONGOLA: It has happened in five cases. I don't know -- and we also haven't received a revised motion to amend in those five cases. So, of the 23 cases that requested preliminary guidance, we've had eight preliminary guidance issued by the board and so far, we've gotten six revised motions

to amend. So, it seems as though the patent owners that are taking advantage of the preliminary guidance are filing revised motion's to amend, but I don't think we have the full story yet as to why a patent owner would not seek preliminary guidance. It just happened in -- and it's only happened in some of the earlier cases it's happened in. I think almost everything since the middle of July that has come in, the patent owner has asked for preliminary guidance.

MR. CASSIDY: If you're negotiating a license or something it might be seen as a sign of weakness. So, for tactical reasons a patent owner may not wish to expose that possibility at some point in time, whereas they could be considering it seriously, so.

MS. GONGOLA: So, I'm actually going to skip ahead in the slides a little bit because one of the things that is developing currently is a notice of proposed rule making on the burdens in motions to amend, and so, we had put it toward the end of the slide deck. There it is. So, that published on October

22, 2019. It basically proposes that the petitioner bears the burden of showing unpatentability of claims proposed in a motion to amend. Patent owner bears the burden to show that its motion to amend complies with the statutory and regulatory requirements and the last piece is that the Board can, when it's in the interest of justice, make a determination regarding patentability of substitute claims based on the record in the preceding, regardless of the burdens that have been assigned to either party. So, developing that a little bit further, the notice of proposed rule making says that the board will act in the interest of justice only in rare circumstances and where, for example, there's easily identified and persuasive evidence that either the motions complies with statutory and regulatory requirements when patent owner didn't make that showing or that the substitute claims are unpatentable. For example, when a petitioner drops out of a case completely, yet the case continues, or a petitioner does not oppose a motion to amend.

And also, importantly, the notice proposes that the Board will -- when the Board does step in, the Board will provide parties an opportunity to respond to whatever evidence the board is referring to in the record. And the NPRM is consistent with the burdens already described in our presidential Electronics decision and that the board has been applying essential since the Aqua Products decision came out. Comments are due by December 23rd and we've received one comment so far from a solo practitioner. Also, there is a link to the NPRM available on the PTAB website when you go to that landing page on the right-hand sidebar is one of -- I think it's the second link on the page, and we do have a mailbox where we're accepting comments, which is mtaburden2019@uspto.gov.

MS. MAR-SPINOLA: Michelle, let me ask a question. With respect to the burdens, is that the order of the procedure? Particularly --

MS. ANKENBRAND: It's in reverse order on the slides. So, typically the Board

will look at the motion to amend to see if the patent owner has shown that it complies with the statutory and regulatory requirements.

MS. MAR-SPINOLA: Mm-hmm.

MS. ANKENBRAND: And then, the Board will go on to address patentability.

MS. MAR-SPINOLA: So, does the patent owner have the burden first to show compliance and then the petitioner has the burden of unpatentability?

MS. ANKENBRAND: Yes.

MS. MAR-SPINOLA: Okay. So --

MS. ANKENBRAND: And that's what it proposes. Yes.

MS. MAR-SPINOLA: Okay.

MS. ANKENBRAND: It's just out of order on this slide.

MS. MAR-SPINOLA: All right.

MS. ANKENBRAND: But if you actually looked at the role and the NPRM, it goes by patent owner's burden first because that is sort of the contents of the motion and the movant typically has a burden on the motion and then it goes into patentability.

MS. MAR-SPINOLA: Okay, great for that clarification.

MS. ANKENBRAND: Mm-hmm.

MR. BOALICK: And if I might add just one thing, so, the kinds of things that the patent owner is required to do both by the statute and regulation, is show the reasonable numbers of substitute claims to -- they're not impermissibly broaden. Those kinds of things. So, that's -- we're not talking about the ultimate burden of patentability. That is on petitioner. Just don't want anybody to be confused about who has which burden, but the NPRM lays all that out pretty clearly.

MS. MAR-SPINOLA: And this is over what time period? From, you know, the motion to conclusion? Is there --

MR. BOALICK: That's right. I mean, upon filing, I think as Michelle mentioned, we'd first look to make sure the motion meets the requirements of the rules and the statute, at which point you start looking at the merits.

MS. GONGOLA: And one thing you may

want to look at for further clarity is some of the preliminary guidance that the board has already issued because it walks through it in that similar way and addresses first, each of the statutory and regulatory requirements and then turns to unpatentability. And it clearly lays out the burdens for both of those.

I'm going to go back now to the last slide that is an alternative to motions to amend, which is the reexam and reissue notice that the office issued in April. This basically explains alternative ways in which a patent owner can secure amended claims outside of an AIA trial preceding. And that's specifically through reissue and reexamination procedures. It's a pretty detailed notice. One of the things it does lay out is factors that the Board considers when there's been a request to stay a parallel preceding that's taking place at the office or suspend, or factors that patents takes into account when a reissue application has been filed and there's an interest in suspending that reissue. It also gives similar factors for lifting a stay.

I think one of the most important things it provides is general information regarding the difference between reissue applications and ex- parte reexamination applications and the processes for how those work. For example, reexamination preceding can't be suspended once they're started by the patent office. The Board can stay them, can stay a parallel preceding, but if the Board didn't stay it, it would continue running in parallel with the AIA trial, whereas the reissue application can be suspended by Patent's or stayed by the Board. I think another important aspect of the notice is that it discusses the timing of requesting stays and requesting lifts of stays, particularly with respect to appeals to the federal circuit after a final decision. So, the Board cannot stay a parallel preceding once there's been a notice of appeal filed, but the Board can lift a stay because we consider that a ministerial action on our part. Even though the case is on appeal. And another important, I think, aspect of the reexam or reissue notice is that it explains

the role of section 325D, if a reissue reexamination preceding is the more advanced preceding and comes before the AIA trial.

CHAIR JENKINS: Michelle, before you go on, I think it's really helpful that the office is bringing attention to this and I encourage the office to -- you all like to study, whatever the right terminology is, because I think this is something that bears some weight so the user community can see, are people using this? How often are they using it? And I think procedurally, it's another way to deal with IPR preceding that you could consider -- I'm not giving an opinion, just to be clear, but you could consider bringing a reissue for your patent if an IPR isn't brought against your patent. So, it's just another way of, I think, patent owners to understand that the importance of the process at PTO. You know, process at PTO is not necessarily a straight line and I think actually you have a slide someplace on the website that shows, if you do this; it goes here. If you go this; you go down here. So,

in some of these nuances, particularly for small inventors and small business who aren't as sophisticated about all the different processes before PTO. I think this is one way of showing, hey, this is another alternative that you can consider, and again, I'm not giving advice, so.

MS. ANKENBRAND: I think one thing I think I would commend people to look at, is we did have a board side chat on the reexam and reissue notice where Deputy Chief Judge Bonilla went through the notice in very particular detail and pointed out some of the nuances that might not be apparent when you first read the notice. So, I would direct anybody who's interested to go to the board side chat portion of the Board's website and look at those slides because they're -- I think, they're particularly helpful and with respect to studying, it is something that I think we will look into. We did preliminarily in preparation for this meeting sort of take a peek and the data set is so small now because it just went into effect -- the notice just

went out in April, so I think it's still sort of permeating through the stakeholder community and there hasn't been that many reissues or reexaminations filed where there's an AIA trial pending since the notice was issued. And I think Janet now is going to talk a little bit about the trial practice guide and upcoming --

MS. MAR-SPINOLA: Uh, Janet, before you do that, we have a question. Is that alright, Marylee? Yeah, so, we have a question about -- with respect to amendments, okay. And the question is, is that many inventors, particularly the small inventors, or many inventors, let me just put it that way, they are not that knowledgeable about intervening rights during amendments or reissue or any of these things. Can one of you address that issue? What do they need to know about the amendment and intervening rights? To the extent you can advise on that?

MS. ANKENBRAND: Sure. I guess, you know, I don't know that we can provide advice, other than to say, when the claims change

there is the potential for intervening rights to attach. So, if the patent is being asserted in litigation, I think that's something that a patent owner needs to take into consideration before pursuing either amendment or reissue or reexamination. Reissue results in a completely new patent. So, that would have to, I think be -- I don't know because I don't know if the district court case law has developed on this, but I suspect that that new patent from reissue would have to be reasserted and a complaint and a litigation would begin again. And I also, I think, one of the things that the notice points out about reissue is that there is the potential for the one year bar for AIA proceedings not to apply to a reissue because it's a new patent, whereas it likely may apply to a reexamination and amended claims for a reexamination because that's the same patent just with additional claims. But I guess I would just say, we don't have advice, but it is something that patent owners should consider when they're pursuing these options.

MS. MAR-SPINOLA: Yeah and I think -- thank you for that. I think that patent owners should seek good experienced counsel on patent issues, specifically from experienced patent lawyers on intervening rights and just being aware that some of these proposed paths to correct or to address the issues of challenged claims is that they understand that there are other factors that they have to consider. So, thank you for that.

MR. BOALICK: Yeah, and I guess maybe the one thing I might add is, you know it is in the statutes, for example, for reissue 35USC252 talks about the effect of reissue. It's rather complex. I would also urge somebody to seek legal advice about the effect of either reissue or changing the scope in reexam because what it sort of boils down to is, how different are the amended claims from the original claims as to whether they're going to have an effect and you'd be able to get damages for past infringement. If they're too far amended, you probably can't, but again, it's a tricky area of law and I'd

advise anybody in that situation to please seek out a patent attorney to consult.

MS. MAR-SPINOLA: Thanks-- Janet. Please proceed.

MS. GONGOLA: Thank you. Okay. So, for the trial practice guide I want to start out by just refreshing everybody's memory as to what this document contains. You know we have our trial statutes. We have trial rules. The guide picks up where those documents stop and fills in the gaps and captures ongoing developments at the board through guidance, as well as cases that are precedential or informative and it tries to compile all that information so you have a particular place to go to, to look to see how we run trial proceedings. In July, we issued our third update from the original trial practice guide and in that document, you can see listed on the slide for you the additional trial topics that we addressed. Securing additional discovery, default protective orders. What's going to happen when a case is remanded back to us from the federal circuit. How we will

handle that case. Of greatest interest, at least to me, and I think maybe probably many of you, is number six on the list; multiple petitions. So, to go there I want to take you back a little bit and tell you a little bit about the history behind multiple petitions so the information that we share in the guide, kind of makes sense and you see how we arrived where we did.

In 2017, we conducted a study into how frequently petitioners are filing multiple petitions and we found that 87 percent of patents are challenged by a petitioner one or two times. Then at the other end, we found 1 percent of patents are challenged seven or more times and then the balance percentage somewhere in between three and six times. Based upon that study, the board started taking some activities to utilize the discretion given to the director under 314A of Title 35. That statute indicates that the Director, may, exercise discretion in deciding whether to institute a petition.

So, to give petitioners guidance on

when the Director is going to execute that discretion, we issued a series of precedential decisions. The first case was General Plastics and, in that case, we looked at when a petitioner is filing multiple petitions at the same time, against the same patent, what circumstances will the Board look at in deciding whether to institute the second, or the third, or the fourth petition? Examples might be, the timing between these petitions. Another might be whether the petitioner used the patent owner's response or the board decision as a road map to guide their follow-on petition.

Thereafter, we extended the General Plastics precedent to a case called Valve, and in that circumstance, we considered multiple attacks by different petitioners and the key take away was we are going to evaluate what relationship these different petitioners have between each other in deciding whether we will grant the second or subsequent petition. And then finally, the last case in this trilogy is NHK. There we examined whether there was

parallel district court litigation involving the same parties, the same patent, the same claims, the same arguments, as a consideration as to whether we would institute a follow-on petitions.

Now, we arrive at the trial practice guide. We took all of these teachings and summarized them for you in the trial practice guide as reflected on this slide. The guide explains that under normal circumstances, one petition should be sufficient, however, we recognize two or more petitions might be needed in certain circumstances. Examples for you, when the number of claims that are being challenged and the patent is excessively large. Petitioner might need two or more petitions to adequately address all those claims. Another example might be in situation where there's a priority challenge as to what constitutes relevant prior art. So, there too, a petitioner might need more than one petition to make this argument.

We also went out to explain three or more petitions should be pretty rare, but we

want to give both parties due process when we're dealing with multiple petitions, so a petitioner, either in the petition itself, or a follow-on paper, should explain to the Board why it is they need these multiple petitions. And then a patent owner, on the flipside, has the opportunity to also explain to the Board why multiple petitions are not needed in this situation. The Board will then take both sides arguments, consider it, and determine whether we go forward with multiple petitions.

So, the next topic is our studies and we've alluded to those a little bit earlier in the presentation. I think I'll start with the third bullet on the slide. Marylee suggested that we might want to look into the frequency that we have parallel proceedings involving a reissue or a reexamination. We did that over the course of the past year, prior to issuance of the reissue reexam notice that Michelle talked about. When we did that, we found that 89 percent of patents that were involved in a trial, were not subject to a parallel

preceding, either a reexam or a reissue. In the remaining percent of patents that were subject to a parallel preceding, it was kind of interesting.

Those that were subject to a reexam, the reexam was filed before the trial petition and those that were subject to a reissue had the opposite situation. The reissues were filed after the AIA petition was brought. Why we saw that difference, we didn't get into the circumstances of how a patent owner is utilizing the proceedings and maybe that will change now that we have our new guidance or our summary of existing procedures out. That's something we intend to study further.

Now, going back to the first two studies, these concerned, in particular, patents that protected biologics or patents that were listed in the orange book protecting some kind of pharmaceutical drug product. In those instances, we found that 2 percent of all petitions challenge a biologic patent and 5 percent challenge an orange book listed patent. We also found that the institution

rate for biologic patents was much lower than it was for orange book listed patents, but kind of the reverse happened a bit when we looked at the outcome of these orange book trials. We found that orange book patents were upheld more frequently than biologic patents. And then when we looked at the litigation, we almost found the polar opposite when we compared biologics versus orange book patents.

There, we found that biologics petitions before the Board were filed before there was any district court litigation. For orange book listed patents, the opposite. For biologic patents, we found the vast majority were not subject to a district court litigation. By contrast, with orange book patents the vast majority of those were. And then finally, we looked at the particular parties to a case and found that in the biologic world the petitioner and patent owner who appeared before the Board were not involved in parallel district court litigation. The exact opposite was true for

the orange book patents.

These studies are posted, so there's a lot more detail, a lot more numbers to go through, I just hit the highlights. So, you can find these on our PTAB website, the statistics page.

And then finally, the 2019 patent eligibility guidance. We have trained our judges extensively over the course of the early winter on how to apply the guidance. This past fiscal year we issued about 1,300 decisions that applied the new guidance. Of those, we made five decision precedential -- oh, I'm sorry, informative. Informative so that we could show you, the public, exactly how the board and the agency are applying the guidance.

Hopefully, that would be instructive for you in using the guidance in your own fact patterns, your own situations, to see exactly the analysis that examiners and judges will conduct. Okay. Now, I'm going to turn things over to our chief to tell you about some of the statistics for the year.

MR. BOALICK: All right. Thank you, Janet. This will be very quick because I know there's other things to get to, but I just wanted to note that the appeal inventory continues to decline. We had about a 22 percent drop from the end of fiscal year 18 to the end of this past fiscal year, right around 8,600 total appeal cases, and so, our goal is to get to an inventory that allows us to have a 12 month pendency at the boards. So, that's where we're headed and hopefully, within the next year we are attempting to be at that 12 month goal.

I'll just direct you to the bar all the way to the right because the colored bars here on our pendency have to do with pendency by TC. We're trying to even out the pendency so that no matter what technology center your appeals in, you have roughly the same wait at the board and you can see we've had some success in doing that. We are knocking down pendencies of the most lengthy pendencies, but we've also in order to do that shuffled cases around, so that some of the pendencies and

other TCs rose a little bit. We were overall, right around 14 1/2 months, and as I say, we are trying to get that overall number down to 12 months has been our goal and we are now getting pretty close to being able to achieve that.

So, AIA trial statistics, the IPRs, as usual, are dominating. CBMs have been almost a nonfactor. We've had very few of those filed recently. I will note though, and I don't have the actual statistics there, but I'll just tell you that, the overall number of petitions filed last fiscal year was 1,464. That compares to 1,613 the year before. It's down by about 9 percent overall year-to-year, but if you look at what happened in the last half of fiscal year '19 as compared to the last half of '18, we're down about 22 percent. And if you've look at our month-to-month filings, you'll notice that we used to get on the order of 140 or so filings a month. We're now down to about 110, maybe down to a hundred every month. So, there has been a drop off that's not precipitously dropping. It's

actually staying pretty steady at right around a hundred to 110 filings a month over the last couple of months.

The institution rate is in the low 60s, that's been fairly steady. You can see the past couple of years back from FY17 through the present and I'm not really going to go over much on this slide. The thing that I will say is that if you have a close look at it and when you consider only concluded cases, so you take out all the cases that are pending, you'll find that roughly one-third of all of the petitions that have been completed, have been denied institution; about another one-third have settled; and, the final remaining one-third proceed to final written decision. So, that's pretty steady from what we've experienced before. So, now that concludes our quick walkthrough statistics. We're back to developments, but Michelle already covered this one. So, really here to put in a pitch for our subscription center.

MS. GONGOLA: If you enjoyed hearing us today and you'd like further information,

we have a subscription center that applies to the whole agency. You can select what topics you want to learn about. Where the red arrow appears, that's the PTAB, we will send you email notifications if you sign up on the subscription center letting you know about upcoming developments and happenings. So, every time we issue a Presidential Decision; every time the Child Practice Guide is updated; a new study comes out, you'll receive an email.

Additionally, I might make a little plug that we do board wide chat webinars on a regular monthly basis covering a whole array of topics and they too are great ways to find out information about the PTAB and if you sign up to the subscription center, you will be alerted as to when we're holding one of these free, free, free webinar programs. Thank you.

MS. MAR-SPINOLA: Thank you for that. I think it's important given all the interest that we have from our stakeholders, and Marylee and I have been fielding a lot of the questions coming in, so, I think offering

the subscription and making information available is such an important and valuable tool for the patent owner. When you secure a patent and you make that investment, I think you have to learn about it, right, and the learning ought to come from the Patent Office because it's their product that they're putting out.

So, I appreciate that. I think that the more information that is focused on addressing some of the issues that we've presented to be made accessible and continuing to do that would be, I think a great service for those who don't quite know what path to take. The great thing is here in the U.S. and elsewhere, but I'm focused here in the U.S. is, we want to innovate. We're always creative. We have a freedom to create and then, rightly so, folks may want to protect it. And what they seek to protect -- because they have to make great investments in securing a patent -- has to have value to them.

So, having this information for

applicants who want to secure patents be informed, and it would be helpful possibly for -- and maybe PPAC can help on this is, to provide a list of questions to ask your prospective counsel, so that they're not doing this blindly and having surprises. It's important, I think for stakeholders to also be able to have questions answered that are focused on the examination process through issuance. And then, equally important is very concise, comprehensive information about post-issuance proceedings. What the challenges are; costs of not only maintaining your patents, but the costs of enforcing it, which is quite hefty. It really is. And it is hard, not only for small inventors, but small entities and really anybody who is in the middle of enforcing a patent or defending against a patent. So, thank you for making your information accessible. Much appreciated.

MS. GONGOLA: If I might add just one comment, I'm completely in agreement with everything that you've said and the Board has

recognized that sometimes our proceedings can be challenging if you are new to them. So, we recently have started an effort to reach to those who are new to PTAB, both the appeal side and on the trial side. So, we are about to launch a particular webpage that focused on basic intro materials for those who want to get the foundation knowledge.

We also launched a webinar series as part of the board side chat called New to AIA. We've done one so far on appeals, November 7th. And we're doing one, New to Trials on November 21st. So, shameless plug on my part for those webinars, but we really are excited about the opportunity to reach the newer audience and get them on the right track on how to proceed in front of the Board.

MS. MAR-SPINOLA: I'm so happy you're shameless. It's important. So, anybody listening to today's meeting, I would urge you to sign on and get this information and take advantage of the assistance that PTAB is offering to newbies. Thank you.

MR. BOALICK: And Julie, we'd be

happy to receive input from PPAC. I think that would be very valuable. Any feedback you receive on that, we -- it'd be great to work with you on that.

CHAIR JENKINS: Any other comments or questions? I think too, it's important that in a sense, this is a user community as a team. So, it not only falls on the Office, but it also falls on us as practitioners. We have an obligation to make sure we're up to date and we know what the new rules are and we have many bar association representatives in the audience that need to make sure that we stay educated and on top of all of the happenings at the office to help support folks who may not understand the system and its details. So, definitely a team effort here. So, with that, can we segue way to the next topic? Thank you.

So, we're actually going to switch, so we're going to go to finance. So, we're taking IT out of order. So, apologies to IT. So, you will follow right after finance. Are we good with that? Yes. Yes, Jennifer, nod

at me and say, yes. Are we good, finance?
Yes, yes, oh, good. Oh yeah, oh good,
honestly. Good. Yeah. Okay, so -- let's see.
So, Dan, you're going to start, yeah.

MR. LANG: I'll give out a little
summary of the annual report section on
finance. And I'll start by thanking the OCFO
team. I think that --

CHAIR JENKINS: Move here.

MR. LANG: Closer?

CHAIR JENKINS: Closer to the
microphone, yeah.

MR. LANG: The OC -- the finance
area, I think is a great example of what
Marylee was talking about earlier, that many
areas of the office there is, on the surface,
the duck is moving smoothly across the water,
but underneath, there is the furious thrashing
of feet and we really appreciate that furious
thrashing of feet. We know what goes on and
it's essential. I want to particularly thank,
Sean Mildrew, Michelle Picard for stepping in
as acting chief and deputy in the wake of
Tony's (inaudible) departure recently.

For any large organization, goes for the Patent Office as well, you know, doing finance correctly is critical. To fulfill the PTO's mission, it's necessary to have stable funding and very, very sound, careful management and that has been like, in other years, it's been very true this year and including for some reasons, for some special reasons that we'll get to, the PTO is a self-funded agency and it has kind of a hybrid funding model within the government in that it only spends its own fees. Its fees can also not be diverted for other purposes by statute. However, it is nonetheless part of the budgeting process. If the PTO collects more money, then it appropriated, it goes into a special reserve fund where it gets reprogrammed back to the PTO. The PTO also maintains its own operating reserve out of its collections to be able to smooth variations in funding and be able to continue its mission of examination and continue to fund long-term initiatives.

So, for this year, you know what's

happened is I know, overall, you can look at the numbers. I mean, the collections were about 1.5 percent higher than it had been anticipated. This is all in the report if you want to get into the detail, but in expenditures were actually about 4 percent less and that caused the operating reserve to spike up a bit at the end of the year to \$383 million. It had been anticipated as late as August to be \$296 million. The operating reserve increased more than expected, which is great part in part, that may have been due to some things that got -- some expenditures like hiring an IT that got, that slowed down a bit, but nonetheless, we're happy to see the operating reserve go up.

The operating reserve was just above it's what we call its minimal level of around \$300 million. You guys can correct my -- if I get any of this wrong, but above its minimum level of \$300 million, but still far below it's recommended level, which is up in the \$700 millions to allow for a few months of operating from the reserve. So, the funding

authorization during the year was provided by a series of continuing resolutions.

Unfortunately, between December and January, we had a gap. And I mean, popularly referred to as the shut down, but it gapped in appropriation, I think is the more proper way to call it. And here the leadership of the PTO, the senior leadership of the PTO, and the hard work of the OCFO, were absolutely critical in very carefully managing expenditures and timing things and keeping a tight focus on day to day finances of the agency so that the agency continued to operate. It continued to perform its core examination and search functions, even though the PTO did not have access to its collections during that time. And it showed the criticality of the operating reserve because the operating reserve was accessible. But, it was an important event and it's an important event that the PTO I think handled very well.

Another important thing that was going on this year was the progress in fee setting. In that, towards the end of the

previous fiscal year, the PTO made a fee adjustment proposal in following the statutory mechanism that came to the PPAC. The PPAC scheduled a hearing, collected public input, issued a report. Now, during this fiscal year, that has progressed further and there is a notice of proposed rulemaking that was issued. I believe it was at the end of July, and the PTO was careful to take into account the public input that we had collected. I mean it didn't always follow exactly what we had recommended, but in each case either there was a modification or there was an explanation of what the PTO had done. And we - that's something I'm sure you'll talk about in your presentation about how that's going to continue to progress in the new fiscal year.

Our recommendations in the report, which I urge you to read are -- we have a number of recommendations. One, like we do every year, we urge a robust operating reserve and that the operating reserve be increased, and we see this year, just how necessary that is. We have a recommendation that's not so

much to the PTO, but rather to the general policy making community that it would be better if the PTO, in fact, had access to its collected funds during a future interruption in appropriation or shut down. These funds cannot be diverted to another purpose, by statute, so there's really no point in freezing them up.

And then ultimately it probably makes sense to remove the PTO from the budget process entirely. So, I also -- we also included in the report a recommendation that the PTO move forward with the fee setting exercise and raise its fees generally along the lines that it had proposed. And we know that certain elements are controversial, for example, the practitioner fee and the accompanying continued legal education provisions.

And we've urged the office to continue to collect input as it has done with the MPRM and take into account. But, overall, we understand that a properly funded PTO is essential for a quality examination process

and achieving the goal of reliable and certain patent rights. That's my summary.

CHAIR JENKINS: Great Dan. Yeah, Michelle, you want to go over your highlights for this week?

MS. PICARD: Sure, I just actually just wanted to thank Dan for that overview, and then we'll go through the more detailed budget. I think the collaboration and cooperation of the PPAC throughout the past year and in years before that with Dan has been very useful, getting your insight as we're making our decisions and moving forward has helped us and plan for kind of our long term sustainability. And appreciate the support as we were juggling through the laps and appropriations and the support through the fee setting process.

So, I will spend time going through the update of the presentation and the budget, where we are. Dan has actually summarized some of the beginning of it. I'm going to move this over here since I'll be facing that direction.

So, in general, like we've done in the past, we go through our three budget years that are going on at any one time, we're going to do a recap of 2019. I'll speed through that because Dan did a fantastic recap of that. We're going to talk about where we are this fiscal year, and the status there and how we're doing in preparing our 2021 budget, and talk a little bit about the fee setting as we wrap up.

So, we collected about \$3.4 billion in fees this year in total for PTO, and that was about \$3 billion for patents. The total fee collections ended up being \$28.7 million and for the patent side \$24.7 million in excess of that appropriated to us. So, that gets into the concept that Dan was talking about balancing between operating like a business, living off our fee collections, but still within the budgeting process.

So, as you can see on the table on this slide, our appropriated fee level, so that was the authorization we received from Congress in 2019, allowed us to spend \$3.37

billion of the fees we collected. And in patents that was a little over \$3 billion on the patent side of it. We collected more than that, so that means we had to take the \$28 million, almost \$29 million, and put it in the patent and trademark fee reserve fund. It's the first time we've done that since 2014.

So, the mechanism that's in place to allow us to have full access to our fees, those fees are technically available to us today, but we have to get a reprogramming from Congress before we're able to spend them. We have started that process and going through the process and the approval process within the administration before we deliver that reprogramming request to Congress. That's important as we flip to the next slide and see how this impacts our operating reserve.

So, Dan had mentioned that we ended the year with \$383 million in the patent operating reserve. So, this table shows where it is when you look at our appropriated level, and then where it will be when we have the access to those fees that went into the patent

and trademark fee reserve fund. So, if, when we get the reprogramming for Congress, it'll be over \$400 million. And that is above the \$300 million reserve that Dan mentioned, it's a little over about a month and a half of operating expenses on the patent side. So, that's put us in a very strong position as we go forward.

To Dan's point, this is higher than what you saw our estimate was in August. Some of this is, as we estimate how big the patent organization is, and exactly when every employee we hire is going to enter the roles and every contract we let is going to enter the roles, some of that is true savings from, people didn't get on board as soon as we had planned or contracts weren't let as planned.

Other pieces of it, a significant portion is timing. So, while we operate within the annual fiscal year bounds set within the budget process, we actually try to manage our business such that we don't let the fiscal year constrain us. So, some of these are requirements we had planned to spend in

2019. We didn't actually obligate yet, as of the end of the year, we're still planning to do the same work. So, that's carried over into the next year. A lot of it being IT work and different kinds of contracts we had to let.

So, I wouldn't say it's a windfall in our operating reserve, it does give us additional levers at the beginning of the fiscal year, though. So, we're continue -- I would say that's only about \$40 million of it. So, still stronger than we had planned and we have a pretty decent operating reserve to carry us until the next fiscal year. And I'll talk a little bit about that on a future slide.

This gives us a little bit, just a summary of where we were in our fee collections last year. So, our appropriated level for patent side was the \$3 billion we just talked about. We updated our planned fee collection estimate in June, and our actual collection, which ended up being pretty close to the appropriated level, our actual

collections came in higher as we talked about. Most of those were due to application filings that have increased and the fees that came with it. Most of our other places had some puts and takes that averaged out. But, overall, even though that's the \$29 million we're seeking in total, we came in pretty close to where we had planned.

This slide gives a little bit of the trends and fee collections. As Dan mentioned, we were 1.5 percent greater than the collections in 2018. Some might look at that 2018 number and say, oh 8.6 percent, that was a huge increase maybe this year wasn't quite as fruitful. But, just as a reminder, 2018 was when the last fee increase went into place. So, that isn't necessarily a volume, that's more of the rate that you see there.

This leads us to 2020. And when we look at 2020, I want to talk a little bit about what Dan was talking about, the continuing resolutions. So, the full appropriation has not happened yet. We're operating under a continuing resolution

through November 21st, which is a week from now. We are following the same news and everything that everybody else is, seeing what happens next, we do see talks of future continuing resolutions. Our operating reserve, with our spending level will allow us to carry forward through that.

You will see that under a continuing resolution, our level that we're allowed to spend is kept to last year's level. So, as we're growing as an agency, that usually hurts us in the future. So, if we had a full year of continuing resolution that would be financially difficult for us. But, the short term things, we're not seeing any concerns in carrying forward from an operational perspective. And as of right now, both the Senate and House Committees have marked our full year appropriation at \$3.45 billion. So, exactly where our request is, so we should be okay if a full appropriation is passed.

So, overall, I think that, as Dan had mentioned, the feet under the -- aggressively swimming under the water, we're

paying attention to all that. We're looking through our funding for our contracts incrementally, but nothing that's impacting operations, we are continuing to go forward with our plans as normal and just managing the funding from the back end, so we think that we'll be fine. Did you have a question Marylee?

CHAIR JENKINS: Just a question on the fund. Since it had -- you haven't had to put any money in the fund for several, several years. Do you recall how long it took, once you requested the funding, how long it took for the office to actually get the amount given to PTO?

MS. PICARD: Yes.

CHAIR JENKINS: In months?

MS. PICARD: So, in 2014, I don't have the dates exactly, but I would say it was about a month and a half. So, it wasn't weeks, but it wasn't long. And I think that we've already been progressing. We're not anticipating any struggles in getting the authority to do that. If there happened to be

a lapse in appropriation or something like that, I think that communications would help to try to speed that up so that we would have access to it. But, as of right now, we're not, it's the number also isn't as big as it was in 2014. In 2014 it was about \$148 million and this is about the \$48 million. So, impact-wise, it's not as significant as it was in 2014.

CHAIR JENKINS: So, obviously, it would be easier if the office had the ability to access its fees during a shut down.

MS. PICARD: Yes.

CHAIR JENKINS: That is obviously the best case solution.

MS. PICARD: Absolutely. Right.

CHAIR JENKINS: But any type of funding, I just was curious how long it would take to continue a resolution being November 21st.

MS. PICARD: Yeah, I would say that we wouldn't have it definitely by November 21st, but it tends -- I think we had it available to us in December last time, so.

MR. KNIGHT: Michelle, do you have a number for the, what would be the optimum operating reserve? Would that be like a month of operating funds or?

MS. PICARD: So, our minimum we shoot for \$300 million. Our optimal we're shooting for three months of operations. And I think if you were to look at it where our total spending was, if we went back a couple slides, on this slide, where it says total end of year spending at \$2.9 billion that estimates for us to be about \$747 million. So, our optimal, as we grow continues to grow, right. So, it's in the \$800 million, could reach to in the out years \$900 million.

MR. KNIGHT: But, wouldn't it be like really unusual for the government to be shut down for three months? I mean, why three months? I'm wondering why three months is the right number.

MS. PICARD: So, when we are considering our optimal operating reserve level, we're considering more than just a lapse in appropriations. So, if you think

about it, the minimum level is what we're looking at for a lapse in appropriation, is making sure that at any point in time we have about \$300 million, a month's worth of operating expenses. The optimal is also getting us through, not just lapses in appropriations, or short term concerns. If we see significant changes in our fee collections with our spending, you have to remember it takes us a couple years to get through the fee setting process, so it's intended to carry us through until we're able to adjust fees again. Does that make sense?

MR. KNIGHT: Yes, thanks.

CHAIR JENKINS: Bernie, it was interesting in the 2009 report, Michelle you didn't know that in my spare time I read old PPAC reports, but it was three months then too, so I thought that was interesting, so.

MS. PICARD: We've yet to hit the optimal on the patent side. So, 2021, I think this will be quick. Since we last met we have submitted our 2021 budget request to OMB on September 9th. We're in the part of the

process in which the Administration is reviewing all of the budget requests, they will get back to us with any recommended adjustments by the end of this month, beginning of December. And we'll consider those in future estimates and submit our draft budget request to PPAC I would estimate in January, for the President's budget to be published in February. Usually it's published at the beginning of February. I don't think there -- yeah I don't, there's nothing to really share about that at this point.

Fee setting is the last thing to talk about. The notice of, as Dan had mentioned, the fee setting process we went through last year, our public comment period closed on September 30th. So, we've been spending a lot of time internally in the agency reviewing all the comments and assessing them and deciding if and when we would make changes for the final rule. We are doing our best to expedite our review process and decision process internally. So, the proposed effective date of the fee changes,

could be as early as July 2020 or earlier. Our goal is to try to get it out in the spring. And once the final rule is published, it will be 60 days before the new fees become effective. So, that's, I think moving along as we had planned, and the feedback from the public has been fantastic and obviously from PPAC in the report. It's been really helpful as we've been going through our decisions internally. And I think that's it. Does anybody have any other questions? No, good.

CHAIR JENKINS: Michelle, thank you. Okay, moving right along. IT, Jeff? I was just going to say, Debbie needs a sign, I want to see Debbie's sign. There it is, good. Okay, ready? So, I think, Mark, you're going to start right? Yes?

MR. POWELL: Yes. We have the Army of the Black Knights. Who? Yes. By Academy Graduate Jamie Holcomb. First I want to, in all fairness, your predecessor that Debbie and David and those who sat in on an interim basis did a wonderful job keeping the ship afloat. Now, the ship has quite a bit of direction.

Thank you sir.

I don't know where to start. You were given a system with hardware 20 years old. One time we had a voltage problem in the building and burned out some of the hardware. That hardware being 20 years, the spares are hard to find. They were coming from overseas. We got the power problem fixed. We know now that there is no alternate processor in the building. You're working to get off site, both storage and processing in the next year or two. Am I correct?

MR. HOLCOMBE: You are definitely correct.

MR. POWELL: Okay. You brought in consultancy groups of world caliber. And they have evaluated the systems. And I understand 25 portions of the old software are vulnerable or at risk and you've already repaired a number of them, and made improvements there. You were working on DOCX, which I don't think people understand the significance of the cost savings of that. Number one, DOCX gives you about three magnitudes less error rate, it'd

be much faster processing. The metadata is going to be stripped out as we understand it. There were some concerns there. You've got new processors on board working at 1,000 times the processing speed of what you had. All in all it's a good thing. We know that one of my -- the pains of this agency has been something called -- is it IFW, Information File Wrapper. As of two or three weeks, it's gone. Is that right?

MR. HOLCOMBE: It's done. You're correct.

MR. POWELL: It's done. And we're working with new search tools. And you want to bring on, I believe, 500 and 750 and then 1,000 and then add 1,000 more examiners at a time, stepping it up. All in all, it looks to be a very good plan. You want to both stabilize and improve, and I think that's wonderful. And I will tell you, you've got a wonderful team of people. I'm sure you go home thanking your lucky stars every night for all of these -- for all the members that work with you to -- I see a real a esprit de corps.

Is that the right term?

MR. HOLCOMBE: That's correct.

MR. POWELL: Yes, sir. Really see that in terms of the IT. And I appreciate your attitude, there's been no excuses, it's more, let's just get the system fixed up and running. And I've probably said too much, but I'll leave it to you. Very good job, sir. Thank you.

MR. HOLCOMBE: Well, thank you very much for those kind words. Of course, it's all about the team. You're only as good as the team you lead. So, I will say that the technical competence is bar none. But, one thing I'd like to report more than anything, I can fix technology, that's easy, but you can't fix people. And what I've seen in the team is a real sense of urgency to get these things done. And so I can recruit other people, but I can't recruit willingness and desire. And I do see that in the team. So, I'm very blessed to have that within our team. So, thank you very much. And you've taken all the general stuff I was going to talk about darn it.

Yeah, we're going to be talking, of course, about our modernization plans with Patent Center, DOCX, search, and finally about the stabilization and modernization plans. I will say that one of the things I did just last night, I was here until about 7:00 p.m., with the CIO for IP Australia. And it was fascinating to talk to him about the move forward with all the modernization artificial intelligence that we're going to be using together. And to reach across to the ocean and just say, let's do these things and share our lessons learned together. So, there is a huge outpouring in the international community for a lot of knowledge in AI and that also is moving forward on the patent search front.

So, there's a lot to be happy about with patents. And with that, I'm going to turn it over to talk about Patent Center, to Huong.

MS. ESPOSS: So, hi, my name is Huong Esposs. I work in the Office of Patent Information Management and I'm the product owner for Patent Center. Okay sure. Sorry.

So, for those who don't know, Patent Center is the new unified interface that replaces EFS-Web Public and Private Payer. We are currently in the limited beta release. We have over 300 beta participants using the system to file and manage their real life applications right now.

And this current release does not have all the features and functionality that EFS-Web and Public and Private Payer offer yet. We are still working on completing all the features, but already right now beta participants can, I say, file applications, real life applications in the Patent Center.

We planned to open up the -- some would call open beta release in the end of December or early January, maybe we could wait until the end of the, after the holidays to offer to deploy the open beta release. When that happens, anyone can get into -- get access to Patent Center and start using the system and hopefully you can give us some feedback so we can further improve the system. So, that's what I have for Patent Center beta release

right now. Does anybody have any questions before I move on?

MS. MAR-SPINOLA: Yes. Sorry, so, just from looking at that, I'm looking on my computer, so apologies. So, under the column or row that says what, under the title what, the second bullet point, the Patent Center beta release does not have all full features. My screen just went out. So, all full features --

MS. ESPOSS: Available in --

MS. MAR-SPINOLA: Available in EFS.

MS. ESPOSS: Public and Private Payer.

MS. MAR-SPINOLA: Thanks. I failed my exam too. So, anyway, so is that just for the beta or is that when you do the full transition?

MS. ESPOSS: That's just for the limited beta release.

MS. MAR-SPINOLA: Okay.

MS. ESPOSS: But, now when we continue to work on completing all the features and functionality that we have in

EFS-WEB Public and Private Payer.

MS. MAR-SPINOLA: Okay, thank you for that.

MS. ESPOSS: No problem.

MS. MAR-SPINOLA: Move on.

MS. ESPOSS: There we go. Filing and retrieving instructor text or DOCX for short. So, currently applicants can already submit their specification claims in abstract in the DOCX format for the new utility non-provisional applications in EFS-Web. In Patent Center, when we open it up to everyone, early next year the additional submission types that Patent Center offered, are 371's and provisionals. So, we'll continue -- for DOCX, so we will continue to add more submission types to it as we go along.

Right now to help with the DOCX submission process, the PTO is conducting weekly DOCX information sessions so that we can help applicants learn how to submit in DOCX and answer any questions they may have. To register for the info sessions, they can just go to the USPTO main page and search for

events and that will pop up.

So, we go down to the whys where we like to talk about some of the benefits that DOCX provide. The reason we implemented DOCX was because it provides better quality applications and more accurate data, right. And some additional -- about several years ago, we went out and did a study. What we learned was that over 80 percent of patent applications were originally offered in DOCX. So, that's why we picked DOCX to be the first structure text to implement. And with DOCX coming into the door directly it eliminates the need to convert DOCX to PDF, and so we get straight text and it's a lot more accurate.

So, right now Patents Center and EFS-Web can perform automatic metadata detection and scrubbing. So, just in case you forget to scrub your data, metadata before you submit, the system will automatically do it for you. Additionally, there are many, many validations that we have implemented to afford pre-submission, such as the system will do an abstract word count for you. It can also

detect improper multiple claim dependencies and give you the independent and dependent claim counts. Just those are a few validations that the system can validate for you before submission. Do you have any questions?

MS. MAR-SPINOLA: So, on this DOCX it sounds like a great program and if I'm reading this, this was -- it says and under when, the USPTO began accepting structured text in August of 2017. Do you have an accounting of how frequent it's being used?

MS. ESPOSS: Sure. Right now we are not getting a whole bunch of DOCX submission. We get about 20 to 30 DOCX submissions a week, and we would love to bring that number up.

MS. MAR-SPINOLA: Do you know the reason for the low numbers?

MS. ESPOSS: Some of the concerns we have heard is that people are afraid that we are changing the DOCX document, the content of their application. What we have been telling people when we go out at speaking event is that that's not what's happening, right. When

you submit a DOCX submission, there is a digest, a message digest or a hash code attached to that particular document. So, if there are any changes made to that document, the hash will change.

MS. MAR-SPINOLA: Right. And I suppose they can keep a PDF of what they sent anyway, if they need a record of that. But is that the only reason why it's not being used? I mean, it seems --

MS. ESPOSS: No. There are several reasons. People are still a little bit adamant about changing, making these changes in their process. We've heard, they say well, you know, what if we left some metadata or comments. And what the system is doing is that when we see -- when the system sees there are metadata left, or comments or anything or track changes, we will delete -- we will remove those metadata and comments and track changes. And this is a correction to the statement I made yesterday at the subcommittee. I misspoke and was like I'm saying that the comments were not removed, they will be

removed before submission.

MS. MAR-SPINOLA: So, it's automatically removed?

MS. ESPOSS: Yes. We detect and we will give you a feedback document for you to review before submission. And the feedback document will call out to the areas where we see problems. There will be a warning or error messages and say you can't use this font or you left a comment here. We will remove the comments you left behind.

MS. MAR-SPINOLA: And the users are predominantly patent prosecution counsel or individuals?

MS. ESPOSS: We've seen from large law firms, we've seen even from independent vendors, yeah.

MS. MAR-SPINOLA: I see. Well, I think -- I was pleasantly surprised to see that automatically the comments and other data in there is automatically removed. I think that's an added protection for applicants. So, it seems to me, and I don't use it I will say, because I don't prosecute patents

anymore. But it seems to be better, because when you try to transfer from, or convert PDF to Word, you also suffer some inaccuracies, right, in the translation, if you will.

So, and those are not as easily caught. So, I think -- thank you for this. If there's a way to maybe inform stakeholders by addressing directly their concerns and maybe showing examples, that might help assuage some of their concerns and you get more users on that. Is there a cost associated with this when things, like if you're -- when there's the corrections or anything or re-filings or anything like that?

MS. ESPOSS: I don't have that at the moment.

MS. MAR-SPINOLA: Not a pre-service?

MS. ESPOSS: A pre-service, the costs associated to making the corrections?

MS. MAR-SPINOLA: Yeah, removing the comments and metadata or anything.

MS. ESPOSS: There's no cost.

MS. MAR-SPINOLA: Okay. Thanks.

MS. ESPOSS: Thank you.

MR. CASSIDY: Could I ask what costs we're avoiding by taking immediately the DOCX documents rather than a PDF document?

MS. ESPOSS: So, when we take in DOCX we get the structured text. And with that what we do with the DOCX document is we also convert to XML. We strip out the XML portion of it and share with downstream system. So, with the XML data, we can build analytic tools for examiners to help with the examination or --

MR. STRYJEWSKI: So, right now we are OCR'ing I think 50 different document types today to present text to the examiners to improve the quality of the examination. So, this allows the examiners to actually copy and paste information from the various documents not just the application components of the documents. With that, we also offer functionality like claimed dependency, trees and various things to assist in prosecution. We hope to expand that to numerous different stakeholder roles within patents operations over time. We do that by OCR'ing the

documents, which inherently has a quality component to it. So, if we're getting the DOCX directly from the applicants, we would be able to manage that all the way through the prosecution life cycle.

Building upon that, over time, we're also wanting to offer back to the applicants, our office actions and texts for them to leverage in their prosecution by creating summaries of what's needed to respond to the office actions over time. So, we see this as kind of a step to a total ecosystem of data exchange, in a much more robust fashion, and thus leveraging efficiencies on both sides of the equation and getting better, valid patents at the end of this.

To just go back a little bit to the impact and change. I was fortunate enough to be around when we went from paper to electronic filing. And in doing so we had a lot of workflow changes. What we thought was, is that all law firms, corporations and independent inventors had like one or two workflows. But, it turns out there's

thousands, if not tens of thousands of different workflows.

And I think one of the changes from switching from PDF to DOCX is, in turn kind of telling you to do something different that we initially told you to do way back in the middle of the 2000's. So, if the steps that negotiating what's going to be in the application over time, always ended would convert to PDF, now we want those organizations to think about how can we manage Word throughout the process and therefore make that step of converting to PDF at the end. We know that PDF is not an easy document to amend and negotiate. It's kind of a final component to keep everyone on the same page. We're hoping that DOCX further upstream, removes that end transition issue that you were stating.

So, I think change management's a big thing. And then the trust level, I think is the point, right. Are you going to change your document? We had that problem when we were going from paper to PDF, we don't trust

you that you're giving, you know, we trust the mail, we don't trust the electronic filing system. So, we have to build that trust and we have to get that message out, as Huong mentioned, and we need your help in getting that message out over time. So, we do appreciate you asking these questions and engaging with us.

MS. MAR-SPINOLA: Thank you. Let me ask this question. A lot of times when, in my work, if I'm executing a draft versus the final, right, I have it in Word and then I have it in PDF to make sure that I have a record, a fixed record.

The other thing I think about in doing PDF, is security, right. Not only whether the Patent Office might change something, but Word documents are easier if the system is hacked to change, although maybe PDF is too, I don't know, it seems to me it's different. Have you all considered the security issue? You know, I have to get one security question in, but have you all thought about the security issue on that?

MR. STRYJEWSKI: Sure. So, our security, we're very fortunate in that we're actually called out in the Department of Commerce Security Handbook as the level of moderate. So, we have a lot of our foundation lies directly from the National Institute of Science, NIST, that gives us those parameters in which you have to connect with the PTO, how we give the PKI, which is our previous conversation. So, all of that structure is the same.

The only thing that we're proposing different in the DOCX is, instead of sending us PDF files, you're sending us DOCX files. And as Huong was alluding to before, the workflow is the same too. You upload your files, the computer validates the files, and in validating it checks that the comments are in place, or if metadata is in place that would be sensitive to submit to the USPTO. When it's sitting on the server, you still did not actively submit the document. It's a temporary file. It's kind of like a holding place until you commit it to the office.

At that point, we actually offer a feature that was requested by the users to save the documents and allow other people, under that same customer number, to look at the file at that point in time and check for the accuracy, you can then download it.

Also, a lot of the features that we include was to try to process it all the way through to what our back end systems would be to allow you to see it in Private Payer. So, you upload it, you can view it before you submit it, you can submit it, then you can view it in the system that's going to see it in front of the examiner, and within the same day. And I know there's always the scenarios of you know 11:30 East Coast time, type of situations, we always recommend starting earlier in the day. But, I think we've put a lot of fail safes in place. On top of it, we have what we call a hash, as Huong alluded to, which is a unique identifier for the document. So, there's no changes of those bits and bytes inside the document as it's been maintained and managed inside the USPTO data center.

Okay.

MR. CASSIDY: I'd just like to toss in, very briefly, that this is a huge issue for data exchange in international relations that we have with other offices. That having one accurate data and being able to exchange it in a common format enables so many different things in the international context, very, very important.

MS. STEPHENS: Before I start, any other questions? DOCX, Patent Center? Okay. So, the last time we met here at PPAC we talked about stabilization of critical systems, kind of at a high level. I think the first thing that the team addressed was our Palm containerization and our efforts to stabilize that system, which we were successful in May in doing.

The second thing the team mentioned to you, was a larger effort that's underway, whereby we have a team of independent consultants helping us with the stabilization, what we refer to as stabilization, modernization and new ways of working in our

delivery of our IT.

So, today I'm going to just talk to you about the stabilization piece and walk you through where we are so far. So, essentially, as I mentioned, there were systems identified, there are 25 in total to highly critical to stabilize. So, we've gone through the process of identifying those, putting them into two different buckets, if you will, about 15 or so, to be stabilized by an independent consultant coming in, they're more complex, more highly interdependent systems. And then another bucket of about ten systems that our teams internally will address to stabilize. So, I wanted to give you a little bit of information on that.

The other piece is in the critical system identification, it's also looking futuristically and that's kind of the modernization piece. So, we're not only looking to stabilize them for the current effort, but what is the potential to modernize them in our, say next phase approach. So, we're looking to ensure that we're very

thoughtful about kind of cradle to grave in terms of our IT.

Recent accomplishments, as it says up here, the ten or the nine that are internal for our teams are working on. We've already had two of those ten stabilized and of the ones for the contractor to do of the 15, we've got two of those, two for patents, and one for trademarks that are identified to be stabilized. So, that's really a good news story.

So, you should also know as part of this stabilization and modernization effort, that the agency is taking a very enterprise approach. So, we're looking at, not only patents and trademarks, but also the corporate systems too, in our exposure and the identification of what needs to be stabilized versus modernized, in what time windows. As well as maybe perhaps even modernized to the point of what should be cloud ready or cloud enabled.

So, our next steps, that's kind of our journey to date. Our next steps,

certainly looking at our high availability, which is the HA in that and the fail over capability. So, not only do we want to look at that in terms of our local fail over capability, but our ability to, in the mid to long term, fail over to an alternate site, as well as the slightly longer plan is to, of course, have complete alternate processing site capability, real time. So, I think that's the update. Any questions?

CHAIR JENKINS: Any other questions? No? I sit here, in my seven years, and I know the first thing when I was on the subcommittee for IT, was the comment that the systems were held together by duct tape and gum. And I remember going back to the office immediately and saying, where are our postcards? Because we may have to mail, at some point in time, and where are those express mail labels.

So, we had to do that when the system went down, not too long ago. And I was amazed that I was having to explain to people who had never mailed anything how to do it. So, because they were so used to electronic

filing system. But, to say that we have come so far, under your leadership, is an understatement.

And I greatly, greatly encourage the office to make this a high priority. And in fact, one of the first - no one may know, but in our annual report, and I will say this because this is important to the committee, is that we discuss our order of importance of what we see the Patent Office should be focusing on. And in my seven years, this is the first time we have ever put IT first. So, I want you to hear from us that we highly, highly value what you're doing and we support you and so, indirectly, that's what you see in our report. So, please, please, please, keep up the good work.

MR. HIRSHFIELD: I will just add that Director Iancu has said multiple times that this is the big operational -- biggest operational issue facing USPTO.

CHAIR JENKINS: And, we agree. Thank you, Julie. Julie said and we agree, so. Okay, with that, thank you so much. So, we

will move on to the legislative update. And Barney, you're going to give the highlights on that to start. Don't look at me like that.

MR. CASSIDY: Well, I'd like to begin by thanking Branden and Kimberly and your team for keeping us updated as efficiently and in such detail as you have. I think the main legislative event that has occurred has been the Success Act, and I know you're going to address that, as well as the various proposals that have not been enacted with respect to changes in the system, for example, the stronger Patent Act that has been proposed. But, other than saying thank you, I don't have much to add to your presentation, so thank you.

MR. RITCHIE: Well, thank you. Again, I'm Branden Ritchie, Director of Government Affairs and this is Kim Alton, Deputy Director. And we're going to do a two pronged approach. We're going to give you an overview of legislation and some hearings and items of interest on Capitol Hill right now as they pertain to patents. And then we're going

to do the second part will be focused on the Success Act and the report that we filed pursuant to that law. I'll do the legislative update and Kim's going to do the Success Act update.

So, far we've had a lot of hearings, unprecedented amount of hearings with PTO witnesses. I believe the count is up to five this year already. And most recently, they did a hearing in the Senate Judiciary Committee on the Stronger Act, which was legislation that was introduced by Senator Coons to make a lot of changes to patent laws and patent procedures at the USPTO.

They also had a hearing on October 30th featuring our Commissioner, Drew Hirschfeld, before the Senate Judiciary IP Subcommittee, and that one was focused on patent quality, patent quality issues at the USPTO. It was a constructive hearing where folks were getting together to talk about potential improvements and it was a good discussion.

On December 3rd, excuse me, on

November 19th, the next one is that the House Judiciary Committee IP Subcommittee, is going to do a hearing on the appointments clause issue and the Arthur X Opinion, that's less than a week from today. So, we'll be watching that, there will not be a PTO witness at that hearing.

On the 3rd, the Senate Judiciary Committee IP Subcommittee Hearing is going to do a hearing on trademark filings in the issues of nonuse and fraudulent trademark filings. And of note, on December 11th they're going to do a hearing on modernization of the U.S. Copyright Office. Just an interesting note there.

Some of the hot issues right now on the Hill are -- deal with drug pricing. And we're always monitoring those drug pricing bills, just to make sure that we're able to offer technical assistance so that any bills that come about, if they touch on the patent system, do no harm. And we're doing a lot of education about that on the Hill. So, far, I feel like we've had some success that patents,

in educating folks about the fact that patents are helping to create more products and improvements on products and things like that. And our talking points have been well received so far, and we're going to keep that up.

Another big issue is Section 101 reform. There was a big push, as everybody knows, in the Senate earlier this year. Multiple hearings, dozens of witnesses, it was an extravaganza and it kept us busy too. And there were a lot of proposals. They're still working on it. I'd say that they're in the stage where they are -- I think folks are thinking about proposals, alternative proposals. So, lots of ideas are being bantered around right now. But, there's a lot of interest in creating more certainty with respect to the judicial jurisprudence on Section 101 Patent Eligibility issues.

Let's see, next we have, as you've probably heard, we're probably going to see another CR until December 20th- ish. At this point it remains to be seen how Congress will tackle the Appropriations bills after that

point. It's one of those years where there are a lot of wildcard factors and it's hard to predict, but we're actively monitoring all these issues.

Another thing of note, is that this year there's been a lot of attention on IP issues. I used to work on the Hill on the House Judiciary Committee, and we definitely have had more activity on a broader range of issues in the last year than in a long time. Partly that's because I think the Senate had reconstituted their IP subcommittee. And naturally, you're going to have more hearings on these issues.

And there's a natural competition between the House and the Senate. But, also because of some of the larger issues at play right now on the national landscape. IP is one of those issues, there's differences of opinion, but they don't break down based on party lines very often. It's more of the interests of the stakeholders. So, it's an opportunity to continue working on these issues into next year. And it's not the case

with most legislation so we'll keep on top of all those efforts.

Another trend, I would say, is there's been a lot of attention in Congress on outreach and expanding opportunities for inventor-ship and entrepreneurialism, both for first time inventors of all stripes and also for underrepresented groups. And so we've done a lot of work with Congress to help educate them about the efforts the PTO is doing and continues to do, has done, is doing, will continue to do. And also we revamped our website to make it more accessible to independent, well I should say, first time inventors, by having a link that takes you right to a map where putting ourselves in the shoes of the of the customer, getting them. They can click on their state and they can get all the resources that we partner with other organizations with or we offer that can help them get started.

And so that's been very well received by the Hill, very well received by the feedback that we've gotten from

stakeholders. So, but that's a big issue that Congress is looking at right now.

Let's see, I'm forgetting to click this thing. This is where we'll start transitioning over to the Success Act presentation, and I will turn it over to Kim.

MS. ALTON: Okay, great. Thank you, Brandon. Good afternoon. We, as you all will recall, we're required by legislation that was passed last year in Congress, to produce a report by October 31, 2019, entitled, the Success Act Report. And that report, what we were required to do, was to really look at the data that is available, that's available publicly, that can show information on the demographics of the patents that are applied for and obtained, and really looking at women, minorities and veterans.

So, the USPTO's Office of the Chief Economist took the lead in doing literature reviews and really looking to see what public data is available. As we discussed at the last meeting, PPAC meeting, there were public hearings that were held. And this all sort of

came together with the report that we released on October 31st.

Some of the key findings of the report are no surprise, there's a limited amount of publicly available data on participation rates of these different groups. The little data that are available show that these groups are underrepresented as inventors. And then that there obviously is a need to try to collect more information to get a better handle on those participation rates.

The report also looks at some of the key initiatives that the USPTO has to address this issue of under representation, and so those are highlighted, I'll just mention a few. The first bullet is a collaborative IP program. And that's really referring to a IP toolkit that we are working on that will really target corporations. And because corporations are the largest filers of patent applications, but there is a real lack of diversity when you look at who is applying from these different corporations, who's submitting these applications to our office.

So, we really want to work with our corporate filers and we think that this tool kit will be helpful on how to really demystify the process for many of their employees.

We're also working on an awards program to really recognize individuals and organizations that are really doing standout work related to diversity. And we also are working to create an innovation and inclusiveness council. And that council will be made up of representatives from the private sector, nonprofits, universities, really having all of these different groups, all of these stakeholders come together to help develop a national strategy on how do we address the issue of really expanding the pipeline and the diversity of candidates that are coming to the office.

And then finally, there's a lot that the USPTO does now related to STEM education and innovation education with K through 12 and college students, and we certainly want to continue the work that we're doing in that area. So, that's everything that's on that

left column.

That right column are some of the recommendations that would require congressional action. And so the first is, if Congress would enact legislation that will allow us, in a more streamlined fashion to gather demographic information, enhance our authority to work with our federal inter agency partners, who we think it could be helpful in collecting this type of data, and then expanding sort of the purposes in scope. There are several federal programs, and we've worked closely with the SBA on this report.

The SBA has grants. There are other federal agencies that offer federal funding to individuals that they can use related to innovation and invention. And we would just -- are hoping that some of those grants could be expanded so that maybe some of the money could be used for perhaps filing fees here at the PTO or other issues to help with, to promote IP. So, that is kind of a big picture overview of the report. And I'll turn it back over to you for our legislative priorities for

this Congress.

MR. RITCHIE: Okay. So, just in general, we've mentioned a lot of the work that we're doing. One thing that we didn't mention yet, and it's more of an -- it's a trademark thing, but it's worth noting, because it's kind of a big effort. And that is that there's a lot of attention being paid, as we mentioned, to this issue of fraudulent filings of trademarks. And Congress is considering statutory changes to allow for potentially canceling marks and things like that. Some kind of proceeding to expedite separating the wheat from the chaff when it comes to marks that were never used. So, worth noting, even though this is PPAC, that's pretty big initiative and it would involve some changes. So, we're working with the Hill to provide technical assistance on that too.

Our legislative activity, just to summarize, I would say a lot of these things you could summarize by saying, continued certainty. Continued certainty in promoting innovation and protection of IP rights.

Whether it be a continuity of service issues to make sure that PTO is able to operate even during fiscal, or weather emergencies and things like that, to working with Congress on the Section 101 reform technical assistance. To making sure that there aren't unnecessary or harmful changes to the patent system as Congress considers the drug pricing issue.

And again, it's a lot of education that we're doing, a lot of technical assistance. And of course, we also list there the IP attaché rank. We've been working with other agencies and the Hill to see if we can elevate the work that those good employees do for all the stakeholders in other countries. So, yeah with that we can kind of end the presentation and open it up to questions.

CHAIR JENKINS: Questions from the committee? Thank you. I think it was nice to see the report came out before this meeting for the Success Act. However, I know I did get some comments from particularly, inventors, individual inventors and small business owners, who, I think we're very

excited about the idea of the Success Act, but didn't necessarily feel that some of the comments and suggestions that they made to the office were fully appreciated, maybe that's the best way to put it.

So, I would assume you're not -- often at times, you complete something, and I think people -- and you have a report now, right, and I even have a copy. That's a plug right there, right. Yeah. But, I -- how'd I do? But, I think at times people forget, particularly here at this office as I've learned, just because you've touched on it, you've worked on it, does not mean it's done.

And so, I think folks would like to know that this is an ongoing process. This isn't -- it's going to be something that's going to be, you know, actually difficult to tackle because you just don't have that data relatively available. And it's nice that you have a legislative activity that says, go do this, but sometimes it's not easy just to wave the wand and create what they want. So, maybe keep that in mind or just keep it going right,

with the user community. Right, Julie.

MS. MAR-SPINOLA: So, the Success Act, in particular, is so important, and I know everyone is aware of the issues. And I think the time is appropriate, especially since the Director is focused on it too. Here, the Office's own diversity within the organization is great. So, I think this is -- it can't stop with the report, the questions and receiving more information so that further analysis can be done. But then, pull the trigger, if you will, to really get programs in motion, and then measuring them for success.

CHAIR JENKINS: And even our suggestions, we do not take offense, but even our suggestions from the committee were not included in the report. But, we know that this is an ongoing activity and something that actually the PPAC finds very important. So, and we will continue to find ways to work together so we can all have an impact. Ha, ha, sorry.

MR. RITCHIE: We can -- just real

quickly, completely hear what you're saying and agree. The Director and the Deputy Director, they're very fully committed to expanding the innovation ecosphere. And what I like to say when we're on the Hill, which is absolutely true, is that our efforts to expand the innovation ecosphere did not start, nor will they end with the Success Act.

The PTO was already well underway with their, pretty groundbreaking, gender study, before the Success Act was even thought of. Now, I was on the Hill and helped pass the Success Act as a staffer there. But, the PTO was already working on this. And they have -- we just have so many programs that do outreach to all these groups, but more can be done. And so it didn't start, nor will end, with the Success Act report and plans are already underway to roll out a lot of these initiatives that Kim laid out. And so it's definitely a priority for the agency. So, we hear what you're saying and agree. And Kim, did you have anything else to add?

MS. ALTON: No, just thank you for

that feedback and let's continue to talk about how we can work together, I think we all want the same outcomes.

CHAIR JENKINS: Great. Anything else on that? Thank you so much. I inadvertently skipped over special projects for Bernie and so we're going to segue to Bernie.

MR. KNIGHT: All right, thanks, Marylee. So, the Special Projects Committee basically is a committee that looks at, sort of unique issues within the patents organization from year to year. And this year we looked at four issues. One was the Success Act, which Kimberly and Branden just spoke about. The second was how the regional offices operate. The third was the interaction between the PTAB and patents. And the fourth was the OED diversion issue.

So, let me take the Success Act first, since it's already been discussed. In our report we recommended that the office analyze whether incentives could be given to underrepresented groups, to incentivize them

to file patents and to participate in the patent system. And we didn't see that in the PTO's report. But, we were assured by Kimberly that you're going to establish a council to look at further initiatives the agency might engage in. And as part of that council, you'll take up our recommendation. Do I have that correct or?

MR. RITCHIE: Yes, there's already some thoughts being put into exactly how to go about establishing the council and that would be the forum to talk about the PPAC recommendations and any others that you may have in the future.

MR. KNIGHT: Okay, thanks Brandon, that's great. And we understand that there may be legal hurdles and other hurdles to provide incentives, but we were hoping that you would at least take a look at it and then let their user community know why you can or can't do certain things, so that'd be great. Thank you.

Then the second thing we looked at were the regional offices. We met with the

regional directors, we met with the deputy director. And the overarching issue with the regional offices was there are regional directors in each of the regions and there's also in the patents organization, technology center directors.

So, a lot of people in the user community are confused about are the roles the same, are the roles different, because they're both called directors. So, if you look at our annual report, we delineate it with, I think a lot of specificity. In a nutshell, the regional directors are very different from the technology center directors. The technology center directors manage the patent examiner's up through the commissioner for patents. So, the Commissioner for Patents manages all the patent examiner's on down, the regional directors do not.

The same thing with the board. Even though there are Board judges in each of the regions, the chief judge of the board manages the board judges. The regional directors really operate within their regions as

outreach coordinators for the PTO, and they do a lot of coordination with respect to outreach and education within their regions. And that's a very valuable resource for the agency, but a lot of people were confused, do they actually manage the patent operation. And they don't.

Another thing that's really important to understand, is that when you look at the hierarchy of the PTO, if there's a vacancy, for example, in the director or deputy director, under the departments organization order, it would be the commissioner for patents, the commissioner for trademarks, and the other executives who would normally fulfill a vacancy and be in the acting position. The regional directors are not in line to act as the director of the PTO should there be a vacancy. So, they do operate on a sort of a different track than the other PTO executives.

The second thing we looked at were the operations of the regional office. And there they do a lot of great education within

their regions. One of the things we recommended, is that a couple of things. One was that the regional offices look at what other services they could provide directly to the user community.

And then second that the agency conduct, sort of a cost kind of benefit analysis of the regional offices. For example, is the PTO really getting value, is the user community really getting value in each of the regions based on the cost of operating those offices.

Then moving on to the interaction between patents and PTAB. PTAB already discussed today the study that they -- they basically conducted two studies with our committee. One was the overlap between reissue and reexamination and a PTAB trial. And they've already gone out with more guidance which was issued this year, they discussed it already today and that was great.

The second area that they've looked at, and this is a little newer area, is the operation of 325D. And what that is, for

those who don't know, is when prior art or arguments were already considered by the office during examination, when those same arguments are made subsequently to the board, the board can basically not look at those arguments and not institute on those arguments, because they've already been addressed by the patent operation.

Our recommendation with respect to 325D, was that the board come up with further guidance for when the board will actually consider that prior art or arguments have been addressed during patent examination or in, for example, in an ex parte examination. So, they're going to take a look at that.

Finally, on OED, the Diversion Program, we looked at it again this year because we gave a couple of recommendations last year and we wanted to follow up on that. For those who don't know, the OED Diversion Program is a program where, if a practitioner has engaged in misconduct, they're not disciplined, they can divert the discipline.

And it happens where someone engages

in misconduct because of, for example, a substance abuse issue or a mental health issue, or because of simple negligence, and they can really, they can avoid discipline in that situation. Last year we recommended that the Office of Enrollment and Discipline do two things.

One was to do more outreach on the program so that the user community was more aware of it. And second, that anytime there's an investigation of a practitioner, they notify the practitioner of the availability of this program. And we're happy to say that the Office of Enrollment and Discipline has adopted both of our recommendations.

Everyone who is given a request for information when a complaint is filed, is given a brochure that they developed on our recommendation describing this program. So, big kudos to Will Colby and his office and Sarah Harris for doing that. And those are the issues we looked at this year. And we look forward to working with PTO again next year. Thank you.

CHAIR JENKINS: I have to commend Bernie because he comes in with a special expertise, as being former General Counsel for USPTO. And so when I was trying to figure out what the appropriate subcommittee for Bernie to do, I just figured, I'm just going to give him special projects. And he took it, he ran with it and he figured out all of these great topics that the committee needs to be looking at and taking from different areas of the office. So, I want to thank you a lot for the effort.

So, any questions with respect to what Bernie presented or, no? I will say we are reading and one of the comments made me chuckle. We got a comment trying to get more detail of why we're going to have, or suggesting, having a commemorative stamp since I said earlier that no one mails anymore. So, point noted to the ether. So, yeah we're good. So, with that I think, do you have any closing comments, or?

MR. HIRSHFIELD: I would just like to close by saying one it was great meeting.

But two, I'd like to thank Marylee and Bernie, and Jeff for their great work. And we were saying, at a break, at how just quickly the time seemed to have flown by with all of you on PPAC. So, thank you for your service, and work on PPAC. I've been fortunate enough to be involved for a long time on PPAC and the three of you have really moved the ball in terms of facilitating a really productive working relationship with PTO and PPAC and I'm very appreciative of those efforts. And so thanks again for everything.

CHAIR JENKINS: Thank you Drew. Just a big thank you to everyone, and on the record, it has been such a joy to be part of this process. So, thank you and appreciate your oversight and support and stewardship for everything that we've been doing. And such an honest dialogue. I think one thing that you should know is, when you reach out to these folks, they really try to address and understand your concerns and Drew, you've been just exemplary in that area, so I really thank you a lot.

Thank also my Vice Chair, Julie, for keeping me on track and just helping me run a great meeting and much appreciated. And so with that, I'd like to move to close the meeting. Do I have a second? Second. All right, thank you all. Closed.

(Whereupon, at 2:50 p.m., the PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

I, Debra Derr, notary public in and for the Commonwealth of Virginia, do hereby certify that the forgoing PROCEEDING was duly recorded and thereafter reduced to print under my direction; that the witnesses were sworn to tell the truth under penalty of perjury; that said transcript is a true record of the testimony given by witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was called; and, furthermore, that I am not 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.

(Signature and Seal on File)

**Notary Public, in and for the Commonwealth of
Virginia**